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Development in Law Surrounding Question of Sentence in India

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In sentencing convicts, the court's sentencing process lacks consistency in interpreting concepts and clarification related to it. Which has resulted in continuous inconsistency and arbitrariness. According to Section 235(2) of the Code of Criminal Procedure, following conviction, it is fundamental to allow both sides a chance to be heard on the issue of sentencing. This stage of the trial is critical because both sides have the chance to put forward aggravating and mitigating circumstances or reasons that should be considered before passing a sentence. Non-compliance with the procedure or a lack of uniformity in the procedure results in discrepancies and an increased number of capital sentences. Various judgments have interpreted Section 235(2) and established its significance; therefore, understanding the real meaning of Section 235(2) becomes essential for making sure that due process of justice has been complied with.

Keywords: *law, sentence, crpc, criminal.*

THE CONCEPT OF PRE-SENTENCE HEARING

On conviction, the accused may be heard on the issue of sentencing before being given the appropriate sentence under Section 235(2) of the Code of Criminal Procedure. Pre-sentence hearing is the term used for describing the hearing wherein the accused is given an opportunity to be heard on the question of sentencing. This gives the accused the chance to argue for a less

severe sentence based on certain facts and circumstances that could be regarded as vital factors while determining the sentence of an accused. For instance, considering the accused's age, his or her dependents, any medical conditions, prior convictions, etc. This provision acts as a right provided to the accused in order to get a chance of being heard on the question of sentencing. The goal of section 235(2)¹ is to allow the accused a chance to express their opposition to the punishment that will be handed to him. Section 235(2)² serves two purposes: the concept of natural justice is adhered to by providing the accused a means to be heard on the subject of sentencing and, it also further assists the court in deciding a suitable punishment for the convict

DEVELOPMENT IN INTERPRETATION OF SECTION 235(2) THROUGH LANDMARK JUDGMENTS

The Code of 1973's Section 235(2) was later introduced, it was missing in the prior Code of 1898. By mandating two hearings - one at the trial stage before the determination of guilt and another at the pre-sentence stage - this subsection divides the trial into two stages. This flaw in the sentencing process was identified by the Law Commission in its 48th Report³. After this, it was widely taken into consideration that there are various shortcomings in the current system and they must be fixed in order to have a reasonable and consistent sentencing policy. One such shortcoming is the lack of thorough information on the character traits and history of the person who committed the offence.

In *Santa Singh v State of Punjab*⁴, the court stressed that care must be taken to ensure that a pre-sentencing hearing does not become a weapon to violate due process of justice; it must be balanced to fulfill the requirements of expeditious disposition of proceedings and appropriate hearing. This provision implies that if either the prosecution or the accused, or both request in this regard, the court must provide both of the parties associated a chance to provide evidence or material pertaining to all of the factors containing the issue of sentence, even though Section 235(2) does not contain any exclusive mention related to evidence and only provides the accused

¹ Code of Criminal Procedure 1973, s 235(2)

² *Ibid*

³ Law Commission, *Some Questions Under the Code of Criminal Procedure Bill, 1970* (Law Com No 48, 1972)

⁴ *Santa Singh v State of Punjab* (1976) 4 SCC 190

a hearing regarding issue of sentence. The court also stressed the importance of a pre-sentencing hearing and the factors that need to be considered while deciding an appropriate sentence. The degree of seriousness of the offence, the circumstances be it mitigating or aggravating, the severity of the offence, the offender's age, his or her employment history, the offender's history with respect to education, family life, abstinence and societal integration, the offender's psychological and mental state, the offender's potential of rehabilitation, and various other factors must be taken into account. In a recent instance, the Supreme Court decided to take suo moto cognizance on whether there is a compulsion to conduct a separate hearing on the issue of sentencing.⁵ The court considered the Santa Singh decision while making its decision, noting that a sentencing hearing is not simply associated with hearing oral arguments. Its goal is to offer both parties a fair chance and to produce material on numerous issues that will influence the implementation of punishment.⁶

