



# Sentencing Policy Vis-a-Vis Supreme Court of 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 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.*

**Key words:** *Indian Criminal Justice System, Sentencing, Malimath Committee, Indian Penal Code, Sentencing Mechanism, Sentencing Policy.*

## 1. INTRODUCTION:

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.

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.

## 2. SENTENCING POLICY & PROCESS IN INDIA:

It is settled principle of penology that punishment deters criminals from committing crime. So, fixation of effective range of punishment to combat any criminal activity is an exclusive function of legislature and to deduce an adequate quantum of punishment in proportion to the gravity of crime or to neutralize the evil resulted from the commission of crime termed as sentence is a functional responsibility of judiciary. The legislature has to fix that range of punishment



keeping in view of various rationales of punishment and principles set by penal jurisprudence. Rationale of punishment reflects reasoning for infliction of punishment as to why the convict should be punished.

Keeping in view of the principles, theories and objectives of punishment i.e. Retribution, Deterrence, Prevention, Incapacitation and Reformation, penal policy and penal codes of the countries are drafted. Penal Codes include various types of offences with different nature or a classification of offences based on their nature as well as it defines and prescribes punishment for offences, hence it maintains a substantive nature of penal law. Indian Penal Code, 1860 enumerates number of offences classified on the basis of their distinct nature. Guiding principles of penal policy in India are embodied in provisions of Indian Constitution, Indian Penal Code and The Code of Criminal Procedure. In brief, strong sentencing mechanism is the condition precedent to maintain law and order threaten to disturb from radical elements. Sentencing Mechanism indicates the entire sentencing framework to sentence the offender which includes the study of sentencing principles, philosophies and policies, hierarchy of criminal courts, sentencing power of courts, stages of sentencing process, question of adequate quantum of sentence, disparity in sentencing of offenders, arbitrary exercise of discretionary power by the sentencing courts, inordinate delay in sentencing process including execution, suspension remission, commutation and pardon. Further, sentencing is a process to sentence the offender in view of substantive and procedural criminal law and sentence is the specific quantum of punishment declared by the judge in a case having regard to the circumstances and evidences placed on record within the statutory limits of law.

Sentencing policy guides judges and magistrates exercising criminal jurisdiction in matter of fixing appropriate sentences and sentencing process is a voyage to reach the destination of awarding an adequate quantum of sentence as per the gravity of offence deduced from a range of punishment diverged under the limits tending from minimum to maximum in penal laws. Further, Sentence is the quantum of punishment ordered to be inflicted upon the convict fixed under a deep consideration to the aggravating and mitigating factors responsible for the commission of some offence or sentence is an individualised form of punishment. Judges are empowered with comprehensive discretionary power in fixing the sentence under the limits demarcated by the statutes. The discretionary power which is provided to achieve ends of justice may sometimes be a reason of injustice as every judge has its own notion of justice meaning thereby judges are also influenced by extra-legal factors. Unguided discretionary power to judges leaves huge space for the construction of terms according to their own perspectives which has a risk of arbitrariness in judicial functioning. Discretionary power exercised in such a manner results into disparity in sentencing of offenders or lacks uniformity in sentencing. This is the reason behind adoption of structured sentencing guidelines in form of competent legislation by some countries so that uncertainty in awarding sentence may be reduced up to maximum level. India does not have any such law, policy or judicial guidelines which may guide our judges in matters of sentencing of offenders. However, some provisions having tendency of guiding the sentencing process are observable in our substantive and procedural criminal laws i.e. I.P.C and Cr.P.C but these are quite insufficient to resolve the issue of disparity, uncertainty and arbitrariness in sentencing. The Malimath Committee (2003) recommended a committee to be constituted to frame sentencing guidelines under the chairmanship of former Judge of the Supreme Court or Chief Justice of High Court having experience of handling matters of criminal law with other members from legal profession, prosecution, police, social scientists and women representatives. In 2007, another committee named 'Draft National Policy on Criminal Justice' was constituted under the chairmanship of **Prof. Madhav Menon** also known as the Madhav Menon Committee reechoed the voice for need of statutory sentencing guidelines. This committee urged for framing a national policy on sentencing having specific sentencing guidelines in respect of each punishment.

### 3. SUPREME COURT VIEWS ON SENTENCING IN INDIA:

**Bachan Singh v. State of Punjab**<sup>1</sup>: In this case Hon'ble Supreme Court declaring death sentence constitutionally valid has held that the death sentence could be awarded in cases falling into the category of the 'Rarest of rare'. This case first time issued judicial guidelines to regulate death penalty in India.

**Machhi Singh v. State of Punjab**<sup>2</sup>: In this case Hon'ble Supreme Court favouring the retention of death sentence has held that death sentence could be awarded in the 'Rarest of rare' cases when collective conscience of the society is highly shocked.

**Mitthu Singh v. State of Punjab**<sup>3</sup>: In this case, Hon'ble Supreme court declared section 303 of IPC as unconstitutional on the ground that it prescribes mandatory death sentence which violates the concept of judicial discretion, and inconsistent with spirit of Articles 14 and 21 of the Indian Constitution.

