

Role of Judiciary in Execution, Remission, Suspension and Commutation



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1. Execution

- A judge or magistrate who passes the sentence or his or her successor-in-office is authorized by law to issue a warrant for the execution of a sentence. Such a warrant for the execution of a sentence of imprisonment is meant to be directed to the officer-in-charge of the jail or the place of confinement of the prisoner.
- **The rationale behind issuance a warrant is primarily to showcase proof especially in the absence of the convict at the time of arraignment who may later resist an arrest & thereby making it convenient for the police authorities to carry out its effect.** It is for this simple reason that a warrant & cognizable offenses (mostly) are 'non-bailable' otherwise it fails to achieve the objective that is sought.
- After executing the warrant the police officer-in-charge to whom it was directed is required to return the warrant to the court with his or her signature bearing on it as proof that he or she has performed his duty obligated.
- **It is to be noted that the period which has already been undergone or served by the convict in the course of investigation & trial will be set-off from the original period of sentence. This implies that the convict is only bound to serve the remainder of the sentence which is left after deduction in set-off.**

2. Deferment of Execution of Death Sentence

The death sentence is deferred or postponed for cases of death sentences appealed to the Supreme Court in the following circumstances:-

1. Where the High Court has sentenced a person to death & an appeal challenging such judgment or decision to the Supreme Court under Article 134 of Constitution under the criminal jurisdiction. **The High Court is bound to automatically postpone or defer the execution of such sentence until the expiration of the time for preferring an appeal or if such appeal is presented within the prescribed time then until the disposal of such appeal;**
2. Where the High Court passes or confirms a death sentence & an application is made to it by the person sentenced for the grant of a certificate of fitness for appeal under Article 132 or Article 134(1)(c) of Constitution, the High Court is obligated to order to stay the execution of the sentence until the disposal of such application by High Court or if the certificate is granted on such application, then until the expiration of the time for preferring an appeal to the Supreme Court within the prescribed time or such certificate.
3. Where the High Court passes or confirms a death sentence & the High Court is satisfied that the person sentenced intends to challenge its judgment in the Supreme Court for grant of special leave under Article 136 of Constitution, the High Court shall stay the order of the execution of the sentence till it deems fit reasonable for presenting the petition in this regard.
4. **While in the case of death sentence awarded to a woman who at that time found to be pregnant, the High Court is at the liberty to stay the execution & may if it deems commute it to life imprisonment.**

3. Suspension & Remission

The executive (appropriate government) has the liberty to impose conditions which upon acceptance by the person concerned, may suspend or remit the whole or any part of the sentence.

Suspension & Remission are completely executive contemplated actions with the only restricted ambit of judicial review. 'Suspension' means a stay of the execution of the sentence or postponement of a judicial sentence. It may be enforced in the following circumstances:

1. Where a fine has been imposed on the offender as punishment & imprisonment ensues in default of payment of such fine.
2. Where the person who is bound to pay fine as punishment fails to do so, the court may other than awarding imprisonment for the default, again order for the recovery of such fine by executing a bond. And if there is any subsequent default forthwith, the court is at the liberty to immediately pass the order of imprisonment.

'Remission' means reducing the amount of sentence without altering or substituting or modifying the original charge of the offense. It implies that the convict had, has & will be considered to be convicted of the same offense, with only shortening the duration of the sentence. **Remission can be remarked as "judicial leniency", to award a mitigative sentence, considering the various mitigating circumstances such as good behavior, the intent of helping the victim, the magnitude of the offense, age, family background & history, the sole breadwinner of the family, etc.**

4. Commutation

While suspension & remission in contrast grossly apropos to the duration of the sentence of punishment, without altering the core of it, merely shortening it. Commutation, on the other hand, alters the very fundamental of the punishment as it all together "substitutes" it for a lesser penalty but imperatively, does not affect the status of a defendant's underlying criminal conviction.

The word "lesser" implies both concerning duration & severity of the punishment. Commutation, therefore, refers to a substitution of a lesser degree or lesser grave punishment for the original severe sentence. A commutation does not reverse the conviction of the applicant continues to remain guilty for the original conviction.

The executive (appropriate government) has the power of commutation of sentences or punishments without the consent of the person concerned: **a death sentence may be commuted to imprisonment for life; imprisonment for life for imprisonment for not exceeding 14 years or fine or both; rigorous imprisonment for simpler imprisonment or fine or both & similarly; simple imprisonment for fine.**

5. Restriction on powers of Remission & Commutation

So, the scope of powers exercised by the executive is inhibited to ensure that unjustified tilting away from the 'deterrence' objective it sought to achieve by enacting such stringent laws. Here there is the access to the 'limited judicial review' to keep a check on the powers of executive & thereby prevent any abuse of such powers. Where a convict has been:-

1. Sentenced for imprisonment for life, for which death penalty is one of the punishments also imposed; or
2. Sentenced to the death penalty which has been commuted to imprisonment for life; he or she shall not be entitled to release except after duly serving at least 14 years of imprisonment.

The demarcation of constitutional & statutory power is culled out. **The statutory power to suspend, remit & commute sentences is not a manifestation of constitutional power under Article 72 & 161. The restriction imposed on remission & commutation of sentences contours the constitutional power to commute, pardon, etc not detracting or nullifying it, because the constitutional power is impregnable & can't be emasculated in any manner.** It is essential to note that such restriction does not forbid parole, furloughs, or other releases within 14 years. Section 433A, CrPC can't be said to fail the constitutional test under Article 14 on the ground that firstly, it ignores the fundamentals of varied crimes & criminals, thereby treating unequal's equally is repugnant on the edifice of Article 14.

6. Conclusion

The objective behind the punishment for every crime is primarily & foremost deterrence effect & protection of the community at large. In the primitive society, due to lack of knowledge of criminology & criminal machinery, it operated on the principle of instant justice, a.k.a retribution.

The popular phrase "An Eye for Eye" but were unaware that it shall, in the end, make the whole world blind. Nevertheless, with the evolution of time, many different views cropped up, slightly shifting focus from deterrence to the root cause of the crime, suppressing the crime rather than the criminal. Thus, the focus was now on justice, meeting the two ends, adequate restitution of the aggrieved victim & the proportionate punishment to the offender, to balance the "scale of justice".

Attention on the reformation which is ameliorating the overall condition of the offender & rehabilitation through adapting & mental health therapy sessions & programs. However, the foremost objective of punishment being deterrence can't be overshadowed, thereby in many modern states; one of such India, a form of the criminal system is devised wherein the capital punishment as an exception (only granted in circumstances where the offender is beyond reform) is gelled with the reformation & rehabilitation of the convicts who show signs of repentance. This is a dicey equilibrium that is ought to maintain.

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