 ***DOI:** https://doi.org/10.63108/IJLMH.12754*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 4

2026

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Uniformity or Flexibility: A Comparative Study of Sentencing Policy in the United States of America and India

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ABSTRACT

Sentencing policy is a crucial responsibility assigned by the legislature to the judiciary. It is central to the administration of criminal justice, embodying a country's punishment philosophy, constitutional principles, and legal institutional goals. For centuries, imposing punishment on offenders has been a fundamental role of all civilized states. Global sentencing rhetoric is shaped by the ongoing conflict between uniformity and flexibility. The United States, particularly at the federal level, has formalized structured sentencing through legislative reforms and guideline systems aimed at minimizing disparities. Conversely, India continues to prioritize contextual decision-making and individualized justice, relying largely on judicial discretion within established legal limits. While the U.S.A. focuses on consistency, predictability, and quantifiable measures, India values flexibility, situational understanding, and judicial oversight. Despite their differing institutional approaches, both systems strive to achieve the goal of justice. The debate between uniformity and flexibility reflects a fundamental philosophical tension within criminal jurisprudence. Although uniformity ensures consistency, an overly strict approach can ignore significant contextual details. On the other hand, too much flexibility may result in inconsistency and possible unfairness. Thus, a well-designed sentencing policy typically balances clear rules with judicial discretion to achieve both fairness and personalized justice.

Keywords: *Sentencing policy, punishment, uniformity, flexibility, judicial discretion*

I. INTRODUCTION

Sentencing policy is an important task given by the legislature to the judiciary. It lies at the heart of criminal justice administration, reflecting a nation's philosophy of punishment, its constitutional values, and its legal institutional priorities. Punishing the offender is a primary function of all civil States for centuries. In ancient times, punishments were extremely severe and harsh. The incidence of crime and its retributions have always been an unending fascination for human mind. However, with the passage of time sentencing policy gradually shifted toward

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a rehabilitative and reformative approach rather than being based solely on the theory of retribution. As the practice of punishment and public opinion concerning it have been profoundly altered due to the rapid change in the social values and sentiments of the people. Modern forms of punishment reflect a philosophy of correction rather than one of imposing sanctions. Global sentencing rhetoric is shaped by the ongoing conflict between uniformity and flexibility. Through legislative reform and guideline-based frameworks intended to reduce inequity, the United States of America, especially at the federal level, has institutionalized structured sentencing. In contrast, India still emphasizes contextual adjudication and individualized justice while relying mostly on judicial discretion within legal bounds. The United States places a strong emphasis on consistency, predictability, and measurement. India places a high value on adaptability, contextual awareness, and judicial review. Although they use different institutional frameworks, both models seek to ensure justice.

Sentencing is primarily governed by federal and state statutes, the U.S. Constitution, and judicial precedents. The legislature defines crimes and statutory sentencing ranges. Sentencing involves distinct guidelines such as the Federal Sentencing Guidelines (in federal cases), which aim to standardize sentencing and reduce disparities. Judges have discretion but are often guided or constrained by sentencing guidelines, which recommend sentencing ranges based on factors like offense severity and criminal history. The judiciary can depart from guidelines in certain cases but must provide reasons. Sentencing policy also reflects separation of powers, with checks and balances among legislative, executive (prosecutorial discretion), and judicial branches. Prosecutors in the USA often have significant influence through plea bargaining, which heavily impacts sentencing outcomes. Sentencing may include alternatives such as probation, fines, imprisonment, and in some states, capital punishment. Whereas, in India, sentencing is regulated by substantive criminal statutes, special laws establishing specific offences, the Constitution of India, the Bharatiya Nagarik Suraksha Sanhita, 2023, and judicial interpretations and guidelines issued by higher courts. The process reflects significant interaction between the judiciary and the other branches of government. The legislature defines offences, determines their essential ingredients, and prescribes the range of punishments. Once the required elements of an offence are proven, the judiciary exercises discretion within the statutory framework to determine an appropriate sentence based on the circumstances of the case.

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II. Meaning of Punishment

The legal definition of punishment is the imposition of special burdens because a person has been found guilty of a crime, usually but not always involving harm to the innocent, or the authorized deprivation of freedom, privacy, or other facilities to which a person otherwise has a right. Pain, suffering, loss, incarceration, or any other consequence meted out by the appropriate authority to a guilty offender is referred to as punishment. The severity of the punishment will depend on the kind of crime the offender committed.

