

The a serious crime;
(iii) no minimum
sentence



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The system seeks to adjust the treatment of the offender according to his personal traits.

From this standpoint, indeterminate sentence has been rightly recognised as a progressive measure. It has affinity with good time laws and indirectly prepares the offender for a better life in future. Lord Clive of the International Penal and Penitentiary Commission, the oldest inter-governmental agency in the correctional field, in his address on 'Indeterminate Sentence' in London Conference (1925) made the following observations with regard to this mode of sentence: (i) Petty offenders should not be subjected to prolonged sentence; (ii) Determinate sentence be limited to offenders above twenty-five years of age whereas those below this age should invariably be awarded indeterminate sentence, unless they are habitual criminals or guilty of a serious crime; (iii) No minimum sentence need be prescribed but only a legal maximum limit may be laid down; (iv) Lastly, the Administrative Boards or the Parole Boards which are entrusted with the arduous task of releasing the prisoners undergoing indeterminate sentence, should include well-qualified and experienced staff.

Merits:

Though the concept of indeterminate sentence stands in direct conflict with the principle of impartiality because the custodial sentence, corrective training and committal to prison under the system permit sufficient discretion with the Administrative Boards to mitigate the rigours of prison life, the method has been treated as one of the most urgent priorities in the development of individualised prison programmes. As a matter of fact, the system of parole cannot function without indeterminate sentence. The

principle of the indeterminate sentence is closely connected with the improvement in prison management. If best results are to be obtained from the prison sentence and the ensuing parole period, the date of the release must be flexible one.

In practice, very few countries use a completely indeterminate sentence—that is a sentence without minimum or maximum. Legislations generally prescribe a minimum time to be served as a part of sentence and also provide protection to the inmate against his being held in prison for an extraordinarily long time. It is preferred to set the time of release based somewhat upon the attitude of the prisoner and conditions of the society in which he is to be sent and the assistance, advice and control that may likely be afforded to him. Indeterminate sentence is further preferred to definite sentencing which creates problems because the standards of judicial sentencing may depend on the predilections of the Judges. Since inequalities of sentences create problems in prison, correctional administrators have always preferred alternatives to definite sentencing.

Indeterminate sentence being one such alternative, would help in subsiding prison unrest to a considerable extent.

Demerits:

Despite the merits of the system, indeterminate sentence has been criticised on many counts. The main objections to this system are as follows: The first and the most potential objection so often raised against this system is the uncertainty about the exactness of the sentence which in itself is a severe punishment from the psychological standpoint. Most persons would certainly

prefer a longer but a definite term of sentence rather than a shorter but an uncertain period of anxiety and agony. Moreover, prisoners with indeterminate sentence always suffer from a feeling of injustice about their sentence in absence of any specified pre-determined definite rules. During the term of their sentence, however short it may be, they remain completely in dark about the exact time of their release. Secondly, mistaken judgment of the Prison Board about the fitness of a particular offender for release is likely to result into his stay in the prison institution for a longer period than that actually necessary in his case.

Thirdly, in absence of any satisfactory method to gauge with accuracy the offender's fitness for release, it might happen that a prisoner is released prematurely or conversely, he might be detained for an unduly longer period. Fourthly, since the release under indeterminate sentence generally depends on the reports of the prison wardens the prisoners who antagonise the wardens are likely to be held in prison for a longer time due to adverse reports against them. Conversely, those who flatter the wardens may manipulate an early release through favourable reports. Fifthly, indeterminate sentence produces sycophancy among the prisoners thus making them to work for securing early release rather than to reform themselves sincerely for a normal life.

Last but not the least, the prisoner undergoing a determinate sentence knows it for certain that after he completes the term of his sentence he has a right to claim release legitimately. The satisfaction of having completed the full term of sentence assures him that his guilt has been washed off and he

no longer remains a guilty person. The element of self-satisfaction is totally missing in case of indeterminate sentence.

Some penologists have suggested that periodical judicial review of sentence by the courts can be an effective substitute for indeterminate sentence. This assertion is founded on the belief that Judges are less prone to external influences than the prison Administrative Boards. But the greatest difficulty in the judicial review of sentencing lies in the fact that it is difficult to convince the court that earlier sentence was erroneous or excessive unless they are made to visit the prisons periodically and contact prisoners to know the effect of sentence on them. The views expressed by the eminent French criminologist Gabriel Tarde deserve particular mention in this context. He observed that the existing criminal procedure should be suitably amended so that the courts are asked merely to decide the guilt or innocence of the accused and leave it for specially constituted committee of experts to determine the responsibility of the accused and the punishment to be awarded to him after taking into consideration his antecedents and mental attitude.

This is indeed a good suggestion but the fact remains that the change in procedure would mean entrusting judicial functions to non-judicial bodies such as Parole Boards etc. which will be derogatory to the accepted principles of penal justice.