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Sentencing Issues and Trends in the Indian Judicial System

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ABSTRACT

The spirit, rationale, and judgment of a country's sentencing policy are depicted in response to convicting the criminal. It aids in the reduction of crime rates through reprimanding, deterrent, incapacitating, restoring, or any other lawful method, and therefore establishes law and order in the society in question. For this reason, an accused is sentenced in a court of law. However, in India, the sentencing policy is based on the discretion of the judges, i.e., their decisions and judgments'. As a result, the system is inconsistent, and there is a constant variance in deciding the ideal and just 'penalty' for a certain offense. The Indian judicial trend of sentencing reflects a variety of factors associated with it. This article aims to examine major issues in Indian sentencing policy in light of judicial remarks and derive possible solutions to this looming problem that has plagued the Indian justice system for decades.

Keywords: Criminal Justice, Disparity, Indian Penal Code, Judiciary, Sentencing Policy, Sentencing Issues, Trends

I. INTRODUCTION

(A) Background

Dr. Justice Malimath claimed that the sovereign state's primary role is to encourage legal rule compliance and preserve peace and order in a manner that allows all citizens to exercise their rights.²This commitment is carried out by the government in three ways: legislation, execution, and judiciary. However, such procedures would be insufficient if they did not include preventive, rehabilitative, and punitive efforts to prevent or correct the offender's wrongdoings. Furthermore, improper activities have the potential to influence other essential aspects of criminal law in this setting, one that needs to be modified and adjusted in accordance with members of society, thus they must be avoided. As a result, the state is responsible for imprisoning the criminal for his or her wrongful act, ensuring a fair trial, and punishing the

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² Government of India, Ministry of Home Affairs, Committee on Reforms of Criminal Justice System Report 170 (Mar. 2003) pg 23, available at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf

offender in accordance with the rule of law if found guilty. Concurrently, the state must strike a balance between the pulls and demands of imposing punishment and the seriousness of the crime committed. As a result, punishment becomes an essential aspect of criminal law in this setting, one that needs to be modified and adjusted in accordance with society.

Sentences are defined as comments in court judgments' that specify the legal punishment for a certain offense. To put it another way, it is a mechanism for not only punishing the perpetrator but also preventing future offenses.³

Punishment, in the legal sense, is the imposition of suffering or loss on a person for his wrongdoing. After a conviction, sentencing is a step in which the criminal law is both interpreted and implemented⁴, and it is seen as a primary, forceful, necessary, and intrusive part of penology.⁵ This is because it affects not just the accused, but also his family, friends, the victim, and society at large. On sentencing, the court concluded in *Alister Anthony v. State of Maharashtra*⁶ that criminal law seeks to punish people for crimes that are suitable, adequate, just, and proportionate to the offense committed. It is also influenced by public support and respect at a given time and by moral and social conventions. The fundamental confirmation of a sentence is, indeed, a primary requirement.⁷

(B) Indian Sentencing Policy

The Indian Legal Code, 1860 (hereinafter referred to as the "IPC"), the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1973 (hereafter referred to as "Cr. PC") are the main pieces of legislation in India that govern the legal code and the system of sentencing and punishment.⁸ However, questions concerning the type of action punishable by law, the person to be punished, the type and extent of punishment necessitate consideration of several factors, including the current law, the gravity of the offense, the evidence against the criminal, judicial officers weigh the credibility of evidence, the role of the accused, his criminal record, and

³ Malhotra, Honey, *Sentencing Policy in Indian Criminal Justice System: An Analysis with Reference To Compoundable Offences* (June 5, 2021), available at <http://Dx.Doi.Org/10.2139/Ssrn.3873358> ((last visited November 19, 2021))

⁴ Akhilesh Et Al, *Punishment And Sentencing Policy In India: A Critical Analysis*, Research Review International Journal Of Multidisciplinary(April 15, 2019), Vol 4, Issue 4, pg 581-89, available at <https://old.rrjournals.com/past-issue/punishment-and-sentencing-policy-in-india-a-critical-analysis/> (last visited December 12, 2021)

⁵ Mirkobageric, *Punishment, And Sentencing: A Rational Approach*, London: Cavendish Publishing, (2001)

⁶ *Alister Anthony Pareira V. The State of Maharashtra*, AIR 2012 2 S.C.C. 648

⁷ Vishnuprasad R, *Issues Concerning Sentencing Policy in India*, Indian Politics & Law Review-Journal (December 2018), Vol 3, pg 74-84, available At <https://TheLawbrigade.Com/Wp-Content/Uploads/2019/06/Dr.-Vishnuprasad.Pdf>

⁸ Aastha Sahay, *Sentencing and Punishment Policy in India* (August 12, 2020), available at <https://www.probono-india.in/blog-detail.php?id=152> (last visited October 12,2021)

witness testimony. This is when the judge's knowledge, perception, and approach come into play, and play a critical role in sentencing the convict.