Hugo Grotius defined punishment as 'the infliction of an ill suffered for an ill done'.[1] His definition of punishment is not entirely adequate. But later he finally implies that punishment is a social act produced by those claiming the rights to punish and imposed on those deemed to deserve it.[2]

Benn and Flew have given some elements of punishment, which say that:

- Punishment must involve pain and consequences must normally be considered unpleasant;
- It must be for any legal wrong;
- It must be given to the actual offender who has committed the offence; and
- The pain must be inflicted by the authority which has been constituted by the legal system.[3]

Robert G. Caldwell, stated that "punishment is an art which involves the balancing of retribution, deterrence and reformation in terms not only of the court and the offender but also of the values in which it takes place and in the balancing of these purposes of punishments, first one and then the other, receives emphasis as the accompanying conditions change".[4]

III. Theories of Punishment

The justification and objectives for punishing criminals in the legal system are explained by theories of punishment. The primary theories are as follows:

A. Retributive Theory

Retributive refers to punishing, punishing, retaliating, or making a return. This view has its roots in the archaic idea of exacting revenge on the wrongdoer. Vengeance hypothesis is another

[1] PHILIP BEAN, PUNISHMENT 4 (Martin Robertson & Co. 1981).
[2] *Id.* at 5.
[3] S.M.A. QADRI, CRIMINOLOGY 120-21 (5th ed. 2015).
[4] ROBERT G. CALDWELL, CRIMINOLOGY 403 (2d rev. ed. 1965).

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name for this hypothesis. This view holds that, regardless of the unintended consequences, evil should be punished. Since a wounded person has the right to exact retribution on the wrongdoer, the punishment satisfies the desire for vengeance. The severity of the offense is directly correlated with the severity of the penalty.

B. Deterrent Theory

When an offender receives punishment with the intention of discouraging them from committing crimes in the future and teaching others a lesson, it is considered a deterrent. This type of punishment requires that the offenders be subjected to harsh consequences. According to this view, the severity of a criminal's punishment should increase with his level of hardness. The death penalty is justifiable when an offense is extremely serious in order to discourage others from committing the same crime.

C. Preventive Theory

The preventing theory says that the object of the punishment is to prevent or disable the offender from committing the offence again. Salmond says, "we hang murders not merely that it may put into the hearts of others like them the fear of a like fate, but for the same reason we kill snakes, because it is better for us that they should be out of the world than in it."[5]

D. Expiatory Theory

This theory is morally grounded. It has nothing to do with the law or legal ideas. This belief holds that an offender should be pardoned and released if he truly repents of his wrongdoings or crime. This punishment's only goal is to convict the offender of his crime and help him become a responsible member of society. Because it is founded on ethical considerations, this theory is no longer relevant in the current system of punishment. Modern Expiation Theory states that the criminal must compensate the victim of the offense with a predetermined sum of money.

E. Reformative Theory

This theory is also known as rehabilitative and corrective theory. According to this theory, the main object of the punishment is to reform the criminal. It is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens of the country. It is the most appreciated theory of punishment. This theory believes that nobody is born criminal; the wrongful act of the individual is the result of those circumstances which were around them. As against the other types of punishment, the reformative approach to punishment seeks to bring

[5] S.R. MYNENI, JURISPRUDENCE (LEGAL THEORY) 143.

about a change in the attitude of offender so as to rehabilitate him as a law-abiding member of the society. Imprisonment shouldn't be for the aim of analytic and eliminating from the society but to create a modification in their mental outlook through effective measures during the term of their sentence.[6]

IV. Sentencing Policy in the United States of America

A. Historical Background

In colonial times, particularly before independence of U.S.A., juries were de facto sentencers with substantial powers. Many crimes were capital offences which are considered as the most felonies within the legal system such as premeditated murder, terrorism, treason etc. for which death sentence was given to the offender. The colonial jurors were authorized to give a general verdict without any explanation. The penal philosophy was retributive. The focus was on deterrence, retributive and public shaming. Later, the 19th century brought scalable punishments which refers to as disciplinary actions, punishments, or legal consequences that can be modified in severity, intensity, or quantity to correspond with the seriousness of an offence. The jury could no longer link conviction to a particular sentence even if it had the power to sentence. By the early 20th century, an indeterminate sentencing system had taken hold. When imposing an indeterminate sentence, the judge's role was primarily therapeutic, similar to that of a doctor. The judge was one of the experts in the field of criminal justice who were tasked with curing crime, which was considered a "moral disease." Between the trial and sentencing phases, distinct standards of proof and evidence developed, reflecting the radically different roles of juries and judges. Number of states have implemented sentencing guidelines to reform the indeterminate sentencing system. In 1984, government entered into the act with the version of reforming the sentences. Congress passed the Sentencing Reform Act, 1984, creating the United States Sentencing Commission, establishing determinate sentencing and abolishing parole.[7] The Commission made numerous problematic decisions during its early formulation that had significant institutional ramifications. The Guidelines were complex and numerical. Congress passed the Sentencing Reform Act because of concerns about perceived leniency, disparities, and unpredictability. At the sentencing stage, the Judge was required to find out the additional findings of the fact in order to determine exactly where the offender fit in the sentencing grid. Here the Judge was nothing but another fact finder, rather than a

