

Sentencing Disparity in The Indian Criminal Justice System

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Abstract

Sentencing disparity in the Indian criminal justice system is a pressing issue that has significant implications for the principles of fairness and equality before law. This disparity arises when similar cases receive different sentences, often due to subjective judicial discretion. In India, where the Judiciary enjoys considerable autonomy, the absence of standardized uniform sentencing guidelines exacerbates this problem of sentencing disparity. Various judicial pronouncements on similar offences with different punishments stand as irrefutable proof that the judicial autonomy and judicial discretion is the major contributing factor towards this problem. The Penal Code and various other penal laws and provisions provides for a range of punishment for a particular offence and the Judiciary is at liberty to decide the appropriate quantum of punishment allowing judges considerable discretion. This flexibility can be advantageous in considering the unique circumstances of each case. But on the other hand, it opens the door to inconsistencies and potential biases. Efforts to address sentencing disparity include the proposal of sentencing guidelines and the establishment of sentencing commissions to ensure more uniform application of the law. These efforts are still taking baby steps and addressing this particular issue in India requires a multifaceted approach.

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1. INTRODUCTION

Sentencing Disparity is a type of unequal treatment in the process of imposing criminal punishment that is completely unjust and has negative effects. In other words, sentencing disparity is that all criminals are treated unfairly and unequally, and the punishment is not proportional to their crime. It is awarded only on the basis of sentence disparities, which is completely against the basic principles of the legal system as it states: "All are equal before the law, and no one is above the law." Disparity is a variation in treatment or outcome that is not caused by prejudice or intentional bias. Disparities emerge in the sentencing process when similar criminals receive different sentences and different offenders receive the same sentence. The

judge formally imposes a sentence on the offender at the sentencing phase of a court hearing. "The main purpose of the sentencing 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 society¹." The decision of quantum or period of sentencing is the process depending upon the judges' discretion. Judges are always thought to be well-trained professionals who make fair rulings. As a result, the procedure of sentencing is ultimately up to the judges' discretion. The Court mentioned in *Soman vs. State of Kerala*² that in order to protect the judges' discretion, concepts including proportionality, rehabilitation, and deterrence must be considered. However, there is where the actual issue arises: if the

¹ G. Kameswari & V. Nageswara Rao, *The Sentencing Process – Problems and Perspectives*, 41 J.

IND. L. INST. Institute 452, 452-59 (1999).

² *Soman vs. State of Kerala* (2013) 11 SCC 382

judges' judgment is as fair as one would want. The rise of discrepancy in sentencing policy, which has proven to be unfavorable and unreasonable, is the main reason for this important issue. The prevalence of various forms of judicial interpretation is one cause for the growing inequality. The Supreme Court declared that the imposition of principles is subject to the circumstances, facts, and questions of the individual case in question. As a result, diverse approaches to a case are taken by judges³. For instance, sentencing disparity is evident in cases of murder where the gap between the minimum and the maximum punishment have never been established by legislation. The quantum of sentence in murder cases and the reasoning behind the decision has always been subjective and different from case to case. The main reason behind this existing disparity is the absence of established sentencing guidelines which is tried to be substituted by judicial discretion and judicial interpretation. This research paper establishes the existing disparity in sentencing process especially in murder cases and puts forth the impending need to frame uniform sentencing policy and guidelines.

2. OBJECTIVES

- To analyze and understand the existing sentencing policy in India.
- To analyze the sentencing disparity.
- To understand the disparity in sentencing with the aid of judicial precedents.
- To emphasize the need for uniform sentencing guidelines as recommended by various law commission reports.

3. REVIEW OF LITERATURE

In *“Need for reforms in criminal justice system in India with special reference to punishment and sentencing policy”*⁴, the Researcher Ivneet Kaur Walia establishes the absence of sentencing policy creates huge ruckus in the Indian Criminal Justice System and there is an impending need to reform the punishment and sentencing policy in India.

In *“A critical analysis of law and policy relating to sentencing in India”*⁵, the Researcher Patil Praveen Balagouda puts forward a perspective about the problems existing in the concept of sentencing in the Indian scenario and it compares the existing arbitrary sentencing in different offences and how the judiciary interprets and imposes different sentences in different cases involving same offences and puts light on what could be the alternative solution to solve this disparity and arbitrariness in the process of sentencing.

