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# **PRE SENTENCE HEARING: ALL YOU NEED TO KNOW**

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## **Introduction**

Both the substantive and procedural aspects of criminal law work to establish the guilt or innocence of the accused. However, criminal law's purpose is not just limited to determining whether the accused is guilty or not, but also what should be done with him in the event of him, being held guilty i.e. upon conviction. At this stage, the criminal justice system has to answer the most important question of what the appropriate sanction should be: the quantum and nature of the sentence so imposed.

### **The law on Pre-Sentence hearing: Indian Context:**

S.235(I) Crpc provides that after hearing the arguments and points of law(if any) in the case, the judge shall give the judgement. S.235(II) crpc: A separate stage of trial has been provided by this clause whereby the court is required to hear the accused (the convicted person to be more precise) on the question of sentence, unless the court seeks to proceed in accordance with the principles of S.360. (this section allows the court to release the offender on probation)

After conviction, the judge is required to pass a sentence on him according to the law. However, considering the character of the offender, the nature and circumstances of the case, the judge may, instead of passing the sentence, decide to release the offender on probation of good conduct under section 360.

According to the wording of S.235(II), the accused is to be heard only if the court does not proceed in accordance with the provisions of S.360. As a matter of fact, there can also be hearing for the convict before being released on probation. Where the court determines whether it would be expedient to do so, having regard to the various facts and circumstances of the case.

**The law on probation and the law on pre- sentence hearing(difference):**

They are different in the sense that probation aims to release the convicted person upon considering his conditions and circumstances, whereas pre-sentence hearing aims for the court to get to know the conditions of the convicted person so that it could pass suitable sentences upon him.

So basically. S.235(II) provides that the court, after convicting the accused shall hear him on the question of sentence, unless it seeks to release him on probation of good conduct under S.360.

**Bifurcation of trial under section 235 Crpc:**

It was emphasized in the case of *Bacchan Singh v State of Punjab* that this provision[S.235(II)], bifurcates the criminal trial into 2 phases, that of pre-conviction and post conviction. Phase one concerns the determination of the guilt or the innocence of the accused. Whereas, phase two is premised on the accused being adjudged guilty and not innocent, where the question of appropriate sentence is decided upon by the court.

**Difference in the relevance of facts in pre and post conviction hearing:**

Till the time the person is convicted of crime, the relevant facts would be the ones which aid in establishing the 'guilt' or innocence of the accused. However, once the person is convicted and the guilt has been established, the facts then pertinent are ones which aid in the determination of his 'sentence'.

However, some facts may be relevant for both purposes: for example, the circumstances of the case or the state of mind of the accused at the time of commission of crime, which may be considered during trial as well as while answering the question of sentence.

However, personal facts pertaining to the offender like his social status and economic conditions are not at all relevant for determination of his guilt, but are important considerations for deciding upon the sentence to be passed.

### **Significance of the provision on pre-sentence hearing:**

This provision was incorporated to the Crpc pursuant to the 48th report of the Law Commission of India. It was a reformatory legislation; a legal adaptation of the modern understanding of a criminal as not a menace who needs to be eliminated but a person who needs to be rehabilitated.

This provision gives an opportunity to the accused convicted, to make his representation on the punishment proposed to be awarded. Such a representation may ask the court to consider his circumstances like he is the breadwinner of the family, of which the court may not be made aware of during the trial.

It was held by the Supreme Court in the case of *Santa Singh v State of Punjab* that the courts should consider those facts as well which might not be otherwise relevant in a criminal trial. The law urges the courts to not just look at the crime but also the criminal and assess the socio-economic conditions before deciding upon a sentence.

This is evidenced by the aims and objects of the Code of Criminal Procedure which talks about due consideration being given when the person to be punished is the sole provider of his family.

### **Pre-sentence hearing on a separate date not mandatory:**

The intent of this provision is to give an opportunity to the convicted person to present to the sentencing judge those aspects of his background and character which may impact the sentence imposed. It is however argued that judges have not grasped the intent of this provision and have treated it in an indifferent manner. They often schedule the pre-sentence hearing on the same day of the conviction, such that the defense does not have enough time to prepare their representations. That judges don't take enough time after the hearing as the sentence is rendered almost immediately after conviction, without duly considering all factors relevant to the sentencing decision.

In *Accused X vs. State of Maharashtra*, one of the contentions raised in the review petition was that the Trial Court had not given the Petitioner a separate hearing while awarding the sentence, in direct contravention of Section 235(2) CrPC. The bench said:

"We are of the opinion that as long as the spirit and purpose of Section 235(2) is met, inasmuch as the accused is afforded a real and effective opportunity to plead his case with respect to

sentencing, whether simply by way of oral submissions or by also bringing pertinent material on record, there is no bar on the pre-sentencing hearing taking place on the same day as the pre-conviction hearing. Depending on the facts and circumstances, a separate date may be required for hearing on sentence, but it is equally permissible to argue on the question of sentence on the same day if the parties wish to do so."

### **Scope of the evidence which can be represented:**

In the case of *Santa Singh v State of Punjab*, the Supreme Court held that under this provision, the accused is provided with an opportunity to place before the court any material which has a bearing on the sentence which may be made against him.

For a pre-sentence hearing, the cooperation of both the prosecution and the accused is needed. Parties are free to place before the court all relevant facts and materials for the question of sentencing. If evidence produced by one party is not agreed by the other party, then they can contest against such submissions by further producing relevant evidence to support their claim.

