

## SENTENCING POLICY IN INDIA

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### INTRODUCTION

In the modern era, crime rates have increased all around the world, and India is no exception to it. The main legislations which govern criminal law in India are the Indian Penal Code, of 1860, The Indian Evidence Act, of 1872, and The Code of Criminal Procedure, of 1973. Before analyzing the Sentencing Policy in India, we need to first differentiate the terms 'sentencing' and 'punishment'. Sentencing is basically a statement provided in the judgments which show the quantum of punishment for a particular offence as per the law. And when this sentence is put into action or operationalized, then it becomes punishment.

### SENTENCING POLICY IN INDIA

Now, before we discuss various kinds of policies adopted in awarding punishment, it is important to understand what actually a sentencing policy should constitute. Different nations across the world adopt different theories of punishment. Some nations believe in awarding punishment to the wrongdoer whereas, on the other hand, some nations believe in rehabilitation of the criminal. All these types of theories which a nation adopts are clearly visible in its sentencing policy. Talking about our nation i.e. India, there exists no such set of guidelines that the court of law adopts. Neither the legislature nor the judiciary has issued any sort of structured sentencing guidelines.

Section 53 of the Indian Penal Code, 1860 describes various types of punishments that a court of law can give to a wrongdoer while awarding punishment. They are:-

- Death
- Imprisonment for life
- Rigorous imprisonment or simple imprisonment
- Forfeiture of property
- Fine

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But every offence under IPC only provides for maximum and minimum punishment and not an adequate amount of punishment.

### **WHY A UNIFORM SENTENCING POLICY?**

However, in March 2003, a Committee was formed by the Ministry of Home Affairs to look into the Reforms of the Criminal Justice System. This committee was named the Malimath Committee. This committee issued a report emphasising the need for sentencing guidelines that a court of law must adopt in awarding punishments. The committee highlighted the fact that The Indian Penal Code, of 1860 consists of several offences where only utmost punishment is described and there are some offences where only minimum is described. Which gives the Judges wider discretion while awarding the sentence to a wrongdoer. Now, since every judge has their own philosophy while awarding the sentence, therefore, there is no such uniformity. The Committee advised further that, so as to bring “predictability within the matter of sentencing,” a statutory committee should be established “to lay guidelines on sentencing guidelines under the Chairmanship of a former Judge of Supreme Court or a former Jurist of a High Court experienced in criminal law with other members representing the prosecution, legal profession, police, social scientist and women representative.”

The reason behind that different members are advised so that the guidelines on sentencing policy cannot be influenced as much as possible. In 2008, the Committee on Draft National Policy on Criminal Justice (the Madhava Menon Committee), reasserted the need for statutory sentencing guidelines. In an October 2010 news report, the Law Minister stated that the government is planning to establish a “uniform sentencing policy” in line with the United States of America and the United Kingdom so as to ensure uniformity while awarding sentences. However despite all such recommendations, still there are no steps taken by the legislature to form uniform sentencing guidelines.

### **JUDICIARY’S ROLE**

But we can say that the Judiciary is somewhat active in giving a certain set of principles so as to ensure uniformity.

In **Bachan Singh Vs. The state of Punjab**<sup>1</sup> court while interpreting Section-354(3) and 235(2) of Crpc highlighted one major point, that extreme penalty shall only be awarded only in those cases which involve high culpability or which can be termed as gravest cases.

In **State of Madhya Pradesh Vs. Mehtab**<sup>2</sup> the court highlighted the fact that sentence while awarding must be fair not only to the accused but also to the victim and general public at large.

In **Gurubachan Singh vs. Satpal Singh**<sup>3</sup> the court stated that by relying more on the benefit of the doubt and letting the suspect free, it will not be right to say that justice is served to the victim. It is true that it is better to let a hundred guilty escape than to award the punishment to an innocent. Letting the guilty person escape cannot be termed as justice is served as per the law. From the above cases, it is evident that the judiciary has played a certain role in setting uniform criteria for awarding punishments for the court of law. But on the other hand, the judiciary is itself responsible for showing inconsistency in awarding punishments. This can be reiterated through various case laws.

