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COLLATERAL CONSEQUENCES IN CRIMINAL SENTENCING: SHOULD INDIAN COURTS CONSIDER THE IMPACT ON THE OFFENDER'S FAMILY?

~ *Dhruv singh*

Usually, when a person is sentenced for a crime by the virtue of court, the focus of the court is very clear from the start: what was done by that person, what was the gravity of the crime and what punishment is deserved. But in actual terms, it is very easy to say that punishment does remain confined to the person who actually committed the crime. However, that is not the case, the punishment do expands it's horizon onto the lives of their family in ways that are not discernible to the legal system. The on-ground reality of India, where families are deeply tied to each other and economic dependence is ordinary, putting even a single person behind the bar can have far reaching consequences such as destabilizing an entire household and in reality with a judicial system like India where the system is overburdened with a large number of case it can also have a large impact on our society, economy and our basic modus operandi too. All this makes it's a worthwhile, compelling question to ask: Should courts do actually take into account what happens to the offender's family while discharging a sentence on his name?

The issue at hand actually becomes more discernible when we take into account the actual on-ground reality. In a hypothetical situation, the person getting convicted used to be the primary breadwinner, there imprisonment can mean an immediate hiatus to the income that was cultivated in that house, or it can cause financial distress for the family. Children might have to drop out of school, spouses may have a lot of trouble finding work, and the family as a whole may get socially ostracised. However, all these people haven't done something wrong or illegal to be in the position of struggle, yet they bear the toil of being ostracised. Traditional ideas of punishment-like repression or vengeance don't, in reality, take all these things into account. They clearly are concerned with the convict and society at large, not with these unintended but very crucial harms.

At the same time, when we actually take into account all these cons, the Indian constitution does have a large room to think more broadly. Article 21, which prominently guarantees that no person shall be deprived of life or personal liberty except through a procedure that is “just, fair, and reasonable”,¹ has been interpreted in a very expansive and broad manner by courts over the years. While it prominently shields the accused, the actual idea of fairness it embodies is not wholly disconnected from social hardships that a person actually faces. A punishment that has a full stop on fully or partially devastating the accused and their family raises a large doubt about whether it is truly “just” in a deeper sense. In the same way, the directive principle—particularly articles 39 and 41—addresses livelihood, social welfare, and support systems.² Even though you cannot have a trial for DPSP, they do reflect a moral obligation on the state and a far-reaching constitutional vision that ensures to keep human dignity and social security intact.

If we do take a look at a holistic view of the statutory framework, there is no rule ordering a judge to take into consideration the family of the accused. But judges do have the flexibility to allow it. Statutes like The Probation of Offenders Act, 1958, for instance, encourage courts to avoid awarding a sentence in certain exceptions, such as first-time offenders, where in the same situation a less severe response might be more appropriate.³ Section 360 of the CrPC also gives the court the power to allow probation instead of putting someone behind bars.⁴ All these statutes aren’t framed, while taking the family into consideration, but do have the flexibility for a judge to think about the broader consequences of imprisonment, worthwhile taking the toll on dependents.

The approach hasn’t been consistent, but we do have some cases to have a broader picture. In *State of Punjab v. Prem Sagar*, the Supreme Court stressed upon the fact that sentencing shouldn’t be mechanical and must take into consideration aggravating and mitigating factors for consideration.⁵ All these cases do open a space for consideration of familiar responsibility. Similarly, in *Mohd Giasuddin v. State of Andhra Pradesh*, the court laid down words on the importance of a holistic and reformatory approach, stressing that punishment shouldn’t be the impediment for the offender to reintegrate into society.⁶ Strong familiar support can work as a catalyst for reintegration, even when the judgment doesn’t say so.

¹ INDIA CONST. art. 21.

² INDIA CONST. arts. 39, 41.

³ Probation of Offenders Act, No. 20 of 1958, § 4, India Code (1958).

⁴ Code of Criminal Procedure, No. 2 of 1974, § 360, India Code (1974).

⁵ *State of Punjab v. Prem Sagar*, (2008) 7 SCC 550 (India).

⁶ *Mohd. Giasuddin v. State of Andhra Pradesh*, (1977) 3 SCC 287 (India).

Even in the death penalty, courts follow the “Rarest of rare” principle, which was laid down in *Bachan Singh v. State of Punjab*, where judges do follow a careful and strict precedent, balancing aggravating and mitigating factors before sentencing to capital punishment.⁷ Although family dependency does carry some weight as a mitigating factor, the application has been patchy. Similarly, in bail hearing matters, courts may, on a very rare basis, show sensitivity to family hardship, as considered in *Hussainara Khatoon v. State of Bihar*, but this concern is not properly reflected in final sentencing decisions.⁸

There are staunch reasons for the courts across the country at any hierarchy to consider the impact of conviction on a convict’s dependent, since putting someone behind bars does have harms that spill over to the family of the convict in ways such as financially, emotionally and socially. However, giving excessive weight to familiar circumstances might create disparity or prejudice in the case; a convict with dependents may get lesser punishment and vice versa, which may create inconsistency. These circumstances may stress the court to strike a balance between compassion and accountability.

In the end, the question doesn’t revolve around whether the convict’s family should matter – the question ends at how much they should matter. A system that entirely puts away familiar consideration feels deficient, but one that does give an excessive weight might create an equally problematic situation. The actual end goal has to be to find a rational middle path. Recognising the consequences on the family between the myriad factors feels like a sensible and egalitarian way. It gives a way for the law to remain firm and rational, but also humane. After all, a judicial administration of a country is not judged by the degree of punishment, but also by how carefully it avoids harming innocent dependents.

⁷ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India).

⁸ *Hussainara Khatoon v. State of Bihar*, (1980) 1 SCC 81 (India).