NOTES AND COMMENTS

RESOCIALIZATION OF CRIMINALS: PROBLEMS AND PROSPECTS*

I. Evolution of the Rationales of Punishment

The law that allowed 'a tooth for a tooth, an eye for an eye, a life for a life,' was a distinct early step towards criminal justice as it indicated a sense of proportion and restraint. Till the time punishment remained the concern of the person aggrieved, its object possibly could only be retribution. But as society progressed and punishment became the function of the state, retribution receded into the background and prevention of crime and reform of the criminal became much more important. These objects were sought to be achieved by the classical theory of fixing a sentence proportionate to the gravity of the crime and culpability of the criminal or by what has been loosely described of "tariff system" of punishments. The classical theory could not produce the desired results. On the contrary, crime rates soared up to new heights each year. Attempts were made to curb this trend by providing more deterrent sentences to the persistent offenders on the one hand, and by giving considerate treatment to youthful first offenders on the other. These attempts in a way heralded a new era of individualization of punishment, for resocializing the criminals. In recent years, the "increasing emphasis on the reformation and rehabilitation of the offender as a useful and self reliant member of society"[1] has been well recognized both by the law-makers as well as the judges[2].

II. Scope of Enquiry

The word "criminal" is not defined either in Indian Penal Code or in any other enactment. However the term "offence" has been defined as meaning any act or ommission made punishable by any law

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1. See statement of Objects and Reasons, The Probation of Offenders Bill, 1957, The Gazette of India, Part II, Section 2, dated 11 November 1957, at 842. The Bill was later enacted into a law.

2. Mr. Justice Subba Rao observed in *Rattan Lal* v. *State of Punjab*, A.I.R. 1965 S.C. 444 at 445:

> The Act [Probation of Offenders Act, 1958] is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him.

See also the observations of Mr. Justice Gajendragadkar in *Indo China S. Naving. Co.* v. *Jasjit Singh*, A.I.R. 1964 S.C. 1140 at 1153.

for the time being in force.[3] And the word "offender" is used to denote a person who has committed an offence.[4] On the other land, any person who considerably deviates from the accepted norms of conduct and thereby causes serious harm to the society or to an individual is popularly called a "criminal", whether he is actual law-breaker or not. But all anti-social acts are not crimes or even prohibited by law. Therefore some gap between the popular image of the "criminal" and the legal image of the "criminal" as a law-breaker is unavoidable. The law-breaking criminal as well as the "law-abiding" criminal, both by indulging in "criminal" behaviour make themselves unfit to live in society, and if "resocialization" means the process of making fit again for living in society, both the types of criminals do need resocialization. Even at governmental level serious efforts are being made all over India for the rehabilitation of some such quasi-criminals by their economic uplift and education; this need was particularly felt after the passing of the Criminal Tribes Laws (Repeal) Act of 1952. However, the law-abiding "criminal," being beyond the reach of law, and a *fortiori*, beyond the judicial process, has been left out of the present enquiry.

Even amongst the law-breakers some will have to be necessarily excluded from the discussion because of the problems of identification. Some crimes go unreported while some others remain undetected despite the best efforts of the police. Quite a good number are acquitted because of faulty investigation or prosecution, or because of lack of adequate evidence. It is of course not possible to know the exact number of *real* criminals who are acquitted or discharged for these reasons. But the statistics of reported crimes and those of actual convictions would indicate to some extent the enormity of the problem involved.[6] Be that as it may, these unidentified criminals will have to be necessarily excluded from consideration here as they do not simply reach the stage of sentencing or for that matter even that of conviction.

Yet there is another class of offenders in whose cases the offence would be allowed to be compounded by the aggrieved person either with or without the permission of the court as provided by section 345 of the Criminal Procedure Code, 1898. In some other cases, the withdrawal of the complaint or the non-appearance of the complainant at the time of trial, would have the effect of acquittal or release of the accused.[7] As the policy of the legislature in such cases appears to be to encourage reacceptance by the society of such alleged criminals without any inhibitions arising from the exposure of such persons to

3. Section 4(0), The Code of Criminal Procedure, 1898.

4. See sections 562, 565 of the Code of Criminal Procedure, 1898. See also section 4(a) of the Reformatory Schools Act, 1897.