Justice *R.C. Lahoti* said “A judge while issuing a sentence has to be a sociologist, psychologist, socio-therapist, and administrator at all times. ⁹Above all, he must be compassionate. Justice has neither friends nor foes. Justice cannot be separated from mercy, even if the law must be applied harshly.” ¹⁰

This means that sentencing is difficult to work for the court, and the judge must have discretion in carrying out this duty. Some jurists view a sentence as a sort of retribution for the crime done, while others see it as a means of incapacitating the criminal or rehabilitating the guilty. In some ways, sentencing tries to deter, disable, or reform offenders, but it is most vital in the Indian legal framework to focus on the prevention of future offenses.

In India, support for one of these philosophical dimensions of punishment has continued to influence sentencing policy. Regardless of which ideology one subscribes to; practically all citizens have a common denominator: reasonable and equitable sentencing.¹¹ In addition, the media prefers to report on punishment more than other areas of the criminal justice system. This attracts politicians and policymakers because it provides a window of opportunity to demonstrate to the public that they are acting on issues of crime in which everyone seems to be interested.¹²

(C) Problem Statement

There is no doubt that Indian judiciary courts have excelled in the art of investigating facts and administering the law, but there is a gap in the process of sentencing.¹³

There is an unjustified discrepancy in sentencing and inexplicable causes of contradicting sentences under comparable circumstances in the Indian prison system, as in the case of *Nar Singh Prasad Singh vs Raj Kumar*.¹⁴ Furthermore, as evidenced in the cases of *Mohammad Chand vs the State of Delhi*¹⁵, *Ashok Kumar vs State of Delhi Administration*¹⁶, and *Modi Ram*

⁹ Mahendra K.Sharma, Minimum Sentencing for Offences in India: Law and Policy, Cover page, Delhi Deep and Deep Publications (1999)

¹⁰ Supra note 6

¹¹ Supra note 3

¹² Marion, Nancy & Farmer, Rick, *Crime Control in the 2000 Presidential Election: A Symbolic Issue*, American Journal of Criminal Justice (March 2003), Vol 27, Issue 2, Pg 129-144, DOI: 10.1007/BF02885690

¹³ Supra note 3

¹⁴ *Narsingh Prasad Singh vs Raj Kumar @ Pappu & Ors AIR 2001*

¹⁵ *Mohd. Chaman v. State (NCT of Delhi) AIR 2001 2 SCC 28*

¹⁶ *Ashok Kumar vs The State (Delhi Administration) AIR 1996 SC 265*

*Lala vs State of Madhya Pradesh*¹⁷, the legitimacy and appropriateness of the criminal sentence imposed by a lower court has frequently been called into question before higher courts seeking alternative punishments. This calls into question judges' discretionary powers and the criminal justice system's ability to provide a fair trial and conviction. More research is needed to acquire a better understanding of the reasons for the developing inequities and concerns in India's sentencing policy, as well as how they may be addressed. By focusing on various instances, judgments, and research about sentencing policies and comparing them to those in other jurisdictions, we may be able to gain a better knowledge of the Indian sentencing process and its issues.

(D) OBJECTIVE

1. Objective and scope of the study

The objective of the study is to ascertain the concerns surrounding India's sentencing policy and the requirement of reforming it. The scope of the study includes determining various parameters governing Indian sentencing policy, as well as the challenges and issues confronting the current Sentencing system and the need for addressing the same. Additionally, the sentencing regimes of other countries are analyzed, including the United Kingdom and the United States.

2. Research questions

- What are the main features of sentencing policy in India?
- What are the different issues related to the Indian sentencing system?
- What are the existing sentencing policies in the United Kingdom and the United States?
- How can the existing issues in sentencing be addressed?

3. Research questions

It is hypothesized that the existing sentencing system in India has various bottlenecks and concerns that are needed to be addressed in line with countries like the UK and USA in terms of having a structured, well-defined sentencing policy.

4. Data collection

For the study, qualitative research was conducted utilizing secondary data, which included many government reports, case laws, research papers, books on law written by notable experts

¹⁷ *Modi Ram And Lala vs The State of Madhya Pradesh AIR 1972 SC 2438*

in the area, and journal articles.