**Sevaka Perumal v. State of T.N.**<sup>4</sup>: Hon'ble Supreme Court emphasized on award of proper sentence having regard to the nature of offence and the manner of its execution and commission, as inadequate being harmful to the justice system would undermine the public confidence in efficacy of law.



**Shailesh Jasantibhai v. State of Gujarat**<sup>5</sup>: Hon'ble Supreme Court held that the object of protection of society must be achieved by the imposition of appropriate sentence and the sentencing system should be moulded by the court as to meet the challenges. Hon'ble Supreme Court stated "In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in such case the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. It was the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

**Dhananjay Chatterjee v. State of W.B.**<sup>6</sup>: Apex Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

In **State of M.P. v. Bablu Natt**<sup>7</sup>, Hon'ble Apex Court held that; "In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane. There are no extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the minimum prescribed by the Legislature under Section 376(1) of the Act."

**State of Madhya Pradesh vs Mehtab**<sup>8</sup>: Hon'ble Apex court has observed that "we find force in the submission, it is the duty of the court to award just sentence to a convict against whom charge is proved. While mitigating and aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also the victim and the society."

**Brajendra Singh Vs. State of Madhya Pradesh**<sup>9</sup>: Hon'ble Apex Court held that;

"The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh and thereafter, in the case of Machhi Singh. The aforesaid judgments, primarily dissect these principles into two different compartments one being the 'aggravating circumstances' while the other being the 'mitigating circumstance'. The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Code of Criminal Procedure."

**State of Punjab v. Prem Sagar**<sup>10</sup>: This case is of utmost importance in which issues relating to sentencing system were extensively addressed by the Hon'ble Supreme Court of India. In this case the issue of absence of sentencing guidelines in Indian criminal justice system was strongly focused by referring earlier decisions, scholarly articles and recommendation of the various committees constitute in this regard.

**Ahmed Hussain Vali Mohd. Saiyed v. State of Gujarat**<sup>11</sup>: Hon'ble Supreme Court has emphasized over the award of appropriate sentence in a criminal case.

**Alister Anthony Paraira v. State of Maharashtra**<sup>12</sup>: Hon'ble Supreme Court has emphasized the award of just sentence having proportion between punishment and nature of crime in a case. Hon'ble Supreme Court added that.-

"One of the prime objectives of the criminal law is imposition of [an] appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of [the] crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: [the]



twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

**OMA @ Omprakash v State of T.N.**<sup>13</sup>: Hon’ble Supreme Court held that Sentence should be based on sound legal principles, nature of offence, collective cry and anguish of the victims and above all the collective conscience and the doctrine of proportionality.

**Gopal Singh v. State of Uttarakhand**<sup>14</sup>: Hon’ble Supreme Court opined that the court has to consider all various complex matters in mind while imposing a sentence and this has to be done with total empirical rationality.

**Soman v. State of Kerala**<sup>15</sup>: Hon’ble Supreme Court opined that there are no legislative or judicial guidelines to assist the trial court in fixing a just punishment to the accused. Court also stated that “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”

**Mohd. Arif v. The Registrar, Supreme Court of India**<sup>16</sup>: Hon’ble Supreme Court opined that there is no statutory sentencing policy to regulate the punishment in India.

**Shatrughan Chauhan v. Union of India**<sup>17</sup>: In this case Hon’ble supreme court extensive discussed the issue commutation of death sentence into life imprisonment which are delay, insanity, solitary confinement etc.

**State of M.P. v. Surendra Singh**<sup>18</sup>; Based on the theory of proportionality, it is laid down by Hon’ble Apex Court that: “Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

Meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of the society. One of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. one should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers. Imposition of sentence must commensurate with gravity of offence”.

**State of Punjab v. Bawa Singh**<sup>19</sup>: In these cases, Hon’ble Supreme Court held that imposition of adequate, just and appropriate punishment commensurate with gravity, nature of the crime and the manner of its execution.

**Raj Bala v. State of Haryana**<sup>20</sup>: Hon’ble Supreme Court held that the court should exercise its discretion on reasonable and rational parameters keeping in view the concept of rule of law and collective conscience balancing it with the principle of proportionality.

**Narender Singh v. State of Punjab**<sup>21</sup>: Hon’ble Supreme Court has emphasized the need of sentencing guidelines stating that there are provisions, statutory or otherwise in other countries, which may guide judges for awarding specific sentence. However, in India we do not have such sentencing policy till date. The Supreme Court observed that the prevalence of such guidelines may not only aim at achieving consistency in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well.

Summarily, it can be observed on the basis of literature review made above that strong sentencing mechanism with statutory sentencing guidelines addressing the issues cited above, is the need of Indian criminal justice system as the sentencing mechanism is directly connected with the security of the people and stability of the state.