5. According to Oxford English Dictionary, the word "socialization" means "to make fit for living in society."

6. During the year 1962, the percentage of conviction to true cases investigated was 28.7 as against 29.6 in 1961. Further, the gap between the number of reported cases and the number of true cases is considerable.

7. See sections 247, 248, 249 of the Criminal Procedure Code, 1898.

the processes of criminal trial, the problem of resocialization does not usually arise.

An attempt is, therefore, made here to examine briefly the structure of penal sanctions, some of the changes introduced in them by recent legislations, and their actual and probable use by the sentencers for the rehabilitation of the criminals. A study of the treatment meted out to criminals in jails, reformatory schools and such other institutions, or of the assistance given to prisoners after their release from such institutions, though of immense value and significance, is not ventured here.

III. Scope of Judicial Discretion in Sentencing

Whatever relative importance the deterrent and reformative theories of punishment might claim over each other, one basic truth would be accepted by both. No two criminals or no two crimes, even those covered by the same legal definition, are exactly alike. And therefore the trial court should necessarily have the freedom to determine a sentence appropriate to the particular circumstances of the crime and the criminal.

In every case the offender is convicted, it is obligatory on the court to pass a sentence[8]. This requirement appears unnecessary, at least, in case of convictions for 'technical' offences and is in practice circumvented by passing a very nominal sentence—a sentence only in name and form but devoid of any substance.[9]

The punishments awardable to the offenders are mainly of three types : (a) death, (b) imprisonment (including imprisonment for life), and (c) fine (which also includes forfeiture of property).[10]

The Indian Penal Code and the other penal laws normally indicate the maximum punishment awardable for an offence and then leave it to the discretion of the court to pass a suitable sentence within such maximum limit. The law in a way fetters the judicial discretion in sentencing; but as the existing maximum limits of punishments are

8. See sections 245(2), 258(2), 263(1), 306(2), 309(2), Criminal Procedure Code, 1898.

The law in some cases allows the court to pass orders of admonition, conditional release, or probation, in lieu of inflicting any sentence on the offender. For instance, see section 562, Criminal Procedure Code, 1898; sections 3, 4, 6, Probation of Offenders Act, 1956; section 10, Suppression of Immoral Traffic Act, 1956; section 31, Reformatory Schools Act, 1897.

9. Sometimes a sentence of imprisonment till the rising of the court is pronounced just before the rising of the court.

10. See section 53, Indian Penal Code, 1860. Sometimes cancellation of licence is also provided as an additional penalty. For instance, see section 8, Untouchability (Offences) Act, 1955.

rather too high and hardly ever reached in practice,[11] the objection would appear to be academic only. The view taken by the courts is that the maximum punishment prescribed is for the worst type of cases.[12] And rarely a case under trial would reach the imaginary or notional stature of the "worst type."

A definite danger to individualization of punishments and consequently to the rehabilitation of criminals is, however, involved when the law enjoins the courts to pass a fixed sentence[13] or a sentence not less than the minimum fixed.[14] The danger has become all the more seribus because of the increasing use of minimum punishments in recent legislations.[14a] One omnibus reason advanced in support of minimum punishments is that such punishments are effective deterrents for curbing the crime. There appears to be no evidence to substantiate the claim.[15] Another reason put forward should, however, receive more attention. Minimum punishments have become necessary, it is said, because of the tendency on the part of the judges to impose indequate sentences. The Law Commission considered this argument but doubted the correctness of its basis.[16] However, some evidence in support of the contention is noticeable from the judgments of the higher courts.

11.

> The maximum punishments laid down in many places have been so liberally fixed that the actual punishments inflicted in courts almost mock at them.... The maximum laid down is hardly ever approached even, far from anybody contemplating to outstrip it....

Adul Hasanat, *Crime and Criminal Justice* Appendix B, at 124, quoted in *Essays on the Indian Penal Code* 121, n. 18 (The Indian Law Institute ed. 1962).

