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An Analysis of Sentencing under Indian Laws

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Abstract: ***In all criminal acts sentencing, is the important element of the criminal law in achieving social defense and delinquent rehabilitation. The main purpose of the sentence broadly saying is that the accused must realize that he has committed an act which is not only harmful to the society of which he forms an integral part but is harmful to his own future both as an individual and as a member of the society. Some of the punishments were laid down by the law and once a verdict of guilty was returned, the judge merely ordered the appropriate sentence to be carried out. In all systems of modern law, wide latitude is given to the court in the matter of sentencing. The legislature defines the offence with sufficient clarity and prescribes the outer limit of punishment and a wide discretion in fixing the degree of punishment within that ceiling is allowed to the judge. This discretion, if not exercised properly in a given case is liable to be corrected by the superior courts. The process of sentencing either in person or property inflicted on the offender under the sanction of law is punishment. Prevention of crime is the principal object of punishment and the measure of punishment consequently varies from time to time according to the prevalence of a particular form of crime and other circumstances. Punishment is in itself an evil and can be justified only by its effect in deterring the offender from committing the offence in future and deterring others by his example from the commission of it. The punishment should be severe enough to deter but not too severe to be brutal. Likewise punishment should be moderate enough to be human but not too moderate to be ineffective. It has to be so designed as to reform the offender and reclaim him as a law-abiding citizen for his good and for the good of the society as a whole. It should therefore be as moderate as is consistent with the object aimed at and if it is in excess, it would defeat its own object.***

Keywords: Aim and Objective of trial, Objective of Sentencing, Process of Sentencing, Impact of Sanction on accused, Provisions in Criminal Procedural Code, Criminal justice system in India

First of all in the beginning of a criminal trial, the prosecution is required to prove beyond reasonable doubt that the accused had committed the offence and when this is done the court gives a finding that the accused is guilty of the offence. The next stage is the award of the sentence to the convict. Sentence as the term is used in criminal law denotes the action of the court before which the trial is held declaring the consequences to the convict of the fact of guilt thus determined. Therefore, any consequence, which flows from conviction, can be looked upon as sentence.

Provisions under the Code of Criminal Procedure

Circumstances considered as aggravating factors calling for an increased severity of punishment are:

1. The manner in which the offence is perpetrated;
2. The motive with which the offender was actuated;
3. The consequences of the offence on the public and on the individual sufferers;
4. The special necessity which exists in particular cases for counteracting the temptation to offend or the facility of perpetration. These considerations include a number of particulars as the time, place, persons and things varying according to the nature of the case.

Circumstances which are to be considered in mitigation of punishment are:

1. Minority of the offender;
2. The old age of the offender;
3. The conditions of the offender;
4. Provocation;
5. The offence being committed under a combination of circumstances and influence of motives which are not likely to recur either with reference to the offender or to any other; and
6. The state of health and the sex of the delinquent.

In India, the sentencing power of the courts is derived from the Code of Criminal Procedure 1973 (Cr. PC), The offences are divided into two groups:

1. Offences under the Indian Penal Code (IPC)
2. Offences under the Special Laws

Any offence under the IPC may be tried by the High Court; or the Court of Session; or any other court by which such offence is shown in the I Schedule of the Cr. PC to be triable. Any offence under any other law shall be tried by the court empowered by such other law to try it.

The punishments to which the offenders are liable under the provisions of the IPC are death, imprisonment for life, imprisonment for a term, which may be rigorous or simple, forfeiture of property and fine. The offences under the IPC have been defined with sufficient clarity and the maximum punishment that could be imposed for an offence has been fixed in most cases. In the case of offences of grave nature, the minimum punishment that has to be inflicted has also been specified with a qualification that less than minimum can be imposed when the judge feels it is warranted, but has to record special reasons for doing so.