This view was reiterated in the case of *Bacchan Singh v. state of punjab*, that though S.235(II) only provides for hearing of the accused, it is implicit in the provision that when the parties request for producing any evidence having an impact on the issue of sentencing, the court shall grant such permission.

However, the court has cautioned that this provision should not be abused for dragging on the proceedings. That it has not been the legislative intent behind the provision to provide for delay tactics in the guise of pre-sentence hearing. What is necessary is giving the convict a simple and short opportunity of pre-sentence hearing and a fair chance to the prosecution to rebut the submissions of the convict on that behalf. Since pre-sentence hearing is equivalent to the post-conviction hearing, it does not have to follow an elaborate scheme of trial as that of the pre-conviction stage.

### **Procedure in case of previous conviction**

S.211(7) Crpc states that the charge must include information of the previous conviction of the accused if he had been previously convicted and is liable for enhanced punishment.

Incase where a previous conviction is charged as per S.211(7), and the accused does not admit that he has been previously convicted as alleged in the charge, the judge may, after he has convicted the said accused, take evidence in respect of the alleged conviction and record the finding thereon.

However, S.236 provides that no such charge shall be read out by the judge nor shall the accused be asked to plead guilty thereto, unless the accused has been convicted.

This section provides for a special procedure for determining liability to enhanced punishment as a consequence of previous conviction. Its object is prohibiting the proof of previous conviction, until and unless the accused is convicted, to prevent him from being prejudiced at the trial.

### **Duty of the court during the pre-sentence hearing:**

As was observed in the case of *Muniappan v State of T.N.*, the court must put a genuine effort to elicit from the accused all information relevant for the question of sentence. It is the duty of the court to cast aside the formalities of the court scene and approach the question of sentence from a broad sociological point of view. Therefore, the questions which a judge can ask to the accused during pre-sentence hearing, are beyond the narrow constraints of the evidence act. In complying with the requirements of this provision, what's more important is to keep in mind the spirit and substance of it, rather than just its letter and form.

### **Nature of Pre-Sentence Hearing:**

S.235(II) makes it a mandatory trial procedure. The language in S.235(II) is that the court 'shall' and not 'may' hear the accused on the question of sentencing. Not hearing the accused before passing the sentence is as fatal to the case as not hearing him during the trial. The non-compliance of the provision would vitiate the final order of the court as it implies to have prejudiced the accused.

In the *Santa Singh* case(supra), it was held that depriving the convict of a pre-sentence hearing is a violation of the principles of natural justice and so, it becomes an incurable irregularity under S.465 of Crpc.

Section 465 states that no order of the court should be reversed on the mere grounds of an irregularity, unless the same has caused failure of justice. Thus, non-compliance with the requirement of this provision cannot be described as a mere irregularity in the course of trial and would render such irregularity as incurable under section 465.

The same was exemplified in the case of *Allauddin Mian v State of Bihar* wherein death sentence of the trial court, confirmed by the High Court, was overturned by the supreme court on the ground that this provision was not complied with before determining the sentence.

However, it was observed in the case of *Tarlok Singh v. State of Punjab* that where it is found by the appellate court that the trial court has not complied with the provisions of this section, it need not necessarily remand the case to trial court for affording the opportunity of pre-sentence hearing to the accused.

#### When not necessary to remand the case to the trial court:

In the case where a minimum sentence is prescribed but without complying with the requirement of this section, remanding the case to the trial court is unnecessary for all practical purposes.

In the case of *Dagdu v State of Maharashtra*, it was observed that even in other cases remand is not necessary and the higher court may just itself hear the accused on the question of sentence.

It was held in this case that,

“the failure on the part of the Court, which convicts an accused, to hear him on the question of sentence must not necessarily entail a remand to that Court to afford the accused an opportunity to be heard. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused. That opportunity has to be real and effective, which means that the accused must be permitted to adduce before the Court all the data which he desires to adduce on the question of sentence.”

The Court may, in appropriate cases, have to adjourn the matter in order to give to the accused

sufficient time to produce the necessary data and to make his contentions on the question of sentence.

### **Conclusion:**

Pre-sentence hearing is mostly centred around S.235(II) of Crpc, which provides that the accused 'shall' be heard on the question of sentence after he has been convicted, by the way of pleading guilty or being declared guilty through a judgement.

Its object is to provide the accused a reasonable opportunity to represent any mitigating circumstances or any evidence which might have a bearing on the sentence which ought to be imposed upon him.

Non-compliance with this provision vitiates the final order of the court and renders it an incurable irregularity. In several cases discussed in this article, it has been seen how the appellate court remands the case back to the lower court in case this provision has not been complied to.

This is a mandatory provision of the Code, based on the principles of natural justice and fair trial. Not hearing the accused after conviction as mandated by this section is as fatal to the case as not hearing the accused before his conviction. This provision of pre-sentence hearing is a safeguard to the rights of the accused and a reformatory legislation.

### **References:**

Code of Criminal Procedure(Crpc)

S.235(I) Crpc

S.235(II) Crpc

S.236 Crpc

S.360 Crpc

S.465 Crpc

S.211(7) Crpc

Bacchan Singh v State of Punjab(1980) 2 SCC 684

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

Accused X vs. State of Maharashtra

Muniappan v State of T.N (1981) 3 SCC 11

Allauddin Mian v State of Bihar (1989) 3 SCC 5

Tarlok Singh v. State of Punjab (1977) 3 SCC 218

Dagdu v State of Maharashtra (1977) 3 SCC 68

Document 1

R.V. Kelkar's Criminal Procedure

Live Law Article

Article 2