12.

> The maximum punishment prescribed by the law of any offence is intended for the gravest of its kind and it is rarely necessary in practice to go up to the maximum.

Rules and Orders of the Punjab High Court, vol. III, ch. 19-A, at 1 (1964).

See also *Dulle* v. *State*, A.I.R. 1958 All. 198. "The maximum penalty provided for any offence is meant for only the worst cases" (at 204).

13. For instance, see sections 303, 311, 363-A(2), 386(2), 389(2), Indian Penal Code, 1860.

14. For instance, see sections 397, 398, Indian Penal Code, 1860.

14a.

> Of late an increasing tendency has been shown by the legislature towards prescribing a minimum sentence in case of some offences.

Law Commission: *Fourteenth Report on Reform of Judicial Administration* vol II, 838 (1958). And also at 840:

> But, during recent years, several enactments have been passed by the State Legislatures or Parliament providing for minimum punishment.

15. The Law Commission in its *Fourteenth Report on Reform of Judicial Administration*, 1958, adverted to this problem and observed:

> The theory that more severe the punishment the greater the deterrent effect is itself a matter of controversy, it has not been ascertained whether there has been a fall in the commission of those offences where an enhanced penalty has been assured by prescribing minimum sentence.

See vol. II, at 838-39.

16. *Id.* at 841.

In *Mahomed Hanif* v. *Emperor*,[17] Mr. Chief Justice Beaumont of the Bombay High Court observed :

> Recently this court has had to send for the record in a considerable number of cases in the courts of Presidency Magistrates, and to enhance the sentence passed. That practice is to be regretted, because it involves a considerable waste of public time and money, and tends moreover to lessen the confidence which the public should feel in the discretion of Magistrates... *It was the view of the former Commissioner of Police in Bombay that the lenient sentences passed by Presidency Magistrates encouraged criminal characters from other parts of India to come and settle in Bombay*, and this case suggests that there may be some force in that view...[17a]

In *Om Prakash* v. *State*,[18] Mr. Justice James observed :

> We welcome this opportunity of giving our considered views on the important questions of sentence in decoity cases, for *we are distressed at the tendency of many Sessions Judges of the present time to treat decoits leniently and to pass light sentences on them*...We wish to express our strong disapproval of this...[18a]

The conditions mentioned in the above two cases pose a serious problem, not easy of solution. The cases *prima facie* make it advisable to investigate into the magnitude of the problem and the circumstances giving rise to it. We feel, however, that the solution to the problem should be sought not in the prescription of minimum punishments but in the reorientation of judicial attitudes towards sentencing.

A factual study in another direction would be equally rewarding. How do the minimum punishments prescribed by law operate in actual practice? In how many cases the power of the government to remit or to commute sentences is invoked by courts to mitigate the rigour of minimum punishments, and with what results? A study of some reported murder cases[19] will illustrate the unsuitability of having minimum punishments in the structure of penal sanctions and would *prima facie* establish that such punishments present a real hurdle in the

17. A.I.R. 1942 Bom. 215.

17a. *Id.* at 215-16. (Emphasis added).

18. A.I.R. 1956 All. 164.

18a. *Id.* at 166. (Emphasis added).

19. *In re Karuppal*, A.I.R. 1941 Mad. 50 ; *Alam Bibi* v. *Emperor*, [1932] 137 I. C. 259; *Sardaran* v. *Emperor*, [1933] 146 I.C. 228; *Queen-Empress* v. *Laksham Dagdu*, [1886] I.L.R. 10 Bom. 512; *Queen-Empress* v. *Kader Nasyar Shah*, [1886] I.L.R. 23 Cal. 604; *Vaghumal Kherajmal* v. *State*, A.I.R. 1955 Sau. 13.