[6] Sonakshi Chinda, *Reformative Theory of Punishment: Analyzing the Status in India*, 4 INT'L J.L. & HUMAN. 1114, 1115 (2021).

[7] Nancy Gertner, *A Short History of American Sentencing: Too Little Law, Too Much Law, or Just Right*, 100 J. CRIM. L. & CRIMINOLOGY 691, 698 (2010).

sentencing expert. In 2005, the United States Supreme Court handed down United States v. Booker,[8] which held that the Guidelines were unconstitutional because of their impact on the jury. The Court found that the Guidelines violated the Sixth Amendment precisely because they obligated judges to find facts with the determinate consequences of increasing a defendant's sentence beyond the range required by a jury's verdict or a guilty plea. The Court deemed the Guidelines to be "advisory," such that judges were to "consider" Guideline ranges but were permitted to tailor sentences in light of other statutory concerns. But in a series of four cases after Booker's case, the Court made it quite clear that it meant what it had said. In Gall v. United States,[9] the United States Supreme Court held that a judge could consider factors, such as offender and offense characteristics, regardless of whether they were allowable under the Guidelines. The Court also ruled that a district court may impose a sentence outside the guideline range if it provides a reasonable explanation, and appellate courts should uphold such sentences unless they are unreasonable. This case also emphasized that the Guidelines are advisory, not mandatory, and that courts have discretion to consider all relevant factors. With Kimbrough v. United States[10] and Spears v. United States,[11] the Court indicated that a trial judge could even reject advisory Guidelines based solely on policy considerations, such as a conclusion that the applicable Guideline did not properly reflect national sentencing data and empirical research.[12] The Guidelines determine sentences based primarily on two factors; firstly, the conduct associated with the offense and secondly, the defendant's criminal history. The aggravating and mitigating circumstances, along with the criteria set thereunder, determine whether an accused person is eligible for parole or a longer form of incarceration. The death penalty orders are carried out via euthanasia and electrocution, which are noticeably absent from the Indian legal system.

B. U.S. Code, Title 18: Crimes and Criminal Procedure

Title 18 of the United States Code is the main criminal code of the federal government of the United States. The Title deals with federal crimes and criminal procedure. In its coverage, Title 18 is similar to most U.S. state criminal codes, typically referred to by names such as Penal Code, Criminal Code, or Crimes Code. Many U.S. state criminal codes, unlike the federal Title 18, are based on the Model Penal Code promulgated by the American Law Institute. Title 18 consists of five parts. Four of these, Parts I through IV, concern crimes, criminal procedure,

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8 *United States v. Booker*, 543 U.S. 220 (2005).
9 *Gall v. United States*, 552 U.S. 38 (2007).
10 *Kimbrough v. United States*, 552 U.S. 85 (2007).
11 *Spears v. United States*, 555 U.S. 261 (2009).
12 Gertner, *supra* note 7, at 706.

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prisons and prisoners, and juvenile delinquency, respectively, and were included in the original title when it was enacted in 1948. The fifth part, concerning witness immunity, was not included in the original title but was added in 1970.

C. Forms of Punishment

Section 3551 of the Code authorizes courts to impose various types of sentences such as imprisonment, probation, fines, or a combination thereof to an individual who has found guilty of an offence and where an organisation found guilty of an offense shall be sentenced to a term of probation; or a fine or a combination thereof. It directs courts to consider the sentencing guidelines and statutory requirements when determining the sentence. It serves as the foundational statute for sentencing procedures in federal criminal cases.[13]

Section 3581 of the Code prescribes the provisions relating to sentence of imprisonment. This Section states that if a defendant who has been found guilty of an offense may be sentenced to a term of imprisonment. The authorized terms of imprisonment are—

- for a Class A felony, the duration of the defendant's life or any period of time;
- for a Class B felony, not more than twenty-five years;
- for a Class C felony, not more than twelve years;
- for a Class D felony, not more than six years;
- for a Class E felony, not more than three years;
- for a Class A misdemeanor, not more than one year;
- for a Class B misdemeanor, not more than six months;
- for a Class C misdemeanor, not more than thirty days; and
- for an infraction, not more than five days.[14]

Section 3582 of the Code prescribes that the factors stated in section 3553(a) shall be considered while imposition of sentence of imprisonment. Section 3553(a) of the Code states that the court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- the nature and circumstances of the offense and the history and characteristics of the defendant;
- the need for the sentence imposed—

[13] 18 U.S.C. § 3551.
[14] 18 U.S.C. § 3581.