II. ANALYSIS AND DISCUSSION

(A) Features of Indian Sentencing

Punishment in India is intended to achieve three goals: punitive, deterrent, and protective.¹⁸ In India, sentencing is based on the seriousness of the offense, and courts strive to provide proper sentencing for the crime committed so that the victim receives justice, and the public has faith in the judicial system. Nonetheless, the penalty does not have to be severe concerning the crime. Another feature of the Indian sentencing system is that the ability to impose punishment is vested in the judiciary, although it is subject to the judge's discretion in each instance. In high-profile instances, public opinion and media influence also plays a role.

(B) Issues associated with the Sentencing System in India

1. Wide Quantum of Punishment

After hearing arguments in the case of the *Delhi States versus Raj Kumar Khandelwal*¹⁹, the high court acknowledged that India suffers from a severe absence of a sentencing policy, noting that “for certain offenses, minimum terms are specified with a cap in so far as the maximum is concerned.” For some offenses, the maximum sentence is established, but the minimum period is left to the discretion of the court, which could be as little as a single day.”²⁰ Furthermore, a slew of cases have revealed inconsistencies in the rules regarding punishment.

In the case of *State of Punjab v. Prem Sagar and Others*, the court stated that “the range of penalty for committing a comparable sort of offense goes from the bare minimum to the most severe possible. Even though the same sentence is given, it is discovered that the principles applied are different. In the case of the imposition of fines, inconsistencies of the same nature have been noticed.”²¹

2. Lack of Guidance

Another concern is that neither the legislature nor the courts have set formal sentencing guidelines. There is no “one-size-fits-all formula” for sentencing an accused based on proof of the offense, the court ruled in *Alister Anthony v. The State of Maharashtra*.²²

Our country's criminal justice system is weakest because there are no clear criteria for a court

¹⁸ Supra note 3

¹⁹ *State v. Raj Kumar Khandelwal*, date of judgment 08 May 2009

²⁰ Ibid para 75

²¹ See *State of Punjab v. Prem Sagar & Ors.*, AIR 2008 7 S.C.C. 550, ^8

²² Supra note 5

to follow to ensure that an accused person receives a fair penalty, according to *Soman v. The state of Kerala*²³. Supreme Court (SC) decision in *State of Punjab v. Prem Sagar & ors*²⁴ revealed that India's criminal justice system lacks judicially driven norms. Recognizing the lack of such rules, the Supreme Court has enunciated many principles to be considered while exercising discretion in sentencing criminals, including proportionality analysis, mitigating and aggravating considerations, the severity of the offense, and criminal history²⁵. When sentencing, courts emphasized the need for deterrence, rehabilitation, and proportionality in the *Soman v. State of Kerala case*. The procedure can be separated into two parts: first, the liability, and then, under Cr, PC, the sentencing of the perpetrator²⁶.

Following the *Nirbhaya gang-rape case*, the Justice Verma committee recommended in 2013 that sexual offenses be punished more harshly.²⁷

In *Gian Singh v The State of Punjab*,²⁸ discussing the power of the court in sentencing, SC observed that abhorrent and grave offenses of moral depravity like murder, rape, dacoity have a profound impact on society and sentencing must reflect this distinction as well. However, it has been noted that the sentencing policy remains a quagmire, with numerous well-known instances simply eliciting principles rather than providing a comprehensive test to serve as a guide for judges when sentencing offenders.²⁹

3. Judicial Inconsistency

In light of the facts of the case, there is no guidance for the judge in calculating the proper penalty. A judge is permitted to exercise his or her discretion and make a decision within the statutory parameters in deciding on a sentence. Needless to say, not every judge is in the same frame of mind or considers the same factors while deciding on penalties. And the exercise of unguided discretion and total neutrality in this regard is ill-used in innumerable cases due to superfluous thought supported by a judge's own experience, prejudice, and considerations.

²³ See *Soman v. the State of Kerala*, AIR 2013 11 S.C.C. 382, ^12

²⁴ Supra note 20

²⁵ The factor of sentencing, elements of proportionality, aggravation, and mitigation, available at <https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/FactorsinSentencingLL.M..pdf> (last visited November 29, 2021)

²⁶ See supra note 22, ^13

²⁷ Harsimran Kalra, Report of the Committee on Amendments to Criminal Law, PRS Legislative Research (January 25, 2013), available at <https://prsindia.org/policy/report-summaries/justice-verma-committee-report-summary>, (last visited November 24, 2021)

²⁸ *Gian Singh v. the State of Punjab* AIR 2012 10 SCC 303

²⁹ Chawla, M. K, *Sentencing Structure and Policy in India*, UNAFEI Resource Material Series (October 01, 1976), Issue 12, pg 54-57, available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=41783>, (Last visited October 29, 2021)

The Supreme Court in the case of *Ramesh Dayal vs. the State of UP*³⁰ remarked that under the same circumstances, the punishment was 4 years in one case and 3 months in the other. Changes in sentencing by courts at various levels were highlighted in *Modi Ram Lala vs State of Madhya Pradesh*³¹, indicating that judges are influenced by a variety of variables during case processing, necessitating a more cautious approach when sentencing the criminal.