It may further be noted that the Punjab High Court found it necessary to give a specific direction to the subordinate courts to forward the record of similar murder cases for the purposes of commutation or reduction of the sentence of life imprisonment. Rules and Orders of the Punjab High Court, vol. III, ch. 20-C, at 7 (1964) provide :

> In every case in which a sentence of imprisonment for life is passed on a woman for the murder of her infant child, and the sentence is not appealed against, the record of the case shall, after the expiration of the period allowed for appeal, be forwarded to the High Court for submission to Government, with a view to consideration of the question whether any commutation or reduction of the sentence should be allowed.

Other High Courts appear to have issued similar directions to their subordinate courts.

judicial attempts towards resocialization of criminals. Further, the operation of minimum punishments is likely to dilute the judicial process of evolving some working classification of criminals for the purposes of rehabilitation.

IV. The Existing Trial Procedures and the Requirements of a Progressive Sentencing Policy

A criminal trial has two distinct functions: (1) adjudication upon the guilt of the accused, and (2) determination of appropriate sentence for the convicted person. Both the functions are equally important for protecting the interests of the society and also of the offender. However, the sentencing aspect of the trial appears today to be somewhat neglected by the normal procedural laws. Probably, the change in emphasis from the crime to the criminal in modern penology is yet to take roots in that field.

The evidence allowed to be given by law at any trial is of facts in issue and relevant facts.[20] The ingredients of the alleged offence are facts in issue but not the individual make up of the offender. Previous good character of the accused is relevant; but previous bad character is relevant only in reply to the evidence of accused's good character.[21] Naturally, evidence of good character is not normally proffered because of the fear of the prosecution producing the contrary evidence of bad character. As a result the evidence regarding the character of the accused is rarely made available to courts in the present system. Again, the motive for the crime may be a relevant consideration but not the general mental and physical condition of the accused. Further the cause and effect of the facts constituting the offence are deemed relevant, but the family background and the economic conditions of the accused are considered irrelevant. The modern penal policy oriented to the rehabilitation of the offender would require the flow of reliable information of this type about the accused-offender to the court which the law of evidence in its present form unfortunately restricts. The more enlightened and painstaking amongst the judges do try to cull out information about the offender's personality and background from the evidence of the crime, and from "other sources"[21a] which are not strictly "evidence." If resocialization of criminals is to be adequately supported by the judges through the sentencing process, it is imperative to provide the courts with as full a social background as is possible. At present, the only information occasionally made available to relates to the previous convictions of the accused for certain

20. Section 5, Indian Evidence Act, 1872.

21. Sections 53, 54, Indian Evidence Act, 1872.

21a. For instance, a challan sent by police, police diary and other statements made to police. While these records have no evidentiary significance, they are nonetheless made available to the court.

offences. But even this is done with a view to make him liable for enhanced penalty.[22]

The Probation of Offenders Act, 1958, has, however, partially succeeded in making a breakthrough in this regard. Section 14 of the Act makes it a duty of the Probation Officer

> to inquire, in accordance with any directions of a court, into the circumstances or home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him, and submit reports to the court.

The prescribed form in which the report submitted would indicate the comprehensive nature of the information that would be collected by a trained social investigator and placed at the disposal of the court.

There are, however, some practical administrative difficulties which can only be solved by sustained efforts. There are also some legal difficulties which can be removed either directly by modifying the Act or indirectly by resorting to bold and ingenious interpretation of the existing statutory provisions. First, it may be difficult to have adequate number of trained probation officers required to cater to the needs of the hundreds of criminal courts in this country. Second, the provisions of the Act are mainly applicable in respect of offences *not* punishable with death or imprisonment for life.[23] Consequently, a large number of serious offences, and also a substantial number of ordinary offences of a less serious nature, covered by section 75 of the Indian Penal Code, would be outside the purview of the Act. And therefore, in such cases, the court may not be able to secure the report of the probation officer under the Act. But as the report can be called for before the conviction of the accused, and as the charge for any of the above said offences can theoretically at least be altered to one for an offence within the purview of the Act,[24] the provisions regarding the report of the probation officer can legtimately be put into action.

