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Disparity in Sentencing Policy in India

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ABSTRACT

The sentencing policy of a country reflects the morale, rationale and the judgement present in the country. It helps to establish a certain degree of punishment and hence the law of a particular society, in order to reduce the existence of a crime through reprimanding, rehabilitation or any other lawful or justified procedure. However, through centuries the idea of reprimanding and sentencing policy has been evolving and developing. This continuous development has led to a disparity in this sentencing policy. A disparity particularly exists depending upon the discretion of the judges, i.e. their decisions and judgements. This leads to an inconsistency in the system and a continuous routine of disparity in what can be considered the ideal and just 'punishment' for a particular offence. The aim of this research paper is to delve into the existent disparities of the Indian justice system and hence derive the possible remedies of this looming issue which has been plaguing the Indian justice system since ages.

I. INTRODUCTION

Sentencing is the final part of a case hearing in which the judge formally imposes a punishment on the accused. "The main purpose of the sentence broadly stated 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."²

'Punishment' covered under Chapter III of the Indian Penal Code (IPC) is defined as the process in which the state inflicts some pain or consequences to the person(s) or the property of such persons who are found to be guilty of a certain crime.

According to *Section 53 of the Indian Penal Code* the various punishments include—

- i.** Death
- ii.** Imprisonment for Life
- iii.** Imprisonment which has two descriptions

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² G. Kameswari & V. Nageswara Rao, *The Sentencing Process – Problems and Perspectives*, 41 J. IND. L. INST. Institute 452, 452-59 (1999).

- a. *Rigorous imprisonment*
- b. *Simple imprisonment*
- iv. Forfeiture of property
- v. Fine

However, the process of sentencing ultimately depends upon the discretion of judges. Judges are always considered to be trained professionals who are just in their decisions. Thus, the process of sentencing ultimately depends upon the discretion of the judges. In *Soman vs. State of Kerala*³ the court mentioned that principles like proportionality, rehabilitation and deterrence also need to be taken into accounting in furtherance of the discretion of the judges. However, this is where the real question arises; whether the discretion of the judges is as fair as one would want it to be. The major reason behind this pressing question is the rise of disparity in the sentencing policy which has proved to be undesirable and unfair.

One reason one can put to this rising disparity is the existence of different forms of judicial interpretation. As mentioned in the *State of M.P. vs Bablu Natt*⁴, it was stated by the Supreme Court that the imposition of principles depends on the circumstances and the given facts and issues of the particular case in question. This ultimately leads to different ways in which a judge approaches a case.

The aim of this research paper, therefore, is to analyze the sentencing policy and the existent disparities in the system and hence compare it with the other jurisdictions of the world. Upon finishing the analysis, the aim is to bring about probable remedies to reduce the undesirable, existent disparities.

II. REVIEW OF LITERATURE

The literature review delves into finding what are sentencing disparities, how do such disparities come into existence and the remedy for the same in a broad sense.

(A) SENTENCING DISPARITIES:

Sentencing disparities arises due to some unexplainable circumstances when the judges grant a sentence to an offender. While it is usually portrayed in a bad light, disparities as found by most researches is usually of two types –

³ Soman v. State of Kerala, (2013) 11 SCC 382 (India)

⁴ State of M.P. v. Bablu Natt, (2008) 9 SCC 281 (India)

1. *Justified disparity*
2. *Unjustified disparity*

Our main aim is to battle unjustified disparity. The main aim behind discretionary power of the judges was to uphold justified disparity, so that offenders could receive a punishment that was suitable for them, rather than making them incapable of any further self-development. While, it is sometimes taken that sentencing discrimination is a part of sentencing disparity, it is quite the opposite. The two concepts are completely different from each other. Disparity occurs taking into consideration larger issues like seriousness of the offence, discretionary power of the judges, general background of the offender while discrimination occurs on the basis of man-made aggravated issues like race, class, gender, caste etc.

(B) REASONS BEHIND DISPARITIES:

The major reasons that can be listed for the existence of disparities are—

- a. *Individualized sentencing system*
- b. *No coherent sentencing aims*
- c. *Judicial variability*
- d. *Lack of guidance.*

These reasons will be further discussed in the discussion part of the research paper.

(C) REMEDIES

One can theorize several remedies to reduce disparities, however it needs to be understood that it is a deep-rooted issue of the jurisdictions of various countries. One also needs to be careful that while trying to eradicate unjustified disparities, the means for justified disparities are not disturbed. If so happens, the balance which has existed in our judicial system and hence has helped to maintain the confidence of the public in the justice system would topple over completely.