As *R. Niruphama* wrote in 2007, "In the absence of a comprehensive sentencing strategy or guidelines, judges must choose which elements to take into account and which to overlook. Furthermore, she feels that the sentencing procedure is vulnerable to abuse and permits judges' preconceptions to sway decisions."³²

4. Individualized Sentencing System

What is more compelling is the lack of rigorous guidelines that lead to inconsistency, inequality, and insufficiency in the sentence, and because of the customized sentencing system, the verdict is never the same and there are frequently notable disparities.

For example, in *Rahul vs. State of Maharashtra*³³ (aged 24 years), *Amit vs. The State of Maharashtra*³⁴, (aged about 20 years), *Santosh Kumar Singh vs. State*³⁵ (aged 24 years), the offenders' age was considered a mitigating factor, whereas, in *Jai Kumar vs. State of Madhya Pradesh*,³⁶ (aged 22 years), and *Shivu & Anr. Vs. Registrar General, High Court of Karnataka*³⁷, the age of the accused was either ignored or judged immaterial. The application of the same statute to individuals with distinct outcomes, notwithstanding the same set of circumstances, breaches the Indian Constitution's Article 14 right to equality.

5. No Coherent Sentencing objective

Judges can have differing viewpoints when it comes to addressing a case and, as a result, punishment. This causes more damage to the justice system and may lead to the victim losing faith in the system and resorting to private retribution.

In *Mohd Chaman v. The State of Haryana*³⁸, where the defendant ad abhorrently raped and

³⁰ *Rameshwar Dayal and Ors v. The State Of Uttar Pradesh AIR 1978 SCR (3) 59*

³¹ *Supra* note 16

³² R. Nirupama, Need for Sentencing Policy in India: Second Critical Studies Conference "Spheres of Justice" Paper Presentation (Sept.20–22, 2007), available at <http://www.mcrg.ac.in/Spheres/Niruphama.doc>, (last visited November 2, 2021)

³³ *Rahul v. State of Maharashtra AIR 2005 10 SCC 322*

³⁴ *Amit v. the State of Maharashtra AIR 2003 8 SCC 93. 13*

³⁵ *Santosh Kumar Singh v. State AIR 2010 9 SCC 747*

³⁶ *Jai Kumar v. State of Madhya Pradesh AIR 1999 5 SCC 1.*

³⁷ *Shivu v. Registrar General, High Court of Karnataka AIR 2007 4 SCC 713*

³⁸ *Supra* note 14

murdered a one-and-a-half-year-old child, the lower court saw the case as the rarest of the rare and so warranted imposition of the death penalty. However, it was lowered to life imprisonment by Supreme Court, ruling that the demonstration did not warrant the death penalty. After seeing such startling decisions, people possibly lose faith in criminal justice and question the validity of deciding which sentence is most lenient.

(C) Sentencing Policy- A Pressing Need

Punishment should be appropriate to the crime committed and alleviate the pain and suffering of the victim and their family. The reasons for sustaining sentencing guidelines are justified by the issues listed above. Many government committees have called for the adoption of sentencing guidelines to reduce the amount of uncertainty in sentencing.

In March 2003, the **Malimath Committee**, a panel constituted by the ministry of home affairs, published a report outlining the aforementioned shortcomings in the Indian sentencing mechanism and underlining the necessity of implementing coordinated sentencing guidelines.³⁹

Additionally, an advisory council comprised of representatives from the prosecution, the legal profession, the police, social scientists, and women, as well as a former Supreme Court judge or former chief justice of a high court with experience in criminal law, was recommended by the committee, to provide "predictability" to the sentencing process.⁴⁰ To make sentencing more manageable, the concept of "proportionality" has emerged, which calls for the judge to compile a list of aggravating and mitigating factors before deciding on an appropriate sentence.

However, a variety of analyses reveal that there is still a lot of work to be done here. Sections 360 of the Cr.PC governs the notion of releasing prisoners based on good behavior and conduct.⁴¹ While no single authority has exclusive control over the definition of "good behavior," it has varied greatly based on the circumstances and kind of crime committed by a convict.