In *“Disparity in Sentencing Policy in India”*⁶, it is reiterated that how it is important to have an est listed sentencing policy for a society to implement its laws especially the penal laws in complete and true sense and how the absence of fixed

sentencing guideline affects the Indian Criminal Justice System and it also helps in arriving at possible solutions for the defect.

4. SENTENCING POLICY IN INDIA - AN OVERVIEW

According to the *OXFORD Dictionary*⁷, Sentence means punishment allotted to a person convicted in a criminal trial. Sentencing is the most crucial stage in the process of criminal trial. The sentencing process contains the essence of the criminal trial as the ultimate success of it lies in awarding the appropriate sentence to the convict. If the balance between the nature of crime committed and the amount of punishment given is not maintained, then it fails the entire purpose of the criminal trial and the mere purpose of the principles of the criminal justice system. In India, punishments are defined in Chapter III - Section 53 of the Indian Penal Code, 1860. The types of punishments mentioned under the Law of India includes death, imprisonment for life, simple imprisonment, rigorous imprisonment, forfeiture of property and fine. Every offence under the Penal code has a minimum and maximum punishment that can be awarded. Finally, it is the discretion of the sentencing Judge whether the certain offence has to be awarded with minimum or maximum punishment. This decision is usually made to decide on the quantum of punishment considering the nature and impact of the offence and facts and circumstances of that particular case in hand. The offence and the punishment should be proportional. There is no uniform punishment regime in India. No such guidelines have been released, though courts have occasionally spelled forth specific principles and considerations that judges should consider when imposing sentences, acknowledging the need for such a policy. For instance, in *Soman vs. State of Kerala*, the Supreme Court acknowledged the lack of a policy for the sentence process. “Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but it is the weakest component of the administration of criminal justice in our nation. There are no legislative or judicially established rules to help the trial court in imposing the appropriate punishment on an accused who is found guilty of the charges⁸. In order to maintain law and order in society, the court system follows a set of procedures based on the principle of natural justice for a fair and just trial in criminal cases. After providing information to the police under section 154⁹ of the Cr.P.C. or to the magistrate taking cognizance under section 190¹⁰ of the Cr.P.C, there is a procedure of investigation and cognizance, followed by a trial that may result in acquittal or conviction.

5. IPC AND SENTENCING

In IPC, there are five theories of punishment among which India has adopted reformatory and retributive theory as the strong belief in India is that the major purpose of punishment is to reform and rehabilitate the offender rather than creating fear

³ *State of MP vs. Bablu Natt (2008) 9 SCC 281*

⁴ <http://hdl.handle.net/10603/201779>

⁵ <http://hdl.handle.net/10603/220795>

⁶ *INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES*

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⁷ *The Concise of Oxford Dictionary, P-058. Oxford University Press, Calcutta. P.58*

⁸ *Supra Note 2.*

⁹ *Information in Cognizable cases.*

¹⁰ *Cognizance of offences by Magistrates.*

and imposing stringent punishment. Thus most of the punishments provided under the Indian Penal Code are of this nature and the severe punishment like death sentence is only imposed in very rare cases where the nature of the offence committed is grave and impact created by the offence is dreadful. It is evident that the Code only clearly lists out the kinds of punishments but it did not provide for the guidelines to be followed in the process of sentencing.

6. CRPC AND SENTENCING

The process of using a judge's discretion when deciding on a sentence for an offender is clearly reflected in the criminal code under section 354 clause (1)(b), which states that a judge must record the reasons for his decision. Also, clause 3 of the same section states that when the sentence involves death or life imprisonment, the judge must use his discretion. In reaction to the foregoing, the law, in resolving the case and supporting their position on the penalty imposed, created logics such as aggravating and mitigating circumstances.

7. JUDICIAL DECISIONS AND SENTENCING

*"Giving punishment to the perpetrator is at the heart of the criminal justice system, but in our nation, it is the weakest aspect of the administration of criminal justice."*¹¹ The Supreme Court, in commenting on its sentencing power, stated that the state of criminal law reflects society's social consciousness, and that any system of law adopted for the administration of criminal justice, whether based on corrective mechanisms or deterrent approaches, should ensure social security because the state's primary function is to protect people and their property. Judges must ensure that the punishment meted out to the criminal is appropriate for the seriousness of the offence¹².