In *Manoj & Ors v State of Madhya Pradesh*⁷, the law established in *Bachan Singh* in reference to this court emphasized that the scope of the chance provided to the convict to be heard on sentencing was out of line related to conformity with Section 235(2). Since *Bachan Singh's* Judgement, more than 40 years have passed, and barely any policy-oriented modifications have been undertaken to formulate a framework or approach that clarifies how mitigation characteristics ought to be compiled to satisfy the court's set standard. The absence of information regarding the accused at the time of sentence significantly hinders the process of taking it into account. Clearly, in accordance with S. 235(2) CrPC, the counsel must relate these facts to the prospects for reformation and supply appropriate judicial justification rather than simply presenting them. A person's social setting, age, degree of education, trauma caused to the offender in the past, the personal circumstances of the defendant, the convict's mental health, convict's post-conviction conduct have been suggested as pertinent factors while contemplating whether the accused should be given death sentence. In *Rajesh Kumar v State*⁸, this court also

⁵ In Re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences Crim WP No 1/2022

⁶ *Sundar Sundarrajan v State by Inspector of Police* Crim App No 300/2011

⁷ *Manoj v The State Of Madhya Pradesh* Crim App No 250/2015

⁸ *Rajesh Kumar v State through Govt. of NCT of Delhi* (2011) 13 SCC 706

pointed out that when the prosecution had not presented any evidence that showed that the convict was not capable of reform, it could be considered a mitigating factor.

In *Mofil Khan v State of Jharkhand*⁹, the court held that the prosecution ought to prove that there was no scope or possibility of reformation and rehabilitation of the convicted person.

RECENT JUDGEMENTS AND CURRENT POSITION OF LAW

In the matter of *Sundar Sundarrajan v State by Inspector of Police*¹⁰, the petitioner had filed a review petition in the Supreme Court of India for a review of his conviction for murder. The convict had kidnapped a seven-year-old child and subsequently murdered the child, and was sentenced to the death penalty by the trial court.¹¹ In the present case, the petitioner argued that the court had not considered any aggravating or mitigating circumstances while sentencing the accused and the sentence should be commuted for failing to consider the mitigating factors.¹² The Supreme Court, while deciding this case, relied upon various judgments passed by it. In *Bacchan Singh v State of Punjab*¹³, the court observed that it should not restrict itself by merely taking into regard situations or circumstances related to a particular crime but it should also consider the circumstances and background of the criminal.¹⁴ It also pointed out that the probability of reform of the convict should be considered and not the possibility. In *Rajendra Pralhadrao Wasnik v State of Maharashtra*¹⁵, it was held that the state ought to present to the court by the way of evidence, that there exists a high probability or a probable cause pertained to why the convicted person cannot be capable of improving himself.

Further in *Sangeet v State of Haryana*¹⁶, no matter how heinous a crime a person has committed, the court held that he is a human being and is entitled to live a life with dignity under our constitution. The court also imposed a duty on the prosecution and courts, stating that it was

⁹ *Mofil Khan v The State of Jharkhand* (2021) SCC 1136

¹⁰ *Sundar Sundarrajan v State by Inspector of Police* Crim App No 300/2011

¹¹ *Ibid*

¹² *Ibid*

¹³ *Bacchan Singh v State of Punjab* (1982) 3 SCC 24

¹⁴ *Ibid*

¹⁵ *Rajendra Pralhadrao Wasnik v The State of Maharashtra* (2019) 12 SCC 460

¹⁶ *Sangeet & Anr v State of Haryana* (2013) 2 SCC 452

their duty to set aside the crime a person has committed and evaluate whether such a person could be reformed.

In this instance, it was the state's responsibility to disclose all relevant information, records, and estimates of reform. In this case, the nature of the offense was the only consideration. Nothing justifies the grievous nature of the crime, but it is equally significant to consider mitigating factors and then pass a sentence. Thus, in the instant case, the honorable court held that the trial court did not give a real, meaningful, and effective chance to the convict, as it had failed to conduct a separate hearing and had not even considered any mitigating factors. Previously, the High Court took into consideration only aggravating factors and the gruesome nature of the crime.

Further, facts indicate that the convict had no prior criminal history, was 23 years old when the crime was committed, and has been imprisoned since 2009.¹⁷ Up until his 2013 prison break attempt, his behaviour had been satisfactory, and mitigating factors included his systemic hypertension, attempts to earn a basic education in the form of a food catering diploma, and the pursuit of a career and it must be taken into account because developing a career while incarcerated will have a significant impact on his capacity to live a dignified life.¹⁸ Thus, the court commuted his sentence from the death penalty to life imprisonment without remission.