Regarding capital punishment, there are several sections in which death sentence could be imposed, but that sentence is nowhere mandatory under the IPC. Under two sections, namely, Section 302 (murder) and Section 121 (waging war against Government of India), alternative punishments of death or imprisonment for life are available and these are the two sections, where the maximum punishments is death and the minimum is imprisonment for life. As regards the rest of the offences, even those cases where the maximum punishment is the

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death penalty, wide discretion is given to the judge to prescribe the appropriate punishment. The death penalty for murder provided in section 302, IPC and the sentencing procedure contained in section 354 (3), Cr. PC were held to be constitutionally valid by the Supreme Court in Bachan Singh v. State of Punjab.

The following propositions emerge from Bachan Singh's case:

1. The extreme penalty of death need not be inflicted except in the "rarest of the rare cases", i. e. in gravest cases of extreme culpability.
2. Before opting for the death penalty, the circumstances of the offender also require to be taken into consideration along with the circumstances of the crime.
3. Life imprisonment is the rule and death penalty is an exception. In other words, death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment, having regard to the relevant circumstances of the crime and provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised, having regard to the nature and circumstances of the crime and all the relevant circumstances.
4. A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating factors have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. These guidelines were laid down for the trial courts to follow, while trying cases punishable with death sentence.

If the punishment that can be imposed for an offence is imprisonment for life, it is always rigorous. If it is imprisonment for a term, it may be rigorous (with hard labour) or simple (confined to jail). The sections which prescribe imprisonment as punishment in most cases state that imprisonment of either description may be imposed. There are of course a few offences for which rigorous imprisonment without the alternative of simple imprisonment is prescribed, and a few offences for which simple imprisonment is to be imposed. Forfeiture of property is prescribed as a punishment in three cases. Certain offences under the IPC are punishable with fine alone; some are punishable with fine as well as imprisonment; and some are punishable with imprisonment or fine or both. In certain cases, the maximum amount of fine that can be imposed is specified by the section. If it is not so specified, the fine is unlimited, but it should not be excessive.

Thus, the IPC leaves the quantum of punishment to the discretion of judges, who would have the means in each case of forming an opinion as to the character of the offender and the circumstances, whether aggravating or mitigating under which, the offence has been committed. The policy of law in giving a very wide discretion in the matter of punishment to the judges has its origin in the impossibility of laying down rigid and inflexible standards. Any attempt to lay down the standards as to why in one case, there should be more punishment and in the other, less punishment would be an impossible task. On balancing the aggravating and mitigating circumstances as disclosed in each case, the judge has to judicially decide what would be the appropriate sentence. To a certain extent, it is a subjective exercise, which might depend, inter-alia upon the penal philosophy of the judge also.

In judging an adequate sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, the injury to the individuals or to the society, whether the offender is a habitual, casual or a professional offender, effect of punishment on the offender, delay in the trial and the mental agony suffered by the offender during prolonged trial, an eye to correction and reformation of the offender are some amongst many factors that have to be taken into consideration by the courts. In addition to these factors, the consequences of the crime on the victim and the members of his or her family have also to be taken into consideration while fixing the quantum of punishment because, one of the objects of punishments is doing justice to the victim. But, this aspect is totally ignored by the substantive criminal law as well as by the courts. However, the Cr. PC, under section 357 provides that the court, while imposing fine or a sentence of which fine forms a part may order the whole or any part of the fine to be paid as compensation to the victim or his or her family. The Supreme Court, by its decision in Delhi Domestic Working Women's Forum v. Union of India, recognized the right of the victim for compensation by providing that it shall be awarded by the court on conviction of the offender, subject to the finalisation of scheme by the Central Government.

Coming to the sentence of fine, it is forfeiture of money by way of penalty. It was justified by the Law Commissioners on the ground of its universality, though they admitted that its severity should be proportionate to the means of the offender, since the sentence not only affects him, but also his dependants. The profits of the offence, the value of the thing which is the subject matter of the offence, the amount of injury and the fortune of the offender have to be taken into account while fixing the amount of fine. While imposing fine, it is necessary to have as much regarded to the pecuniary circumstances of the accused person as to the character and magnitude of the offence. Where a substantial term of imprisonment is inflicted, an excessive fine should not be added to it, save in exceptional circumstances.