The rules framed by some of the state governments[25] under section 17 of the Probation of Offenders Act, 1958, enable the court to direct a probation officer to have a medical or psychiatric examination of the offender and report to the court for enabling it to decide

22. Sections 221(7), 225-A, 348, Criminal Procedure Code, 1898, read with section 75 of the Indian Penal Code, 1860.

23. See sections 3, 4 and 6 of the Act.

24. Section 227(1) of the Criminal Procedure Code, 1898, provides:

> Any court may alter or add to any charge at any time before judgment is pronounced, or, in the case of trials by jury before the Court of Session or High Court, before the verdict of the jury is returned.

25. Such rules are in effect in the following states: Delhi, vide Rule 26(2); Rajasthan, vide Rule 26(2); Assam, vide Rule 26(2); Punjab, vide Rule 24(2); Bihar, vide Rule 17(iii).

the action to be taken under the Act. Such examination and report would be particularly useful in dealing with offenders guilty of sexual offences. It is suggested that similar provisions be incorporated in the rules framed by other state governments.

The determination of the age of the accused, apart from its general importance, is particularly relevant and essential while taking action under section 562 of the Criminal Procedure Code, 1898, section 6 of the Probation of Offenders Act, 1958, and generally under Children Acts, Borstal School Acts and the Reformatory Schools Act, 1897. These are intended to provide suitable treatment to youthful or adolescent offenders with a view to their rehabilitation. Therefore, in some of these statutes, the relevant date for reckoning the age of the offender has been mentioned to be the date of conviction[26] and not the date when the offence was committed. Even where such an express provision is not made[27] the same result has been arrived at by judicial decisions.[28] But when the beneficial provisions are not applied by the trial court but are for the first time applied by the appellate or revisional court, the logic is somewhat different. It has been held that in such a case, "the crucial date must be that upon which the trial court had to deal with the offenders."[29] It would be expedient if a uniform rule in this matter is formulated to facilitate the work of the courts.

Further, sometimes the jurisdiction of the court depends upon the age of the accused person.[30] Only section 11 of the Reformatory Schools Act, 1897, and section 32 of the Children Act, 1960, provide for an enquiry to determine the age of the accused, but otherwise there are no directives to adjudicate upon this preliminary question. The Punjab High Court has, however issued instructions to the subordinate courts as follows :

> In order to minimise and if possible to abolish the infliction of sentences which are likely to have prejudicial effect on the character of a youthful offender, when other suitable methods of punishment are available the judges are also pleased to direct that all Criminal Courts should in future enter the ages of the convicts in the body of their judgments, with a view to being directly seized with the question of age when deciding the sentence to be imposed on a juvenile or adolescent.[31]

Proof of previous convictions is an important factor while dealing with the offenders. This particularly becomes important when action is

26. See, for example, section 4(a) of the Reformatory Schools Act, 1897.

27. For instance, see section 562, Criminal Procedure Code, 1898; section 6, Probation of Offenders Act, 1958.

28. *Ramji Missar* v. *State of Bihar*, A.I.R. 1963 S.C. 1088.

29. *Id.* at 1093.

30. Ordinary Magistrates' courts are not entitled to try cases covered by the Children Acts.

31. Rules and Orders of the Punjab High Court, vol. III, ch. 22-A, at 2-3 (1964); see also ch. i-G, p. 35.

contemplated under section 75 of the Indian Penal Code,[32] or section 562 of the Criminal Procedure Code,[33] or under section 3 of the Probation of Offenders Act, 1958.[34] To facilitate the proof of previous convictions, it becomes inevitable to rely upon the records maintained by the police. The present system of maintaining such records of convictions is confined to cases[35] in which the subsequent conviction for the same or similar offence would render the person liable to enhanced punishment.