In bringing about such remedies one has to look at several factors like nature and seriousness of crime on which the sentencing should depend. Keeping a mark of such would also help to prevent harsh sentencing being imposed on offenders who did committed a minimal crime, etc.

III. STATEMENT OF RESEARCH PROBLEM

Disparity during sentencing is a major issue in the criminal justice system and has proved to be unfair and unjust. Such disparities are a result of unfair and unexplained causes though most fingers point towards to the allowed discretion of judges. What was brought about to bring just

decisions is now considered as a root cause for the rising disparities. To gain a better understanding about the causes of the rising disparities and how it can be brought down, a more in-depth research is required. Focusing on various cases, judgements and researches about the sentencing policies and hence comparing the same to other jurisdictions may help us to develop better theories about the reasons behind such disparities *in sentencing under the criminal justice system*.

IV. OBJECTIVES

1. To analyze the sentencing policy in the Indian criminal justice system.
2. To find out the reasons behind the rising rate of disparities during sentencing
3. To compare the sentencing policies of India with other countries and hence analyze how India can bring about improvement in its sentencing policies and strategies.
4. To ultimately, put forward ideas on how such disparities can be reduced and thus bring about the fairness which had been the main aim.

V. RESEARCH PROBLEM

What is the reason behind the existence of disparities during sentencing in the criminal justice system and how can it ultimately be brought down?

VI. DATA COLLECTION AND ANALYSIS

The data collected for this research paper has been mostly secondary data hence it includes several government reports, case laws, research papers prepared by eminent people in the field of law and journal articles. Hence the entire research conducted is quantitative research.

The several articles which had been consulted while writing the discussion and analysis of the paper are listed as follows:

1. Committee on Reforms of Criminal Justice System Report, March 2003, Government of India
2. Introductory Session by Dr. Geeta Oberoi in “Seminar of Principal District Judges” on “Sentencing Ethics”.
3. “Sentencing Discretion in India: Arbitrary Sentencing and Modalities to Arrest Arbitrariness – A Comprehensive Study”
4. “National Assessment of Structured Sentencing”, Bureau of Justice Assistance by the U.S. Department of Justice.

5. Sentencing Disparity: Causes and Cures by Julian C. Jr. D'Esposito in Journal of Criminal Law and Criminology (Vol. 60, Issue 2)

Among the cases which have been consulted are—

1. *Santosh Kumar v State Th. CBI*, (2010) 9 SCC 747 (India).
2. *State of M.P. v. Bablu Natt*, (2008) 9 SCC 281 (India).
3. *Soman v. State of Kerala*, (2013) 11 SCC 382 (India).
4. *Dhanonjoy Chatterjee v. State of West Bengal*, (1994) 2 SCC 220 (India).
5. *Jai Kumar v. State of Madhya Pradesh*, (1999) 5 SCC 1 (India).
6. *Santosh Kumar Singh v. State*, (2010) 9 SCC 747 (India).
7. *Amit v State of Uttar Pradesh*, (2012) 4 SCC 107 (India).

When one reviews all the articles with reference to the various cases, one can theorize the issues with the sentencing policy, the types of disparities, the causes behind these disparities during sentencing and what steps the state can take to reduce the existent disparities. One major revelation that the reader comes across is while the existence of disparities is often blamed on the lack of a structured sentencing policy, when we analyze western jurisdictions like USA, we notice that even with the presence of a structured sentencing policy, the disparities are still existence, ranging different for each state. A close study hence helps us analyze the probable remedies for the disparities.

VII. DISCUSSION

(A) WHAT IS SENTENCING?

Sentencing is a crucial part of the criminal justice system where the judge imposes an actual punishment upon the convict. The ultimate goal of providing a convict with an appropriate sentence is to deter him as well as discourage others from making similar offences in the future. However, it should not again be so, that the sentence takes away the individual's chance or opportunity to start afresh. The judicial system was brought about to give everyone a just and fair chance. However, in the light of recent circumstances it has been noticed that the attention that was earlier given to the offense committed has now shifted to the offender who committed the crime.