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- the kinds of sentences available;
- the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- the need to provide restitution to any victims of the offense along with other relevant factors provided in this Code.

The provisions of probation are stated under sections 3561 to 3566 of the Code. Sections 3561 to 3566 of Title 18 of the U.S. Code govern federal probation sentences, outlining eligibility for probation, procedures for imposing it, possible conditions, calculation of the probation term, grounds and process for revocation, and the overall implementation of probation sentences in federal criminal cases.

Section 3591 et seq. (Sections 3591-3599) of Title 18 of the U.S. Code addresses the death penalty in federal criminal law, detailing the offenses eligible for capital punishment, the procedures for determining a defendant's eligibility and sentence, the role of juries and judges in the sentencing process, and the specific guidelines for imposing and carrying out the death penalty, including provisions for aggravating and mitigating factors to ensure a fair and structured approach to capital punishment in federal cases.

Sections 3571 to 3574 and 3566 of Title 18 of the U.S. Code address the imposition and enforcement of criminal fines and the implementation of probation sentences, outlining the authority and limits for fines based on offense severity, factors courts must consider in setting fines, inclusion of fines and restitution as probation conditions, methods for fine collection and enforcement, and the procedural framework governing probation administration in federal cases.

D. Mandatory Minimum Sentences

Mandatory minimum sentences under Title 18 of the U.S. Code refer to statutory requirements that set minimum prison terms for certain federal crimes, particularly involving drugs, firearms, and violent offenses. These laws compel judges to impose at least a specified minimum sentence regardless of mitigating circumstances, aiming to ensure uniformity and severity in punishment for serious offenses. The specific mandatory minimums vary by crime and are often detailed in various sections throughout Title 18 and related statutes.

E. Structure of the Federal Sentencing Guidelines

The structure of the Federal Sentencing Guidelines in the U.S.A. is organized to provide a consistent framework for sentencing federal offenders. These guidelines take into account both the seriousness of the offense and the offender’s criminal history. It consists of the following key components:

- Seriousness of offence: The sentencing guidelines provide 43 levels of offense seriousness; the more serious the crime, the higher the offense level.[15]
- Base Offense Level: Each type of crime is assigned a base offense level, which is the starting point for determining the seriousness of a particular offense. More serious types of crime have higher base offense levels (for example, a trespass has a base offense level of 4, while kidnapping has a base offense level of 32).[16]
- Criminal History: The guidelines assign each offender to one of six criminal history categories based upon the extent of an offender’s past misconduct. Criminal History Category I is the least serious category and includes many first-time offenders. Criminal History Category VI is the most serious category and includes offenders with serious criminal records.[17]
- Specific Offense Characteristics: In addition to base offense levels, each offense type typically carries with it a number of specific offense characteristics. These are factors that vary from offense to offense, but that can increase or decrease the base offense level and, ultimately, the sentence an offender receives. For instance, one of the specific base offense characteristics for fraud (which has a base offense level of 7 if the statutory maximum is 20 years or more) increases the offense level based on the amount of loss involved in the offense. If a fraud involved a $6,000 loss, there is to be a 2-level increase to the base offense level, bringing the level up to 9. If a fraud involved a $50,000 loss, there is to be a 6-level increase, bringing the total to 13.[18]

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15 U.S. Sentencing Comm’n, An Overview of the Federal Sentencing Guidelines, https://www.ussc.gov/sites/default/files/pdf/about/overview/Overview_Federal_Sentencing_Guidelines.pdf (last visited Mar. 4, 2026).
16 *Ibid.*
17 *Ibid.*
18 *Ibid.*

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- Adjustments: Adjustments are factors that can apply to any offense. Like specific offense characteristics, they increase or decrease the offense level. Categories of adjustments include: victim-related adjustments, the offender's role in the offense, and obstruction of justice. Examples of adjustments are as follows: If the offender was a minimal participant in the offense, the offense level is decreased by 4 levels. If the offender obstructed justice, the offense level is increased by 2 levels. The final step in determining an offender's offense level involves the offender's acceptance of responsibility. The judge may decrease the offense level by two levels if, in the judge's opinion, the offender accepted responsibility for his offense.[19]