The previous convictions for offences not included in the records are for all practical purposes not counted as previous convictions, and section 3 of the Probation of Offenders Act, 1958, and section 562 of the Criminal Procedure Code, 1898, can be applied to them though in fact contrary to the expressed intention of the legislature. Thus, the discretion of the courts in awarding punishments is not arbitrary but one to be guided by a variety of considerations.[36]

V. Conventional forms of Punishment and the Rehabilitation of the Criminal

From the point of view of the resocialization of criminals, the prevalent structure of penal sanctions may be classified into following categories :

(a) *Death Sentence*: Cases where death penalties are awarded are considered obviously impossible for resocialization. Death penalty is awardable in case of eight offences under the Penal Code.[37] All precautions are taken to avoid possible mistakes in taking a final decisions to "write off" the criminal. Apart from the normal facilities of appeal and revision, an additional safeguard is provided by making it obligatory for the court passing a death sentence to submit its proceed-

32. Section 75 of the Indian Penal Code, 1860, provides for enhancement of punishment for certain offences under chapter XII or chapter XVIII of the Code, after proof of previous conviction.

33. Section 562 of the Criminal Procedure Code, 1898, requires courts to take into consideration *inter alia* previous conviction of certain convicted offenders while exercising their power to release them on probation of good conduct instead of sentencing to punishment.

34. Section 3 of the Probation of Offenders Act, 1958, empowers courts to release certain offenders after admonition, provided *inter alia* no previous conviction is proved against them.

35. Rules and Orders of the Punjab High Court, vol. III, ch. ii-G, 25-28 (1964).

36. See observations in *Adamji Umar Dalal* v. *State of Bombay*, [1952] S.C.R. 172, 176 ; *Mahomed Hanif* v. *Emperor*, A.I.R. 1942 Bom. 215.

Rules and orders of the Punjab High Court, vol. III, ch. 19-A, at 1 (1964), read as follows :

> The determination of appropriate punishment after conviction of an offender is often a question of great difficulty and always require careful consideration ...The measure of punishment in any particular instance depends upon a variety of considerations such as...

37. See sections 121, 132, 194, 302, 303, 305, 307, 396, Indian Penal Code, 1860.

ings to the High Court for confirmation of the sentence.[38] Further, it has been specially provided in case of death sentence that the trial court after passing the sentence shall inform the convict of the period within which he must appeal if he wishes to do so.[39] The trial court has been directed that the record of every case in which the sentence of death has been confirmed by the High Court should, as soon as orders confirming the death sentence have been passed, be forwarded to the state government.[40] Again, it has been observed by the Supreme Court that as a matter of convention the death sentence should not be imposed when the conviction for murder is confirmed only by a majority.[41] It may be noted that the number of persons actually executed is small as compared with the number of persons sentenced to death.[42] The suitable means for resocialization of convicts thus not executed need to be considered.

(b) *Life Imprisonment* : To a lesser degree, offenders sentenced to life imprisonment are considered incapable of resocialization. In case of the offence of murder (section 302 of the Indian Penal Code) life imprisonment is the minimum sentence provided by law: for four other offences[43] it is the only sentence that can be passed, while for thirty-nine offences[44] that is the maximum awardable sentence. Every year, about three thousand and odd persons are sentenced to life imprisonment. Some of these offenders convicted for the above mentioned five offences might have not received this sentence but for the minimum-sentence-restriction imposed by law. It means that this category includes at least some persons who would not have been considered by the judges as unsuitable for resocialization.

(c) *Fine* : At the other end of the structure of penal sanctions is the punishment by way of fine. In fact, in case of criminals sentenced to fine there is no problem of resocialization as such. The imposition of fine, whether prescribed by the legislature as the only penalty for an

38. See section 374 Criminal Procedure Code, 1898.

39. See section 371(3), Criminal Procedure Code, 1898.

40. Rules and Orders of the Punjab High Court, vol. III, ch. 20-D, at 9 (1964).

41. *Aftab Ahmed Khan* v. *State of Hyderabad*, A.I.R. 1954 S.C. 436; *Pandurang* v. *State of Hyderabad*, A.I.R. 1955 S.C. 216.