The **Madhava Menon** Committee, which was formed in 2008 to design a national criminal justice policy, reaffirmed the necessity for statutory sentencing guidelines in 2007.⁴² Many scholarly papers on the subject argue that politicians should act even in areas where the intensity of the punishment to be doled out for the offense is prescribed, such as sentencing policy.⁴³

³⁹ Supra note 1

⁴⁰ Supra note 1, pg 171

⁴¹ The Code of Criminal Procedure, 1973 § 360

⁴² Government of India, Ministry of Home Affairs, Report of The Committee on Draft National Policy On Criminal Justice (July 2007), available at <https://www.mha.gov.in/sites/default/files/DraftPolicyPaperAug.pdf>

⁴³ Supra note 6

Lawmakers in India have been working since 2010 to develop a sentencing policy that follows the United States and United Kingdom's sentencing guidelines⁴⁴ but no legislation has yet been introduced.

Sentence standards that are strict, organized, and consistent are an unquestionable need, which would help to reduce the ambiguity in sentence awards by requiring judges to follow the standards and award punishments in accordance with them. It will also relieve stress on trial courts by requiring them to impose clear, articulated penalties in accordance with criteria established by either the judiciary or the legislature. Furthermore, stringent, well-defined criteria can help to ensure that punishment is consistent and predictable, as well as limit the possibility of prejudice. Not to mention the legislature's well-deserved opportunity to revitalize and develop a robust and truly democratic sentencing policy, given the gradual but steady decrease in public faith in the penal justice system. In this regard, incorporating the views of a well-informed and genuine public into sentencing policy can boost not only acceptance but also the much-needed transparency in the proceedings.

(D) Sentencing Guideline of Other Countries

The United States of America

35 years after the Sentence Reform Act of 1987 has been passed; federal courts in the United States have well-established federal sentencing standards. The US Supreme Court, however, affirmed them as just advisory rather than mandatory in light of the judge's verdict in the United States v. Booker and following opinions in Gall v. the United States and Kimbrough v. United States.⁴⁵

United Kingdom

Sentencing framework in England and Wales have been in effect since 1999 which all UK Courts were required to follow, unless detrimental to the interests of justice. It laid out several elements to consider before deciding on a sentence. Under the 2009 Coroners and Justice Act, the state created an independent sentencing committee to modify guidelines, encourage a consistent approach to sentences, and enhance public awareness.⁴⁶

⁴⁴ Rachit Garg, Need for Sentencing Guidelines in India, May 12, 2021, available at <https://blog.ipleaders.in/need-sentencing-guidelines-india/>, (last visited November 11, 2021)

⁴⁵ Lisa M. Seghetti, Federal Sentencing Guidelines: Background, Legal Analysis, and Policy Options, Congressional Research Service (March 16, 2009) available at <https://www.everycrsreport.com/reports/RL32766.html>, (last visited December 13, 2021)

⁴⁶ Sentencing Policy in U.K. And U.S.A, available at <https://www.cusb.ac.in/images/cusb-files/2020/el/law/w2/Sentencing%20in%20UK%20and%20USA%20LL.M.pdf> (last visited December 12, 2021)

III. CONCLUSION

Indian criminal courts excel at investigation and application of the law due to their apolitical and impartial attitude, but the sentencing procedure has numerous limits due to components of emotion and subjectivity regarding the convict's situation. Numerous variables, including an individualized sentencing system, the absence of unified sentencing objectives, judicial unpredictability, unguided discretionary power, arbitrariness, inconsistency, and lack of urgency contribute to the creation of such discrepancies. This affects both the victim and the convict and casts doubt on the criminal justice system's efficacy. The situation deteriorates further as a result of the absence of a well-defined sentencing policy. This demonstrates the existence of infirmities in the current Indian sentencing system, demanding legislatures' and judiciary's attention.

The goal of sentencing should be to guarantee that the perpetrated crime is not left unpunished and that both the victim and society are satisfied that justice has been served. While judicial recommendations may provide an instant remedy to the problem, they must be quickly substituted by legal incorporations to ensure that the problem is not exacerbated. As a result, the legislature needs to step forward to draft a road map and take critical efforts to design a methodical and unambiguous policy. When developing a policy, the legislature should draw on the successful policies of other countries, such as the United States and Great Britain, and adapt them to India's requirements. This blueprint must also be consistent with the recommendations and findings of the Malimath Committee, the Madhava Menon Committee, and the Law Commission of India in this respect. The court could also play a vital part in the policymaking process by ensuring that discretionary powers granted to them are used in the interests of justice and are not abused. We may thus conclude that rapid structural change of India's sentencing policy is required to provide criminal justice efficiently.