(B) ABSENCE OF STRUCTURED SENTENCING GUIDELINES:

India does not have a structured sentencing policy and the necessity of it has constantly been stressed. For example, in March 2003, the 'Malimath Committee' or the 'Committee on

Reforms of Criminal Justice’, which was established by the Ministry of Home Affairs issued a report emphasizing on the need to introduce sentencing guidelines in order to minimize uncertainty during awarding sentences. It stated as follows—

“The Indian Penal Code prescribed offences and punishments for the same. For many offences only the maximum punishment is prescribed and for some offences the minimum may be prescribed. The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore each Judge exercises discretion accordingly to his own judgment. There is therefore no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge that exercises the discretion. In some countries guidance regarding sentencing option[s] is given in the penal code and sentencing guideline laws. There is need for such law in our country to minimise uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing the alternative sentences. This requires a thorough examination by an expert statutory body.”⁵

The Committee had also advised about the need for “predictability” in matters of sentencing. According to them it could be done with the presence of an established committee and such a committee could lay down the guidelines under experienced judges. This would in fact help to reduce the uncertainty in matters of sentence awarding.

According to research conducted by Justice Sinha, the discretion of the judges depends upon several factors like the gravity of the offence, family record, previous criminal records, etc. However he also argued that a judges view during sentencing would be majorly affected by a conflict between his upbringing and sentencing ethics.

A major example of the rise of unfairness can be brought up through the “Priyadarshini Mattoo Case”⁶. While in the trial court, Additional Sessions Judge G.P. Thareja said about the convict, Santosh Kumar Singh, that he thought *“he knew that he is the man who committed the crime, he was forced to acquit him, give him the benefit of doubt.”*⁷ This resulted in unprecedented public pressure and media publicity because of which the government had to file an appeal in Delhi High Court where the convict was awarded capital punishment. In 2010, an appeal was filed by the convict in the Supreme Court, which commuted his death sentence to life

⁵ Government of India, Ministry of Home Affairs, *Committee on Reforms of Criminal Justice System Report*, 170 (2003).

⁶ Santosh Kumar v State Th. CBI, (2010) 9 SCC 747 (India)

⁷ *Supra* note 5.

imprisonment, an act which was widely criticized by the public because of the heinous crimes which he had committed.

In the *State of M.P. v Bablu Natt*⁸ it was observed by the Supreme Court—

“The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with.”

Again, in *Soman v. State of Kerala*⁹, the Supreme Court observed—

“Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges”

This case in itself sets forward the need of the hour: a structured sentencing policy for the country. The above pattern as portrayed by these case observations also portrays how the judiciary is in complete isolation from the demands of the public which also puts the judiciary under a phase of lack of confidence of the people.

(C) THE EXISTENT DISPARITIES

Before addressing the existent disparities in the sentencing policy and the reason behind its existence, one has to understand what these disparities actually are.

A sentencing disparity is an inequality in criminal sentencing which is a result of unfair and unexplained causes (rather than legitimate use of discretionary power by the judges.)

A sentencing is inherently through discretionary power of the judges and such discretion leads to disparity.

Disparity need not necessarily always be bad. It can often be classified into two types—

1. *Justified disparity*
2. *Unjustified disparity*

Justified disparity arises on the basis of grounds of offence, seriousness of it, number of previous convictions, youth etc. For example, differential treatment between the sentencing of somebody who is sixteen years old and has committed a minor offence and somebody who is twenty years old and has committed a heinous crime is justified.

⁸ State of M.P. v. Bablu Natt, (2008) 9 SCC 281 (India)

⁹ Soman v. State of Kerala, (2013) 11 SCC 382 (India)

However unjustified disparity is a matter of great concern. “When all ingredients are equally fulfilled in both the case and yet sentences differ in an apparently unjustified way, unjustified disparity in sentence is said to have occurred. Thus if age or chances of reformations are seen as mitigating factor in one case and the same are denied as mitigating factor in another case, unjustified disparity is established.”¹⁰ One example one can take into consideration is how age has been completely disregarded in the case of Dhananjoy Chatterjee aged around 27 years in *Dhananjoy Chatterjee v. State of West Bengal*¹¹, Jai Kumar aged about 22 years in *Jai Kumar v. State of Madhya Pradesh*¹², in which both were given death sentences, while it was again give its due importance in *Santosh Kumar Singh v State*¹³, *Amit v. State of Uttar Pradesh*¹⁴ etc.

Disparity, hence, is a difference in sentencing and depends on one’s theory of sentencing. However all this leads to a break in the confidence of the public in the system.