Regarding the offences punishable under special laws like the Essential Commodities Act, The Prevention of Corruption Act, The Prevention of Food Adulteration Act, The Dowry Prohibition Act, The Protection of Civil Rights Act, The Immoral Traffic (Prevention) Act and the like, the trend of legislation as well as judicial approach to such offences have been casual. The punishment imposable for these offences has been imprisonment for a term. In certain cases, minimum sentence has been prescribed by the IPC but the courts are empowered to award less than minimum in special cases after recording the reasons. Imprisonment imposable in these cases may be of either description and the court is empowered to

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decide whether the offender has to undergo rigorous imprisonment or simple imprisonment.

Thus, wide discretionary powers are vested in the courts regarding awarding sentences in the case of socio-economic offences. While dealing with this type of offences, it is the duty of the courts to understand the nature of those offences and the aims and objects of the State in enacting laws in respect of them and to enforce them so as to carry out those objects effectively and properly and not by imposing light sentences.

The modern trend in penology and sentencing procedures is to emphasise the humanist principle of individualising punishment to suit the offender and his circumstances. The principle is given effect to in the Cr. PC by providing for post-conviction hearing under sections 235 (2) and 248 (2). Under section 235 (2), if the accused is convicted, the judge shall hear the accused on the question of sentence and then pass the sentence on him according to law. Under section 248 (2), opportunity is given to both parties, to bring to the notice of the court, facts and circumstances which will help individualise the sentence from a reformative angle. There are provisions in the Cr. PC16 as well as in the Constitution of India for appeal and revision on the order of conviction and sentence. The superior court in appeal may, if necessary, alter the sentence awarded by the trial court to one of reduced severity, if there had been any short-coming on the part of the trial court in adhering to the procedural requirements of section 235 (2). Cr. PC in the matter of hearing regarding sentence.

The State Government and the Central Government in respect of cases investigated by the Delhi Special Police Establishment or any other agency under a Central Act are empowered to file appeal through their respective Public Prosecutors to the High Court against the sentence imposed on the ground of inadequacy of such sentence.

Under Article 142 of the Constitution, the Supreme Court can suo-motu enhances the sentence. The power of judicial review of sentences by the appellate and revisional courts is intended to mitigate to a certain extent, the problem of disparity in sentences because this disparity creates hostile attitudes in the mind of the offender and reduces the chances of his ^socialisation as he would feel that he is being discriminated.

The question of sentence is normally at the discretion of the trial judge. The trial court should collect materials necessary to help award a just punishment in the circumstances of the case. The personal factors and social background of the offender are very relevant and the trial court is duty bound to be activist enough to collect such facts as have a bearing on punishment with rehabilitation.

Important Cases

The trial courts in India are already over-burdened with work and hardly have any time lo set apart for reflection on sentencing. There is no uniformity of approach among trial judges. Some tend to give maximum penalty and some, the minimum. Some penalise certain types of crime severely, while others do the opposite. They have neither consistent policy nor thorough and scientific analysis of the behavioural problems of individual offenders. They receive very little assistance from the society also.

1) In Rameshwar Dayal v. State of Uttar Pradesh, the Supreme Court noticed two different cases where, on identical facts, the punishment in one case was 4 years and in the other 3 months
2) In State of Karnataka v. Krishna alias Raja, the respondent was tried and convicted for causing death of one person and injuries to another by rash and negligent driving under section 304-A and sentenced lo a fine of Rs.250. The Supreme Court, describing the sentence inflicted as unconscionably lenient or a ile a bite' sentence held that this had the effect of making the trial and conviction a mere farce; that the High Court gravely erred in refusing to enhance the sentence under section 377, Cr. PC and that consideration of undue sympathy in such cases would not only lead to miscarriage of justice, but will also undermine the confidence of public in the efficacy o (the criminal justice system.
3) In A. Wati Ao v. State of Manipur. Where the accused, an I. A. S. officer was charged with misuse of office under section 5 (1) (d) of the Prevention of Corruption Act 1947, the trial court convicted him and sentenced him to imprisonment till the rising of the court and a fine of Rs.10, 000. And the High Court upheld the conviction and sentence. The Supreme Court however, held as follows:

A perusal of the trial court's judgment shows that the sentence of imprisonment till the rising of the court was awarded because of:

1. The appellant being a senior officer and holder of different high posts which showed that he is a respectable person;
2. The appellant having a number of dependants;
3. The certainty of appellant's losing his job and requiring him to earn a living for himself and his family members;
4. The present being first offence committed by him and
5. The spectre of the incident hanging on his head for about half a decade.