F. Latest Trends in Sentencing Policy in U.S.A.

i. Sentencing Reform and Reduction of Mandatory Minimums

The First Step Act (2018) formally known as the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act, is a bipartisan criminal justice bill passed by the 115th U.S. Congress and signed by President Donald Trump in December 2018. The act introduced a number of changes to U.S. federal criminal law in order to reduce overly harsh mandatory minimum sentences for non-violent drug offenses, decrease the federal prison population by promoting early release and rehabilitation programs, lower recidivism rates by providing inmates with more opportunities for education, job training, and treatment, improve fairness and reduce racial disparities in sentencing, enhance overall public safety by focusing on effective rehabilitation rather than just punishment.

ii. Increased Use of Alternatives to Incarceration

Currently, several alternative methods to incarceration are adopted in the U.S.A. to reduce prison populations and promote rehabilitation. Key alternatives to incarceration include:

- Probation: Probation usually referred to community correction in United States of America is an alternative to incarceration. In probation offenders are allowed to remain in the community under supervision, with certain conditions to comply with thereby putting limits on their freedom. Probation usually comes with many conditions attached, including meeting regularly with a probation officer, staying under house arrest during certain parts of the day, taking random urine tests, remaining drug-free, working, doing community service, etc. If an offender does not comply with the conditions of probation, more stringent supervision is imposed upon the offender, or,

[19] *Ibid.*

if the violation is serious, probation can be revoked and the person can be required to serve time in jail or prison.

- Parole: Probation is the first stage of the correctional method while parole is the last stage of the correctional method where the offender is released earlier from prison after they have served a portion of their sentence under supervision, often granted on good behavior and participation in rehabilitation programs. It is also accompanied by the threat of re-incarceration if they violate the conditions of parole or commit a new offence. As per U.S. Parole Commission parole is granted upon the completion of one-third of the term. If an offender is serving a life sentence or a term or terms of 30 years or more he or she will become eligible for parole after 10 years.[20]
- Drug Courts: Drug Courts are specialized courts that focus on treatment and rehabilitation for substance abuse offenders instead of traditional incarceration. Drug courts in the United States are presented as an alternative to incarceration for people arrested for minor drug offenses where drug use is considered an underlying cause of the crime, thus theoretically serving as a tool for reducing prison populations. The United States has nearly thirty years of experience with these courts, which have spread to all fifty states as well as U.S. territories.[21]
- Mental Health Courts: Mental Health Courts are alternative to incarceration to navigating the criminal justice system of U.S.A. for defendants with mental disability. The courts generally deal with nonviolent individuals who have been diagnosed with a mental illness or co-occurring mental health and substance use disorders. The courts emphasize treatment, rehabilitation, and recovery instead of punishment. Defendants receive mental health treatment, counselling, medication management, and other supportive services. Example: Specialized courts like Veterans Treatment Courts address the unique needs of veterans with Post-Traumatic Stress Disorder (PTSD) and substance abuse disorders.
- Community Service: Under community services the offenders perform a prescribed number of hours of unpaid work for the community as a form of restitution (e.g., cleaning parks, helping nonprofit organizations, assisting public facilities).

Many states have expanded drug courts and mental health courts to divert offenders from prison into treatment programs. Example: Washington State's Drug Court Program has been shown to

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[20] U.S. PAROLE COMM'N, U.S. DEP'T OF JUSTICE, FREQUENTLY ASKED QUESTIONS, https://www.justice.gov/uspc/frequently-asked-questions (last visited Mar. 10, 2026).

[21] *Drug Courts in the Americas*, SOC. SCI. RSCH. COUNCIL, https://www.ssrc.org/publications/drug-courts-in-the-americas/ (last visited Mar. 10, 2026).

reduce recidivism by addressing underlying addiction issues rather than focusing solely on punishment.

iii. Restorative Justice Practices

Restorative Justice Programs in the United States are alternative approaches within the criminal justice system that focus on repairing the harm caused by criminal behavior through cooperative processes involving victims, offenders, and the community. These programs emphasize accountability, healing, and reconciliation rather than punishment alone. The offenders take responsibility for their actions and actively participate in making amends.