Legislation and court judgments have shaped sentencing principles (common law). They serve as the foundation for sentence decisions. These principles include:

- *Parsimony* - the punishment must be no harsher than is necessary to achieve the sentencing goals
- *Proportionality* — the entire penalty must be proportionate to the seriousness of the offence.
- *Parity* - For similar offences committed by criminals in similar circumstances, similar punishments should be imposed.
- *Totality* — where an offender is sentenced to many terms, the total punishment must be just and appropriate in light of the overall offending behaviour.

8. INFLUENTIAL FACTORS

To decide the appropriate quantum of punishment in a particular case, the sentencing judge is required to take into consideration certain factors that would either propose the maximum punishment prescribed or would stand for the minimum punishment. The factors which influence the decision on the quantum of punishment can be grouped under two heads as aggravating factors and mitigating factors. The former amounts to the presence of certain circumstances or factors in a particular case that puts the judge in a place to decide on imposing the maximum punishment prescribed. The latter reduces the wrong on the part of the offender which puts the judge to decide on the minimum punishment. In determining the proper

sentencing for an offence, the court must first analyse the seriousness of the offence based on the offender's behaviour. It is a well-known truth that judges are affected by various circumstances during the course of a case's procedures. It can also be deduced from the 2003 *Malimath committee's recommendations* (Page 171), which recommended the formation of a statutory committee to establish sentencing guidelines, chaired by a former Supreme Court judge or former Chief Justice of the High Court, with members representing the prosecution, legal profession, police, social scientists, and women's representatives. They recruited a diverse group of people to ensure that sentencing guidelines are not impacted as much as possible and that significant stakeholder perspectives are represented. To make an appropriate decision, there came the concept of aggravating and mitigating factors whose presence helps in deciding the quantum of punishment. An aggravating factor can lengthen a prospective sentence, whereas a mitigating factor can shorten it. Not every aggravating and mitigating factor present in a case will automatically result in a sentence increase or decrease. Depending on the facts of the case, the relative relevance of each aspect will change. Promoting a young offender's rehabilitation, for example, may be considered more important than the principles of general deterrence (that is, the deterrent effect of a sentence on others in the community who might consider committing such a crime) and public condemnation in the case of young offenders. Pre-planning, offence committed in a brutal way, offender having prior history of convictions are few of the aggravating factors whereas the perpetrator suffering from severe mental or emotional distress, the chances of the offender being rehabilitated for good, the victim provoked the offender are few of the many mitigating factors.

9. JUDGES' ROLE IN SENTENCING PROCESS

A review of our country's criminal legislation reveals that the distribution of penalties is left totally to the discretion of judges for almost all charges, and as a result, sentences handed down by two different judges for nearly the identical offences are frequently wildly unequal. Only the maximum penalty periods have been specified because the offences have been characterized in broad terms. As a result, within the stipulated limits, judges must apportion the amount of the penalty based on the gravity or otherwise of the individual violations. Two main things expected by any judge to abide by or follow while deciding a case are

- Immediacy
- Consistency

The Judge has all rights and liberties to interpret the law relating to the particular offence and case and can decide the case based on the evidences produced, arguments put forward by both the sides and his own intellect without any prejudice. The only limitation imposed is that whatever decision he may make, it should be consistent with the present scenario and with the law of the land and should protect the rights of the parties involved in the case and also the society as a whole and thus render justice. To make this decision and to decide the quantum of punishment, the Judge can take into consideration the aggravating and mitigating factors involved in the case and the presence of these factors influence the decision on the quantum of punishment.