According to us, none of these factors (except the last to some extent) make out a case for awarding sentence less than the minimum prescribed by the aforesaid Act, i. e., imprisonment for one year. The fact that the appellant is a senior I. A. S. officer really requires a serious view of the matter to be taken instead of soft dealing. The fact that he has a number of dependants and is going to lose his job are irrelevant considerations in as much as in almost every case, a person found guilty would have dependants and if he is a public servant, he would lose his job. The present being the first offence is also an irrelevant consideration. Though the delay has some relevance, but as in cases of the present nature, investigation itself takes time and then, the trial is prolonged because of the type of evidence adduced and number of witnesses to be examined, we do not think that the fact of delay of about 5 years could have been a ground to award the sentence of imprisonment till

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the rising of the court, which really makes a mockery of the whole exercise. Thus, in the case of socio-economic offences also, there is a complaint that lenient view is being taken by the courts. Though imprisonment is awarded, the term awarded is not appropriate to the gravity of the crime, so that a small period is mechanically regarded as sufficient. The discretion to award fine only or to award imprisonment below the minimum is improperly exercised so that, in a very large number of cases, the offenders are let off with a fine or a short term of imprisonment.

Procedure of Inquiry before commencement of trial

The need for making detailed information about the offender available to the court has been felt in the modern penal systems. The sentencing authority must have information regarding various personal factors of the accused if the primary and secondary decisions are to proceed in scientific premises. Courts not only receive and use the information given in the reports but they may also seek advice from experts like psychiatrists or probation officers regarding the desirability of a particular sentence keeping in view its likely impact on the offender. The information is special in case of juvenile offenders. In the absence of any pre-sentence reports, courts in India have to fix punishments on the basis of whatever inadequate information they receive about the offender in the course of the actual trial.

In P. K. Tejani v. M. R. Dange, 11 Krishna Iyer, J observed that post conviction stage of the current legal system is weak. The Code does not provide penological facts bearing on the individual's background, the dimension of change, the social milieu etc. The intelligent hunches should be made on the basis of the materials adduced to prove guilt. In Ramashraya Chakravarti v. State of M. P12, the Supreme Court referred to the lack of opportunities for the consideration of sentencing issues in trial courts. Under the Criminal Procedure Code, 1973, Sessions Courts and the Magistrates trying the warrant cases has to give hearing to the accused on the question of sentencing after finding him guilty of the offence.13 The nature and scope of the provision of the Section 235 (2) of the Criminal Procedure Code of 1973, which deals with the pre-sentencing hearing was explained by the Supreme Court in Santa Singh v. State of Punjab14. It was held that the provision was mandatory and the failure to give the accused before the sentence is pronounced vitiates the sentence and it is not just an irregularity curable by Section 465 of the Criminal Procedure Code. The hearing implies the opportunity to place full and adequate material before the court and if necessary, to lead evidence.

Despite the mandatory provision in Section 235 (2) of the Criminal Procedure Code, the courts usually take up the pre-sentencing exercise in a casual manner as if it was just a meaningless formality. In D. D. Suvarna v. State of Maharashtra, 15the sentencing hearing was given after the death sentence had been pronounced by the judge; a procedure was aptly described as a farce by the court. In some rare situations it would be unnecessary to give any pre-sentencing hearing to the offender where the accused admitted his guilt before the Court and told that they are very proud of what they had done16.

Critical analyses of sentencing process

Sentencing is the most crucial point in administration of criminal justice. It is critical because nowhere in the entire legal field the interest of the society and those of the individual offender are at stake than in the system of sentencing. The principles of justice get eroded where the offender receives a particular sentence not on consideration of the offender's personality guilt but on consideration of the judge's personality and ideology.