42. Vide 12 *Statistical Abstract of the Indian Union* 647 (1963-64) :

Year	Number of persons sentenced to death	Number of persons executed.
1958	695	50
1959	671	109
1960	521	119

43. See sections 311, 363-A(2), 388(2), 389(2) of the Indian Penal Code, 1860.

44. See Indian Penal Code, 1860, §§ 121-A, 122, 124-A, 125, 128, 130, 131, 132, 194, 222, 225, 232, 238, 304, 305, 307, 313, 314, 326, 329, 364, 371, 376, 377, 394, 396, 400, 409, 412, 413, 436, 449, 459, 467, 472, 474, (2), 477, 489-A, 489-D.

offence or preferred by a judge over other forms of sentence, is indicative of the assumption that these offenders, individually or as a class, are not unfit to remain freely in society. However, in the absence of institutionalized and other correctional alternatives to imprisonment courts might be, with reluctance and somewhat underserved leniency, preferring a sentence of fine to that of imprisonment. This might be so due to not quite unfounded belief that most men come out of prison worse than before. With the advent of other alternatives to imprisonment the choice of punishment by fine is becoming more frequent and may be rationalized.

(d) *Imprisonment*: In case of majority of offences the law has provided punishments of imprisonment of varying terms. This remaining part of the structure of penal sanctions calls for serious attention. The courts while awarding such punishments were till recently—or are for that matter even today—mostly guided by considerations relating to the gravity of the offence and the malevolence of the offender. Considerations of rehabilitation of the offender did not weigh much with the courts as they were thought to be the concern mainly of the prison authorities and after-care agencies. And failures in resocialization of these criminals were mostly attributed to the failures and deficiencies of prison administration and allied agencies. But experience showed that prison reforms were in themselves no adequate answer to the problems of resocialization of criminals. It was observed by the Indian Jails Committee, in its report of 1919-20, that

> Whatever improvement may be effected in prison administration, it must, we fear, still remain true that *imprisonment is generally evil and that all possible measures should be taken to avoid commitment to prison* when any other course can be followed without prejudice to the public interest.[45]

The apprehensions about the deleterious effects of life in jail have been occasionally echoed in legislative debates and judicial pronouncements. In sentencing first offenders and young offenders to imprisonment, the courts have been more forthright in adverting to the risks involved. The High Courts have repeatedly emphasized that the subordinate courts should ordinarily avoid passing sentences of short term imprisonments, especially on first offenders of immature age, as their contamination by hardened criminals has been much more imminent.[46] All this testifies, if any testimony is needed, to the fact that prison sentences impede the subsequently imperative resocialization processes. Efforts on ascending scale are accordingly being made to

45. *The Report of the Indian Jails Committee, 1919-20* [Cmd. 1303], 1921, at 35 (emphasis added).

46. See generally on this aspect *Bangru Barman* v. *Emperor*, (1933-34) 38 C.W.N. 362; *Tirath Ram* v. *Emperor*, A.I.R. 1930 Lah. 424; *Mahomed Hanif* v. *Emperor*, A.I.R. 1942 Bom 215; *Mukhram* v. *Emperor*, 1929 All 930; *Lekh Raj* v. *State*, A.I.R. 1960 Punj. 482; *Jogi Nahak* v. *State*, A.I.R. 1965 Orissa 106.

provide alternatives to sentences of imprisonment.[47] Admonition, release on a bond for keeping peace and good behaviour and on probation with supervision; detention in reformatory school, certified school, or Borstal School, are some of the alternatives already provided. However the statutory provisions offering these alternatives give little or no guidance to the courts as to the conditions and environments in which these methods are likely to give optimum results in the process of resocialization of criminals. Certainly, a first step towards the attainment of such results may well be seen in preparation or comprehensive formultations in this regard in the High Court rules and circulars for the guidance of criminal courts or separate guide books or handbooks on sentencing on the lines suggested in the Streatfield Committee Report.[48]

The advisability of transforming the "crime" oriented sentencing structure into one more subservient to the reformation and resocialization of criminals is quite evidently felt in case of juvenile delinquents and young offenders. But this process of transformation, once begun, does not stop at that.

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47. Consider, for example section 562, Criminal Procedure Code, 1898, the Reformatory Schools Act, 1897, the different Borstal School Acts and Children Acts applicable in different states, the Probation of Offenders Act, 1958.

48. *Report of the Interdepartmental Committee on the Business of the Criminal Courts.* Cmnd. 1289 (1961).

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