¹¹ *Supra* Note 2

¹² *Sailesh Jaswanthi vs. State of Gujarat - (2006) 2 SCC 359.*

Judges have difficulty adhering to basic principles when they are called upon to do so. As a result, there has been a gap in the sentences handed down by different courts for specific types of offences, frequently without recourse to the rules established to minimize inequalities. The Indian Penal Code, 1860, or any other substantive statute with a contractual impact on judges does not expressly state such principles. They've also adhered to certain criteria under their own direction; there's no system in place for daily judges' conferences, and differences in techniques aren't addressed or reconciled. The disparity between maximum and minimum sentences has a significant impact on the criminal justice system's sentencing regime. The large disparity between this and the judges' concentration area while issuing sentencing. They have a lot of authority when it comes to making decisions. Judges' discretion is required to determine which cases merit the least and which cases warrant the maximum. In India, judges consider numerous elements governing the case, such as severity, responsibility, and guilty mind, before imposing a sentence. This sentence appears to be entirely the result of the judge's thinking, prejudices, and concerns. This process of using a judge's discretion when deciding on a sentence for an offender is clearly reflected in the criminal code under section 354 clause (1)(b), which states that a Judge must record the reasons for his decision. Also, clause 3 of the same section states that when the sentence involves death or imprisonment for libel, the judge must record the reasons for his decision. In reaction to the foregoing, the law, in resolving the case and supporting their position on the penalty imposed, created logics such as aggravating and mitigating circumstances. When an offender is convicted, balancing is expected. It is necessary to strike a balance between the rights of the accused and the needs of society as a whole. It would also be a difficult task to maintain citizens' trust while employing the courts' authority to convict or execute. It is also a difficult task for the condemned to be found guilty and so executed with a proper penalty without any infallible procedure. The sentence meted out to the criminal should be appropriate and consistent with the heinousness with which the criminal act has taken place. Apart from all these influential factors in deciding the quantum of punishment, there is another side to the Indian Judiciary that proves that the Indian Judiciary is not victim based and has decided certain cases in a way to protect the rights of the accused considering the conduct and character history of the victim as well. It was demonstrated in *Raju vs. State of Karnataka*¹³ that the Indian judiciary is not victim-centered; the convict's sentence was lowered solely on the basis of the victim's alleged immoral character in the eyes of the law.

10. COMMON DEFECTS IN SENTENCING POLICY

- The death sentence is the harshest punishment, followed by life imprisonment; there is no punishment in between, as there is in the United States, which is known as "imprisonment without remission or commutation."

¹³ 1994 SCC (1) 453

¹⁴ *State of M.P. vs Gyan* 1992 CriLJ 192

¹⁵ *Jagmohan Singh vs. State of Uttar Pradesh* AIR 1973 SC 947

¹⁶ *Jai Kumar vs. State of Madhya Pradesh* (1999) 5 SCC 1.

- The penalty imposed by the Code must be changed because the value of money has increased by 50 times since 1860.
- The prosecution must either establish beyond a reasonable doubt or the accused will be acquitted, whether he is guilty or not. The public's trust in the legal system is eroded as a result of this.
- The aggravating and mitigating elements must be utilised consistently and within a specified framework in all circumstances.
- The imposition of sentences by trial courts without recording acceptable justifications in an arbitrary and unjust manner. The role of various employees in the criminal justice system has been questioned by the higher judiciary on several occasions¹⁴.

11. SENTENCING DISPARITY IN LIGHT OF JUDICIAL PRECEDENTS

The Indian Penal Code defined the offences and penalties to be imposed. For many offences, only the maximum punishment is specified, whereas for others, only the minimum is specified. Within the statutory boundaries, the Judge has a lot of leeway in deciding on the sentence. There is no longer any direction for the Judge in determining the most appropriate punishment in light of the facts of the case. As a result, each Judge uses discretion in accordance with his or her own judgment. As a result, there is no consistency. Some judges are forgiving, while others are harsh. "The inability of laying down standards is at the very core of the Criminal law as administered in India, which invests the Judges with a very wide discretion in the subject of fixing the degree of punishment,¹⁵" the Court said in discussing India's sentencing system. This discretionary power vested with the Judges gives rise to the major problem i.e sentencing disparity. When judges impose different sentences on offenders with identical criminal histories or similar penalties on offenders with distinct criminal histories, it is known as sentencing disparity. Consistency is required under criminal law, and discretion in sentencing leads to unwarranted disparities. When all of the ingredients are present in both circumstances and the sentences differ in an evidently unjustified way, there is an unjustifiable disparity. For instance, the offender's age which taken into account as mitigating factor in one situation¹⁶ and is considered irrelevant in another¹⁷. This difficulty in deciding the quantum of punishment is commented upon the Apex Court in *Soman v. State of Kerela*¹⁸ as Punishing the wrongdoers is at the heart of criminal justice delivery, but it is the weakest aspect of our country's criminal justice administration. There are no legislative or judicially established rules to help the trial court in imposing the appropriate sentence on an accused who is found guilty of the charges. The Supreme Court has stated in *State of Madhya Pradesh v. Surendra Singh*¹⁹ that "undue sympathy to inflict inadequate sentences would cause more harm to the justice system and destroy public confidence in the efficacy of law,"

¹⁷ *Dhananjay Chatterjee vs. State of West Bengal* (1994) 2 SCC 220.