Another significant cause of disparity in sentences is the lack of unanimity among sentencing judges as to the purpose of the sentences. The disparity not only offends principles of justice, but it also effects the rehabilitative process of the offender ad may create problem like indiscipline and riots inside the prison. The disparity in the sentences limits the correctional efforts to develop sound attitudes of the offenders. In Asgar Hussain v. The State of UP, 17 the Supreme Court observed that the disparity in sentencing creates hostile attitude in the minds of offenders and reduces their chances of resocialization as the offenders feel that they have been discriminated.

Disparity in sentences defeats the objective of modern correctional philosophy. However, the disparity in sentence is a world phenomenon, but the developed countries have adopted various phenomenon to avoid it. In India, the elaborate system of appeal and revision as well as hearing on the sentence to some extent helpful in curbing the disparity in sentences.

Effect of Sentencing Policies

The main objective of the punishment is prevention and control of crime. Justice Krishna Iyer has rightly pointed out that the purpose of sentencing is to change or convert offender into non-offender. Any method which will not cripple a man, but which will restore a man, is the purpose of sentence. The sentence should bring home to the offender, the consciousness that the offence committed by him was against his own interest, as also against the interest of the society of which he happens to be a member. The purpose of sentence is the protection of the society, by deterring potential offenders from committing further offences and by reforming and turning them to law abiding citizens.

In order to achieve goals underlying the modern correctional philosophy, the sentence should not be fixed only in accordance with the nature and gravity of the offence but all circumstance surrounding it should be taken in to consideration. The factors like nature of crime, circumstances under which it has been committed. Antecedents, age, family and educational background of the offender should be taken into consideration in order to select a proper sentence. It is also essential that for the selection of a proper sentence, wide range of penalties should be made available to the sentencing courts; provision should be made for the award of indeterminate

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sentence. In order to avoid disparity and ensure uniformity in sentencing judges, lawyers and prosecutors should be given for the determination of proper sentences. They should also see the impact and consequence of sentences by paying periodical visits to penal institutions in their jurisdictions. A proper sentence conceived in the light of the relevant circumstances can be helpful to curb the increasing crime rate.

Certain legislation against social and economic offences like the Dowry Prohibition Act and the Prevention of Corruption Act have been amended increasing the minimum and maximum punishments and removing the relaxing power of courts. The social and economic offences are offences, which have their impact on the economy of the State and affect the public health or public morality. These lend to cause harm to the health and welfare of the entire community and this has to be kept in view, while awarding sentences for these offences.

The trial courts hardly state any reasons while passing a sentence where there is no statutory obligation to give reasons. Giving reasons for awarding a sentence has to be made obligatory in every case, which would go a long way in assisting the appellate and revisional courts in assessing the adequacy of sentence. A rational and consistent sentencing policy requires the removal of several deficiencies in the present system, one being the lack of information as to characteristics and background of the offender. This can be overcome by encouraging the taking of the evidence as to the circumstances relevant to the sentencing with the co-operation of both the prosecution and the accused. In a good system of administration of criminal justice, pre-sentence investigation has a great sociological value.

Sentencing disparities can be reduced by training the judicial personnel in penology and sentencing procedures by keeping them informed of the latest trends in penological thought and practice. Sentencing councils or boards can be set up with experts trained in disciplines like social work, psychiatry and allied disciplines and the job of sentencing may be entrusted to them. There is also a suggestion gaining ground in developed countries that Ihe sentencing power should be taken away from the judges and handed over to a board of scientists known as diagnostic clinics, which would be staffed by a group of persons skilled in the fields of human behaviour like psychiatrists, social workers and psychologists. These clinics, through tests and investigations would distinguish those who suffer from emotional disorders from those who are retarded mentally or who through obvious circumstances were accidentally precipitated into crime. Although we may be a long way from establishing diagnostic clinics, at least pre-sentence investigation may be insisted upon, which would help in reducing disparities in sentencing. Law is good but justice is better and it is expedient in the interests of justice that the sentence passed in a case should reasonably be balanced to the exigencies of the case.