Sentencing discrimination, which is a completely different realm from sentencing disparity also needs to be taken into consideration. Such discrimination arises on the basis of gender, caste, race, social status etc. Factors like poverty, illiteracy, caste etc. have also been considered as several variables for discrimination.

Some reasons which can be taken into consideration as a source of inconsistency or disparity in the Indian Sentencing System—

1. **Individualised sentencing system** – Individualist sentencing system by their very nature gives rise to inconsistency and disparity. India inherited this system from the British legal system. While in this individualised system, the result is never the same and there are often noticeable differences.
2. **No coherent sentencing aims** –The reason behind the rising disparity is that unlike in other places, there is no unifying sentencing aim that are to be given priority by the judges while passing statement. This means judges can have different propositions in addressing a case and hence its sentencing.

¹⁰ Abha Shukla, *Sentencing Discretion In India: Arbitrary Sentencing and Modalities To Arrest Arbitrariness- A Comparative Study*, SHODHGANGA (Aug 4 2020, 11:18 PM) https://shodhganga.inflibnet.ac.in/bitstream/10603/220795/1/11/11_chapter-iii%20sentencing%20discretion%20in%20india%20%20arbitrary%20sent.pdf

¹¹ Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220 (India)

¹² Jai Kumar v. State of Madhya Pradesh, (1999) 5 SCC 1 (India)

¹³ Santosh Kumar Singh v. State, (2010) 9 SCC 747 (India)

¹⁴ Amit v State of Uttar Pradesh, (2012) 4 SCC 107 (India)

3. **Judicial Variability** – “Judicial variability refers to the individual differences between judges in terms of their approach to sentencing that occur naturally by virtue of their own individuality.”¹⁵ This variability always exists during sentencing which is primarily because of the discretionary power of the judges. This usually occurs during difficult or harsh sentencings like death penalties, life imprisonment etc.
4. **Lack of Guidance** – The lack of guidance arises because India does not have legislative or judicial guidelines like the other countries. This absence ultimately takes away the proportionality which is required to reduce the disparities during sentencing.

(D) REMEDIES FOR DISPARITIES :

The sentencing policies and the disparities of several jurisdictions had been discussed in detail earlier. However, the paper ultimately burns down to the remedies for these disparities. Some of them can be listed as follows:

1. Sentencing and hence recognising the length and nature of the sentence should ultimately rest upon the seriousness of the crime. Other factors like nature of the crime, personality of the offender, list of previous offences, danger of such offences etc. should also be taken into consideration.
2. A major issue which exists is the lost rationality during sentencing, especially during the sentencing of high maximum terms. While the presence of high maximum terms is primarily to arm the court and keep the society free from dangerous offenders, these terms have also been imposed on those offenders who neither need or deserve them. This in turn takes away their opportunity for growth in future.

If offences are not classified it takes away the rationality from them. Though while “a limitation on sentence length would narrow the scope of judicial discretion, but only reduce the possibilities for disparity.”¹⁶

VIII. CONCLUSION

Disparities have become a major part of sentencing in judicial systems across the world. As one can conclude from the above paper it depends on a variety of factors and while justified disparity is approved of, it is the unjustified disparity which has been plaguing our society.

¹⁵ Abha Shukla, *Sentencing Discretion In India: Arbitrary Sentencing and Modalities To Arrest Arbitrariness- A Comparative Study*, SHODHGANGA (Aug 4 2020, 11:18 PM) https://shodhganga.inflibnet.ac.in/bitstream/10603/220795/11/11_chapter-iii%20sentencing%20discretion%20in%20india%20%20arbitrary%20sent.pdf

¹⁶ Julian C. Jr. D’Esposito, *Sentencing Disparity: Causes and Cures*, 60 J. CRIM. L. CRIMINOLOGY & POLICE SCI 182, 187 (1969)

While at the beginning one could blame the non-existence of a structured sentencing policy to be the main reason behind there being disparities in the first place, when compared to that of USA, one finds that even with the existence of a structured sentencing policy, disparities are still present. Upon further research, one can conclude that several factors like individualised sentencing system, existence of no coherent sentencing aims, judicial variability, lack of guidance, discretionary power of the judges etc. are behind the existence of such disparities. Ultimately one can hypothesize several remedies to reduce the existent unjustified disparities ; this can be done by taking into consideration, factors like the seriousness of the crime committed, the background of the criminal, bringing about rationality in the system of providing maximum terms to offenders etc.

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