Now, a question arises about what would amount to a real, meaningful, and effective sentencing hearing. And is there an obligation to conduct a separate hearing or what would amount to sufficient time to allow a separate and effective sentence hearing? Before answering these questions, let us take a look at recent research undertaken by Project 39A on Death Penalty Sentencing in Trial Court.¹⁹ Project 39A looked at all death penalty judgments handed down by the Supreme Court between 2007 and 2021. Mitigating circumstances were not addressed in 51% of the 215 trial court judgments. Furthermore, in direct contravention of the spirit of individualized justice envisioned by Section 235(2) CrPC, 44% of instances entailed a sentence

¹⁷ *Sundar Sundarrajan v State by Inspector of Police* Crim App No 300/2011

¹⁸ *Ibid*

¹⁹ Dr. Anup Surendranath et al., *Death Penalty Sentencing in Trial Court (Project 39A, 2020)*

<<https://www.project39a.com/s/Death-Penalty-Sentencing-in-Trial-Courts.pdf>> accessed 15 August 2023

on the same day as of conviction. Furthermore, while selecting between life imprisonment and the death penalty, trial judges failed to consider the default punishment of life imprisonment in 73% of cases, according to the research.²⁰

In a recent *Suo Motu Criminal Writ Petition* titled *In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences*²¹, the Supreme Court of India took into account the above-mentioned research and the different approaches in which Section 235(2) of the Code of Criminal Procedure is interpreted along with a view to what would amount to 'sufficient time' at the trial stage of a court for a separate hearing.²²

One opinion holds that the accused should get a separate hearing on the issue of sentencing following the recording of the conviction. The court ruled that 'sufficient time must be given to the accused... on the question of sentence'. The court further ordered that the hearing should be utilized to provide evidence to demonstrate alleviating by the convict and aggravating factors for the prosecution.

Another opinion is that Section 235(2) of the CrPC is generally not violated by same-day sentencing. The concept behind the opposing line of cases is that while the court might schedule another hearing its absence wouldn't invalidate the verdict *per se*. The court also referred to *Accused X v State of Maharashtra*²³ in which a three-judge bench, after considering all the precedents in this regard, concluded the current position of law as:

1. The prosecution and the accused must be provided a real opportunity as part of the 'hearing' described in Section 235(2), at their discretion.
2. A meaningful hearing under Section 235(2) CrPC is not, in general, based on the amount of time or days granted to them. It should be evaluated on the basis of quality rather than quantity.

²⁰ *Ibid*

²¹ *In Re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered while Imposing Death Sentences* Crim WP No 1/2022

²² *Ibid*

²³ *Accused X v The State of Maharashtra* (2019) 7 SCC 1

3. The trial court must do its best endeavours to abide by the requirements of Section 235(2) CrPC.
4. Even if section 235(2) is not complied with, it can be corrected at the appellate stage by giving another opportunity to be heard.
5. In such cases, the appellate court must balance different factors and pass orders accordingly.
6. However, the accused has to satisfy the higher court that there are mitigating circumstances for hearing the appeal. As we can conclude from the above-mentioned points, that there is no uniform procedure and conflicting precedents, the Supreme Court has decided to refer this matter to a larger bench.

CONCLUSION

In all the decisions, we can observe a commonality that, the courts are striving to conduct a real, meaningful, and effective hearing on the issue of sentence. However, there should be a reasonable uniform procedure that will give the convict a real, meaningful and effective opportunity to present his mitigating circumstances during the stage of trial itself. Doing so will save the time of higher courts and will also be fair to convict because if we take a close look at it before conviction, only aggravating factors related to the seriousness of the offense and conditions under which the offense took place are considered and not the circumstances of the accused. Thus, in order to give him a fair chance at trial, considering that records need to be presented and various factors need to be considered, a real opportunity and sufficient time should be given to the convict in cases of serious offenses wherein he can present material to show that there are genuine mitigating circumstances in order to effectively fulfill the mandate of Section 235(2).