#### 4. CONCLUSION:

The Indian criminal justice system urgently needs an appropriate sentencing policy given the rising crime rates in the country. The goal of introducing such a policy is to reduce the subjectivity that judges use to a minimum while still allowing them the necessary discretion needed in the interest of justice, hence it must not be a strict one. The courts in India currently have to rely on precedents, which also vary depending on the judge’s discretion and the existence of additional aggravating and mitigating circumstances surrounding the offence. If these rules are applied, this will prove to be very helpful. The intention of the sentencing guidelines is to create a just and equitable society in which the rights of victims and criminal defendants, who are now being weakened by the sentencing system, are protected. The court is expected to strike balance between too harsh and too lenient view while awarding sentence. The Judge should give





thought to gravity of the offence, degree of participation of the convict in the offence and convict's subsequent attitude towards the case. While awarding any sentence a judge must visualise the effect of sentence on the offender. Generally in all cases excepting offence of immense gravity, a judge should ask himself whether he can avoid sentencing of sending offender to prison. He must keep in mind that short sentences expose an offender to all bad influences of imprisonment without enabling him to any benefit from it. In such cases the court should see whether benefit of Probation of Offenders Act, 1958 can be extended. In order to anticipate such an effect the judge must be equipped with adequate information about the offender and their statistics. Judicial visits to Jails and correction homes from time to time, is a welcome step which may enable a judge to see the actual effect of sentences passed. Apart from it a judge is required to have an informed outlook on life, live approach to the needs of society and ability to respond to advance intendment of legislation within the framework of law.

### SUGGESTIONS:

- The sentencing magistrates and judges shall after thorough scrutiny of the whole case file inclusive of evidences of each sides, arguments etc. impose the most excellent sentence to be inflicted on the offender.
- The judicial discretion sentencing is no longer exact exercised by means of judiciary.
- There is no yardstick in measuring the quantum in punishment in comparable situation.
- No try has made in looking out the sentencing elements in the judgement upon which the fabulous sentence depends.
- In the Indian Penal Code, besides in very few negligible section. The provision minimal punishment is now not be has now not been maintained which is a outstanding barrier in the sentencing manner for sentencing pattern.
- The stage of sentence listening to is left out through the judiciary no longer true exercised as the end result the ne sentencing elements are no longer discover which the suitable sentencing relies upon which is a serious defect in the sentencing process. Principal of regulation as interpreted in sec 235 (2) 248 (2) of Cr. P.C in Santa Sigh case [AIR 1976 SC 2386] has no longer been accompanied by using judiciary mainly the decrease judiciary
- Etiology, the science of Crime Causation, has been absolutely overlooked in the sentencing process, even though it is the groundwork of penology. Why a specific convict dedicated the Crime if now not discovered, the sentence inflicted on the wrongdoer besides thinking about that issue will become meaningless, absurd, unjustified and will become simply guesswork. Generally, no try is being made by way of the judiciary to find out the etiology of crime.
- The sentencing elements of the accused are no longer explored at all at the time of guilty plea by way of the accused. In some instances, heavy fines are imposed on the offender. The sentencing Judges in plea of responsible has no yardstick in assessing the proper quantum of punishment, due to the fact they do no longer have possibility to consider or locate out the sentencing elements of the convict.
- It is an disagreeable reality that the Magistrates in particular the Lower Judiciary medical practitioner no longer understand the necessity of balancing the traumatic and mitigating factor. No try is made for exploring these two factors, upon which the fantastic sentencing depends.
- Sentencing disparity has induced serious miscarriage of justice bobbing up out of differential remedy in the comparable offenders below comparable occasions in comparable offences.
- The Present Judiciary does now not assume at all for the present sentence-disparity in the sentencing- process.
- Life or loss of life regularly relies upon on the non-public mindset and wondering of a decide in marginal instances and now not on the advantage of the case.
- Long pendency of crook trial is regarded as a mitigating aspect for lesser sentence in the High Court and in the Supreme Court although no longer accompanied through the decrease judiciary.
- Reformatory Penal Justice has been omitted in India in the decrease judiciary

### REFERENCES:

<sup>1</sup>AIR 1980 SC 898

<sup>2</sup> AIR 1983 SC 957

<sup>3</sup> (1983) 2 SCC 277

<sup>4</sup> (1991) 3 SCC 471

<sup>5</sup> (2006) 2 SCC 359

<sup>6</sup> 1994 (2) SCC 220

<sup>7</sup> (2009) 2 SCC 272



<sup>8</sup> Cri. Appeal No. 290/2015, dated 13.02.2015

<sup>9</sup> AIR 2012 SC 1552

<sup>10</sup> (2008) 7 SCC 550

<sup>11</sup> (2009) 7 SCC 254

<sup>12</sup> (2012) 2 SCC 648

<sup>13</sup> AIR 2013 SC 825

<sup>14</sup> (2013) 7 SCC 545

<sup>15</sup> (2013) 11 SCC 382

<sup>16</sup> (2014) 9 SCC 737

<sup>17</sup> (2014) 3 SCC 1

<sup>18</sup> (2015) 1 SCC 222

<sup>19</sup> (2015) 3 SCC 441

<sup>20</sup> (2016) 1 SCC 463

<sup>21</sup> Criminal Appeal No.686/2014 arising out of S.L.P.(Criminal) No.9547 of 2013