V. Sentencing Policy in India

A. Historical Background

In ancient India under Hindu Law punishment has been perfectly defined under Dharmashastras and in several works of esteemed Hindu saints like Manu, Narada and Vishnu. Dharmashastras were the primary source to run both the criminal and civil administration under the ancient Hindu Kings.[22] Manu, the ancient Hindu law giver, has finely described dandaniti (penal policy) and also said that punishment is the only weapon that will protects the individual and the society. Manu firmly stated that it was only fear that would make the human being serve their duties. Apart from the punishments which the King was authorized to impose under secular laws for committing offences the Shastras and Smritis prescribed certain measures to be self-imposed by a person for the sins committed either against the secular laws or against the moral laws or those governing personal conduct, either openly or secretly.[23]

The Moghul conquerors, whose influence peaked under Akbar in the second half of the sixteenth century, established the Mohammedan Law, which was the penal code used in both northern and southern India. The Quran, which is regarded as having divine origins, served as the main foundation for Islamic criminal law. Islamic Jurisprudence has four basic principles of punishment namely Qisas or retaliation, Diyut or the blood money, Hudhud or fixed punishment and Tazir and Siyasa or discretionary and exemplary punishment. The principles of Qisas were based on the theory of a life for a life, a limb for a limb, an eye for an eye. Diyut referred to blood money for the fine or compensation for blood in cases of offences like homicide and was usually given as an alternative to Qisas. The Hidayah, which includes set penalties to uphold

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[22] Shreya Sahoo, *History of Punishment*, LEGAL BITES, https://www.legalbites.in/history-of-punishment/ (last visited Mar. 5, 2026).
[23] M. RAMA JOIS, ANCIENT INDIAN LAW: ETERNAL VALUES IN MANU SMRITI 87 (2015).

law and order in society and achieve the goals of justice, defines Hadd. Under Hadd, the severity and amount of punishment for specific offenses were set and could not be changed.

With the introduction of British authority in India, the rulers continued to practice the already established Muslim form of judicial administration in criminal proceedings. However, when the British gradually took over all the administrative and legal functions into their hands, then it became necessary to introduce new legislations with a view to bring forth unity of administrative control. In 1833 Lord Macaulay persuaded the House of Commons that the ideal moment had come for the codification of Indian Laws. The Penal Code was drafted by the first Law Commission under the Presidentship of Lord Macaulay. The first draft of the Code was presented before the Governor-General-in-Council in the year 1837, returned it to the Law Commission with an order to get it printed under its superintendence. Finally, the IPC was passed by the Legislative Council of India, and received the assent of Governor-General on the Oct. 6, 1860. It was scheduled to come into force on May1, 1861. Thus, IPC as a codified law came into existence. Under this code, offences were defined and punishments were prescribed. Now Indian Penal Code, 1860 has been replaced by The Bharatiya Nyaya Sanhita (BNS), 2023. It came into effect on July 1, 2024, after being passed by the Parliament in December 2023. Under BNS, 2023, a sentence of community service has been introduced for six offences.

B. The Bharatiya Nyaya Sanhita, 2023

C. Forms of Punishment

The quantum of punishment in India is generally decided by the substantive laws depending upon the nature, gravity of an offence. Section 4 to 13 of BNS, 2023 incorporates general provisions relating to the punishments for various offences prescribed under the Sanhita. Section 4 deals with the kinds of punishments which can be inflicted upon the offenders. This section sates that the punishments to which offenders are liable under the provisions of this Sanhita are:

- Death;
- Imprisonment for life;
- Imprisonment, which is of two descriptions, namely-
- (1) Rigorous, that is, with hard labour;
- (2) Simple;
- Forfeiture of property;
- Fine;

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- Community Service[24]

Earlier in Indian Penal Code, 1860 only five types of punishments were inflicted upon the offenders however, under Bharatiya Nyaya Sanhita (BNS), 2023, a new type of punishment i.e. community service has been added. The Bharatiya Nyaya Sanhita, 2023 has brought a significant reform in the Indian criminal justice system by introducing community service as a viable option for punishing minor offences. As an alternative type of punishment, community service, also known as community sentencing, requires the offender to perform unpaid labour for the good of society. This is consistent with the principles of restorative and reformative justice, which emphasize mending the harm caused by criminal behavior through reconciliation with the community and, when feasible, the victims, to reintegrate offenders into society. Community service is a progressive change in the Indian criminal justice system because of these ideas. The Indian Courts have often emphasized the importance of community service as an effective form of punishment. In the case of Babu Singh v. State of Uttar Pradesh,[25] the Supreme Court pointed out that justice should concentrate more on restorative measures like community service and personal development, and that its goal should be reform rather than punitive action.