¹⁸ *Supra* Note 2.

¹⁹ AIR 2015 SC 3980

based on the proportionality approach. It was held by the Apex Court²⁰ that, the presence of various types of judicial interpretation is one explanation for the growing inequality. The imposition of principles is contingent on the circumstances, as well as the facts and issues of the case at hand. As a result, diverse approaches to a case are taken by judges. As a result, disparity is a discrepancy in sentencing that is determined by one's sentencing theory. However, the public's trust in the system is eroded as a result of all of this.

12. CAUSES

Some factors that can be considered as sources of inconsistency or disparity in the Indian Sentencing System include

- Individualized sentencing.
- Inconsistent sentencing goals.
- Discrepancies in judicial decisions.
- A lack of direction or guidelines.

13. NEED FOR SENTENCING REGULATION

Punishing the accused for the actus reus is the important aspect of criminal law. This process is to be guided by the sentencing policy. There are no established sentencing guidelines in India and without the sentencing guidelines the process is jeopardized resulting in sentencing disparity which is against the basis of criminal law. In India, judges have the authority to choose the term of a sentence at their discretion. The courts have handed down disparate penalties for comparable offences. The sentencing, on the other hand, is subject to the judges' discretion. There is little consistency in sentence, even for the most heinous offences. *"In certain cases, murderers are sentenced to 14 years or more in prison, while others are sentenced to life in prison. It fluctuates depending on the circumstances."* Unsurprisingly, there is a growing desire for particular sentencing criteria. Experts point out that India's absence of structured sentencing results in a vast difference in the delivery of justice. Neither the legislature nor the judiciary in India have established formal criminal sentence guidelines too far. This frequently results in a miscarriage of justice. *K.T.S. Tulsi*, a Supreme Court lawyer, adds *"The judge's subjective opinion should not be used to determine justice. We require thorough sentencing rules"*²¹. According to legal experts, the IPC merely stipulates the maximum or minimum punishment for many crimes. The judge is the one who determines the severity of the penalty. The maximum and minimum punishments are vastly different. Tulsi feels that establishing guidelines will serve as a deterrence to criminal activity. *"It will also lower crime since people will be aware of what crimes will result in what punishment. Now that they are aware that there is no specific punishment, they have plenty of room to escape"* he declares. Currently, a judge can impose any sentence that falls between the maximum and minimum bounds, which is arbitrary and unpredictable. Many lawyers also claim that due to personal preconceptions, this extensive discretion leads to abuse of the sentencing process". Provided all the above reasons and factors, small behavior of the accused inside the Court which perceived as inappropriate to the Judge can be an aggravating factor and there is no rule book available as to what to be done and what not.

14. SUGGESTION

The ambiguity and disparity in sentencing process can only be negated by the establishment of a fixed regime of sentencing

guidelines suitable to the Indian scenario which would reduce the judicial discretion.

15. CONCLUSION

To ensure 'justice' in every case, deliberations outside the nature of the crime committed and surrounding circumstances are required. Sentences are widely left up to the discretion of the judge. The use of judges' discretion is not the best criminal justice policy. The *Malimath Committee Report on Criminal Law Reform (2003)* recommended that sentencing guidelines be incorporated to assist judges in determining suitable sentences. The Indian judiciary has matured, and suitable punishment policies are due. Individualization, non-uniform or random sentencing must be abandoned in India in favour of certainty and rationale in sentencing. With sentencing standards in place, the courts will be able to react to the community's daily cries for justice. Several government-appointed bodies have emphasized the significance of developing and/or implementing sentencing guidelines in India. This is a reiteration of that call. Individualization of punishment will be addressed, and the uncertainty surrounding the allocation of penalties in India would be reduced.

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17. CONFLICT OF INTEREST

Conflict of interest declared none.

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²⁰ *Supra* Note 3.

²¹ Available at <https://www.telegraphindia.com/opinion/different-strokes-for-different-folks/cid/1443368>