

Chapter III

INDIAN PENAL CODE : Section 75

In the course of history, the measures that have been adopted for dealing with habitual offenders have been numerous and of infinite variety. The "indeterminate sentence" (*i.e.* a sentence to which is set no bounds except the administrative decision) has been tried.¹ However, this kind of sentence has been "a goal, rather than an achievement of criminal reform".² A variation of it is the "indefinite sentence". Here the limits set by the court or the legislature control both the maximum and the minimum for which the person can be sentenced, but within the limits there is an elasticity or, the exact date of release is left to an administrative authority. This method has been more frequently used than the purely indeterminate sentence.³ Transportation as a sentence for offenders has been tried (and abandoned) in Chile, Denmark, England, Equador, France, Holland, Italy, Portugal, Spain and Russia.⁴ Of these, France has applied transportation ("relegation") specifically to habitual criminals.⁵ Castration of sexual criminals has been resorted to in Denmark and California, though the measure so adopted does not seem to have been addressed to habitual criminals as such.

Two methods of combating the habitual facet of criminality which are applied at the stage of the conviction for the *last crime*, can now be mentioned.⁶ First, the sentence for the last crime may be increased or continued indefinitely, though the conditions under which this increased term is served remain unchanged, both in theory and in practice. This method may be called "aggravation of punishment".

1. In Denmark and Germany. See Norval Morris, *The Habitual Criminal* 23 (1976).

2. Grunhut, *Penal Reform* 114 (1948).

3 E.g. Canada, New Zealand, some South Australian states, Yugoslavia, Czechoslovakia, Spain, Finland, Poland, Italy, Hungary, Sweden, Switzerland, Belgium, Holland, and Norway. See Norval Morris, *The Habitual Criminal*, pages 203-204 (for Europe) and pages 102, 109, 117, 128, 143, 153 (for commonwealth countries).

4. Norval Morris, *supra* note 3 at pages 23-24.

5. *Supra* note 3 24.

6. *Supra* note 3 24-25.

Secondly, the sentence for the last crime may be followed or supplemented by a *different type of punishment*, applicable to habitual criminals as such. This method, where it takes the shape of detention, may be called preventive detention (not to be confused with preventive detention ordered without trial).

Section 75 of the Indian Penal Code falls under the first category mentioned above—aggravated punishment for the last crime committed by a criminal who has had certain previous convictions (in the language of criminology, a “habitual” or “persistent” offender or “confirmed” recidivist). Recidivism as a matter requiring special aggravated punishment is, thus, the subject of this section of the Code.

The section reads as under :

75. Whoever, having been convicted, (a) by a Court in India of an offence punishable under Chapter XII or Chapter XVII this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life or to imprisonment of either description for a term which may extend to ten years.

The chapters of the Penal Code which are referred to in section 75 are concerned with offences relating to stamps and coins and certain offences against the property (as theft, extortion, robbery and dacoity) respectively. If the requisite conditions are satisfied, the section operates by authorising an aggravated punishment, *i.e.* a punishment higher than that otherwise awardable for the subsequent offence.

Of course, the provisions of the section are not mandatory and, in fact, courts have pointed out the need for applying this section with some discrimination, and not in a mechanical manner.⁷ The section received the attention of the Law Commission when the commission gave its comprehensive report on the revision of the Indian Penal Code. On an examination of the scope of the offences mentioned in the section, the Law Commission recommended⁸ that the section should be extended to all the offences under the code punishable with imprisonment upto three year or more. Secondly, it recommended that enhanced punishment under section 75 should be permissible only if the subsequent offence was committed

7. *Kasim Ali v. Emperor*, 7 Cri. L.J. 293 (1908).

8. Law Commission of India, *42nd Report* (Indian Penal Code) pages 78-80.

within three years of the release of the offender from the prison for the last offence committed by him. Thirdly, the Law Commission recommended that where, on the last conviction, the offender had been sentenced not to imprisonment but to some lesser or milder punishment or measures, such as fine or probation, the section ought not to be applied. The first recommendation expanded the range of offences falling within the section while the second would make more stringent the requirements to be satisfied before applying the section. These recommendations of the Law Commission were intended to strike a balance between, on the one hand, the need to protect society against serious offences committed by a recidivist, and, on the other the need to subdue within certain limits the instinct of retribution. It may be mentioned that in the official Bill⁹ seeking to implement the report of the Law Commission on the Indian Penal Code, proposed certain amendments in section 75 which (so far as is material) was to read as follows :

Whoever, having been convicted by a Court in India of an offence punishable *under this Code* with imprisonment of either description for a term of *two years* or upwards, commits, *within five years from the date of his final release from prison after serving that sentence*, any offence punishable under this Code with imprisonment for the like term, shall be subject for every such subsequent offence to imprisonment for life, or to imprisonment of either description for a term which may extend to ten years.

The proposals in the Bill have not yet become law.¹⁰

9. Clause 30, Indian Penal Code (Amendment) Bill, 1978 (Emphasis added).

10. There is another provision of the Indian Penal Code which is of interest in connection with recidivism. Section 303 of that code provides that where a person undergoing a sentence of imprisonment for life commits murder, he shall be sentenced to death—a rare case in Indian criminal law of *mandatory* death penalty.