D. Judicial Discretion

In India, the Judges have wide discretion in awarding the sentences. In the Indian criminal justice system, judicial discretion refers to the power and authority granted to judges to make decisions based on their judgment, experience, and interpretation of the law within the framework of legal provisions. This discretion allows judges to consider the unique facts and circumstances of each case, including the nature of the offense, the accused's background, and mitigating or aggravating factors, to arrive at a fair and just outcome. Judicial discretion plays a crucial role in areas such as sentencing, granting bail, deciding on the admissibility of evidence, and interpreting ambiguous laws.

i. Factors Relevant for Sentencing

The Sentencing process requires consideration of both aggravating and mitigating factors. Aggravating factors increases the seriousness of the offence and the culpability of the offender. While the mitigating factors reduce the seriousness of the offence and the offender's culpability. The law allows the courts to reduce the sentence if the accused pleads guilty. At its most basic factors, it involves considering:

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[24] The Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 4 (India).

[25] *Babu Singh v. State of Uttar Pradesh*, AIR 1978 SC 527.

- Seriousness of the crime: Seriousness determines whether either of the sentencing thresholds has been crossed. It indicates whether a custodial, community or other sentence is the most appropriate. It is the key factor in deciding the length of a custodial sentence, the onerousness of requirements to be incorporated in a community sentence and the amount of any fine imposed.
- Aggravating factors: At the sentencing hearing presentation of evidence by the prosecutor of aggravating factors would result in a harsher sentence. The seriousness of the offence is judged based upon the circumstances of the case such as the gravity of the injury, usage of weapons etc. Some of the aggravating factors are previous conviction, culpability of an offence, victim vulnerability, leadership, hate crimes etc.
- Mitigating factors: Mitigating circumstances are facts that appear to mitigate the seriousness or penalty of a felony by rendering the actions of the criminal more reasonable or less guilty. The mitigating factors that can be considered by the judge while sentencing are like, the offender was coerced, threatened to commit the offence. It would not constitute a complete defence but would slightly affect the sentencing process, the involvement of the offender in the crime was a mere accessory, it was because of provocation the act was committed, a belief possessed by the defendant that he or she holds a rightful claim over the property, under the situation of necessity, the offender was forced to provide aid to his or her family etc.
- Principle of Proportionality: It is a well-known principle that the seriousness of an offence shall be directly proportional to the severity of the sentence pronounced. Proportionality Principle has a major role in sentencing guidelines. The penalties grossly disproportionate in relation to the gravity of the offence were perceived as unfair. Proportionality respects rule of law values, and places limits on the sentencing power.

E. Latest Trends in Sentencing Policy in India

i. Uniform Sentencing Guidelines

India currently does not have formal sentencing guidelines, leading to variability in sentences for similar offenses. In India neither the legislature nor the judiciary has issued structured sentencing guidelines. The Law Commission in its 48th report observed that it is now being increasingly recognized that a rational and consistent sentencing policy requires the removal of several deficiencies in the present system. One such deficiency is a lack of comprehensive information as to the characteristics and background of the offender.[26]

The high Court of Delhi in the case of State vs. Raj Kumar Khandelwal,[27] while considering a matter for confirmation of death sentence conceded that there is glaring lack of a sentencing policy in India and observed that,

"for certain offences a minimum sentence is prescribed with a cap in so far as the maximum. For some offences, an upper limit of sentence is prescribed, leaving the minimum, at the discretion of the Court, which may be a single day. To somewhat mitigate the problem of sentencing, the principle of proportion between crime and punishment, requiring the Judge to prepare a balance sheet of mitigating and aggravating circumstances and after balancing the two, awarding an appropriate sentence have been evolved over the period of time."

ii. Reformative and Restorative Justice

India's sentencing approach is gradually moving away from a strictly retributive framework toward reformative and restorative justice. The emphasis is now on rehabilitating offenders, addressing the harm caused, and supporting their reintegration into society. The reformative theory focuses on transforming the offender through individualized treatment, often using diversionary methods. This shift is reflected in developments such as expanded victim compensation schemes, restorative provisions under the Juvenile Justice Act, the adoption of open prisons, and the growing use of probation and community service. Juvenile Justice (Care and Protection of Children) Act, 2015, emphasizes rehabilitation and social reintegration of juvenile offenders. The Indian criminal justice system is increasingly incorporating rehabilitative forms of punishment into its sentencing approach. Building on this shift, the restorative justice system takes it further by offering a more comprehensive model aimed at fully achieving the process of reformation.

iii. Alternative Dispute Resolution and Plea Bargaining

For a long time, courts have been extremely overworked. It has been determined that there are gaps in our current procedures, and new alternative dispute resolution (ADR) mechanisms must be made available in order to resolve disputes without the direct involvement of the court. The act of settling disagreements between two or more disputing parties, typically outside of court and without resorting to conventional litigation procedures, through mediation, arbitration, or