Punishment is institutionalised violence and it can be justified only when it is aimed at protecting the society by preventing crime. No sentence should ever appear to be vindictive. An excessive sentence defeats its own objective and tends to undermine the respect for law. On the other hand, an unconscionably lenient sentence would lead to miscarriage of justice and undermine the people's confidence in the efficacy of the administration of criminal justice. As observed by Justice Krishna Iyer, sentencing is a means to an end, a psycho-physical panacea to cure the culprit of socially dangerous behaviour and hence the penal strategy should strike a balance between sentimental softness towards criminal, masquerading as progressive sociology and terror-cum-torment-oriented sadistic handling of criminal, which is the sublimated expression of judicial severity, although ostensibly imposed as deterrent to save society from further crimes.

Conclusion

There is no legislative and judicial approached has been seen to issue structured criminal sentencing guidelines in India. As per section 235 (2) Cr PC contains just a hearing procedure to be followed while deciding the quantum of sentence post-conviction. It is more of mercy plea, provisional opportunity wherein the convict should be called upon to show cause while the maximum penalty should not be imposed on him. The convict’s submissions may be outside the facts in issue. The social-economic standing of the convict may mitigate the punishment and could influence the judge in deciding the sentence. Fully aware of the absence and the need for the guidelines, what the Supreme Court has succeeded in doing is the provision of judicial guidance in the form of principles and factors that courts must take into consideration while exercising sentencing discretion. This is not enough and worrisome, as far as determining appropriate sentence is concerned. Worrisome because the ongoing individualisation of sentencing has created and still creates lots of uncertainties in the quantum of punishments being awarded by courts in almost similar sets of facts. After conviction, it is obviously the duty of the judiciary to award appropriate sentence. The absence of statutory sentencing guidelines to assist judges in discharging this all important duty has left a wide vacuum in the machinery of justice dispensation in India. Widely leaving sentencing open to the discretion of the judges is not the most ideal criminal administration policy. The Malimath Committee Report on Criminal Law Reform (2003) recommended incorporation of sentencing guidelines for aiding the judiciary in deciding appropriate sentence. Even the Law Commission of India in its 262nd Report on Death Penalty categorically recorded this disparity in sentencing, on account of personal leanings of judges, as one of the factors amongst others to recommend abolition of death penalty in all crimes except terrorism related offences. Individualisation, non-uniform or random sentencing status in India needs to give way for certainty and logicality in the award of sentence. Having sentencing guidelines in place will enable the courts respond to the daily cry for justice and the yearnings of the community. The judges should be able to award appropriate punishment proportionate to crime committed. It is only by so doing that the retributive and just desert theories of

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criminal punishments can be met. Quite a few committees set up by the government have emphasised the importance of having and/ or adopting sentencing guidelines in India. That call is hereby re-iterated. Having such will definitely address individualisation of punishment and minimize the uncertainties surrounding the award sentences in India. The rights of the victim, the offender and the society should be simultaneously considered in any sentence that will pass the 'justice' test. We need proper proper sentencing policies with regard to the administration of justice either with the efforts taken by Supreme Court or by parliament in India

References

[1] Bedi, Kiran: It's always possible: Transforming one of the largest prisons in the world. (Sterling Publishers Private Limited, Delhi, 1998)
[2] Bhatnagar, (2003), A. P.: Prison reforms. (Government of Punjab, Chandigarh,)
[3] Bhushan, V. (1970). Prison Administration in India. S. Chand & Co.
[4] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)
[5] ILI, edn.23, 1999, "THE SENTENCING PROCESS - *Problems and Perspectives"* Criminal law manual.
[6] Lal Batuk, "Introduction to Criminal procedure code", Eastern Law book Publication.
[7] Rupert Cross, (1971), Punishment Prison and the Public, Stevens and Sons, London,
[8] Satadru Sen, a Separate Punishment: Juvenile Offenders in Colonial India, the Journal of Asian Studies
[9] Sethna, M. (1971). Society and the Criminal. Bombay: N. M Tripathi Pvt. Ltd.
[10] Siddique, A. (2011). Criminology & Penology. Sage Publication.
[11] www.manuptra.com
[12] www.shodhganga.com
[13] www.mondaq.com
[14] www.legalservicesindia.com
[15] www.livelaw.com
[16] www.lawoctopus.com

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