[26] LAW COMM'N OF INDIA, 48TH REPORT ON SOME QUESTIONS UNDER THE CODE OF CRIMINAL PROCEDURE BILL, 1970 16 (1972).
[27] State vs. Raj Kumar Khandelwal, date of judgment May 8, 2009.

negotiation is known as alternative dispute resolution, or simply ADR. The ADR system was created to lessen the load on the courts, make litigation more accessible to individuals who cannot afford more time and money, and make it less restricted.

iv. Use of Victim Impact Statements

In the criminal justice system, victims of crime are frequently referred to as the "forgotten man." The adversarial system, being largely focused on the accused, tends to overlook the needs of victims once a crime has occurred. Victims are often left without a platform to express their concerns, particularly because they lack the right to be heard during sentencing. However, the development of victimology and the pro–human rights movement has helped restore the participatory rights of victims within the criminal justice process. These perspectives stress that true justice for victims can only be achieved when they are granted an equal opportunity to be heard. In this context, the Victim Impact Statement (VIS) serves as an effective mechanism for conveying the victim's voice to the appropriate authorities. The judiciary is progressively considering victim impact statements as part of the sentencing process. These statements allow victims or their families to describe the physical, emotional, and financial impact of the crime, providing a fuller picture beyond the legal facts. This helps the court tailor sentences that reflect the real harm caused. The Malimath Committee also suggested that crime victims must be endowed with participatory rights at all stages of the criminal justice process. It recommended a) active participation of the victim during the investigation would help discover the truth, b) participation of the victim will also assist the court in exercising its discretion concerning the grant or cancellation of bail, c) The victim should have the right to be represented by a lawyer, etc.[28] In Mallikarjun Kodagali vs. The State of Karnataka, the Supreme Court observed that "a victim impact statement or a victim impact assessment must be given due recognition so that an appropriate punishment is awarded to the convict."[29]

v. Technology and Data-Driven Sentencing

Technology and data-driven sentencing is an emerging trend in India's sentencing policy, reflecting a global shift toward using technology and analytics to improve judicial decision-making. For instance, courts and policy-makers are exploring databases that track sentencing patterns, recidivism rates, and offender profiles to assist in making informed decisions. This approach aims to improve fairness and reduce bias by grounding sentencing in empirical evidence. Efforts like the e-Courts project by the Indian government aim to digitize court

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[28] DR. JUSTICE V.S. MALIMATH, COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM (2003).
[29] *Mallikarjun Kodagali v. State of Karnataka*, (2019) 2 SCC 752.

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records and improve judicial transparency, laying groundwork for more advanced tech-driven tools in sentencing in the future.

vi. Judicial Activism and Sentencing Reform

Judicial activism refers to the courts taking an assertive role in interpreting laws and policies, sometimes going beyond traditional boundaries to protect rights, ensure justice, and drive legal reforms. In sentencing, this means the judiciary actively scrutinizes and reforms sentencing practices to address systemic issues. The Indian judiciary, particularly the Supreme Court and High Court, has played a proactive role in reforming sentencing policies. Through various landmark judgments, the courts have emphasized principles like proportionality, human rights, and the need to avoid excessive punishment. The Supreme Court has played a critical role in restricting the use of the death penalty by insisting on the "rarest of rare" doctrine and ensuring rigorous review processes. Judicial interventions have also pushed for better prison conditions, alternatives to incarceration, and the protection of vulnerable offenders.

VI. Conclusion

A deeper philosophical conflict within criminal jurisprudence is encapsulated in the debate between uniformity and flexibility. The U.S.A. places a high priority on structured consistency in an effort to eradicate inequality through legislative calibration and quantification. India places a strong emphasis on judicial discretion in an effort to maintain contextual sensitivity and individualized justice. Uniformity ensures equal treatment by establishing clear, standardized sentencing guidelines that reduce disparities and promote predictability in the justice system. This can enhance public confidence and fairness by minimizing arbitrary or biased decisions. On the other hand, flexibility allows judges to consider the unique circumstances of each case and the individual characteristics of offenders, enabling more personalized and just outcomes that reflect the nuances of each situation. While uniformity promotes consistency, too rigid an approach may overlook important contextual factors. Conversely, excessive flexibility might lead to inconsistency and potential inequality. Therefore, an effective sentencing policy often seeks a balanced approach, combining clear guidelines with judicial discretion to ensure both fairness and individualized justice.

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