## INCONSISTENCY IN AWARDING PUNISHMENTS

In **Modi Ram and Lala vs. State of Madhya Pradesh**<sup>4</sup>, after the victim married the accused's wife, the accused cut off the nose and private parts of the victim in revenge. The case went to the trial court. The trial court stated that the victim's actions provoked the accused which led him to commit such a crime. Therefore, he shall be sentenced to one-year rigorous punishment. On appeal, the High court changed the trial court's decision and increased the sentence to eight years of rigorous imprisonment by stating the reason that although the victim's act was provocative in nature, such a lenient approach in awarding punishment to such a harsh crime is inappropriate. Further, on a special leave petition to the Supreme Court, the sentence of punishment was reduced to three years of rigorous punishment. The Supreme Court admitted that the victim's act was provocative in nature but it is necessary to balance the severity of the offence with the circumstance of the case.

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

<sup>2</sup> Cri. Appeal no. 290/2015

<sup>3</sup> AIR 1990 SC 209

<sup>4</sup> AIR 1972 SC 2438

The three different approaches by the three courts show the ambiguity and uncertainty in the sentencing policy of India. Now, we will understand the inconsistency of the courts in awarding punishment to the accused in similar rape cases by looking at the following cases:-

In the **Shakti Mills rape case**<sup>5</sup>, where five men including two juveniles raped a girl. In this case, the court by adopting a stricter approach granted the death penalty by relying on the newly adopted section-376 E of IPC by stating the reason that earlier also, the accused were held guilty of raping a girl and for which life imprisonment was awarded to them. Although they were not convicted at the time the crime had occurred.

In the **Khairlanji massacre**<sup>6</sup>, where a mob not only sexually assaulted by inserting objects in their private parts but also stripped the mother and daughter naked in the market and lastly heinously murdered them. This case happened in the year of 2006 but was decided in the same year 2019 when the Shakti Mills case was decided. Also, this case was no less heinous as compared to the Shakti Mills case, because it was not only against the victim but was also against the whole scheduled caste community as well. But, the court in this case awarded only a life sentence.

In **Priyadarshini Mattoo's case**<sup>7</sup>, where a Delhi university student was brutally raped and murdered by his senior at her home itself. In this case, the Trial court was well-versed with sufficient evidence, still, the accused is the son of a high-profile police officer who managed to escape from punishment. This case is a perfect example of showing the ambiguity in the decisions made by the courts.

During the trial, the prosecution established that the accused had been stalking the deceased for almost two years and due to which she was provided with a bodyguard. Also, the prosecution was able to prove that on scientifically analyzing the hair sample, blood sample, nail samples as well as semen sample which was found on the prosecutrix's body it was found that the samples were of the accused Santosh Kumar.

Even after all such evidence the trial court by giving some strange reason acquitted the accused which clearly showed the influence of the accused's father in some or the other way. On appeal, the case went to the High court, where the court convicted the accused on both grounds of rape

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<sup>5</sup> Vijay Jadhav Vs. The State of Maharashtra (2019)

<sup>6</sup> Central Bureau Of Investigation vs Sakru Mahagu Binjewar, (2019)

<sup>7</sup> Santosh Kumar Singh vs State (2010)

and murder and finally sentenced the death penalty. Later, the accused appealed in the Supreme Court. The Supreme Court held that where there is an option between a life sentence and a death sentence and the court itself feels some difficulty in awarding one or the other, it is appropriate to award lesser punishment.

In the **Kathua rape case**<sup>8</sup>, in which an 8-year-old minor girl was raped in a temple periodically and after she was abducted. The heinous crime, in this case, was nowhere less than the Nirbhaya rape case. However, in a **Nirbhaya rape case**<sup>9</sup>, the court awarded the death sentence while in this case, the court allowed only a life sentence.

In the **Unnao rape**<sup>10</sup> case, which involved the name of an ex-BJP MLA. He was convicted by the court not only for the rape of a minor girl but also for conspiring to kill her father. Even then, the court awarded him life imprisonment only.

In all the above rape cases, the court granted the death penalty only in the Nirbhaya rape case and Shakti Mills case, whereas the court went for a lesser punishment i.e. life imprisonment in the other cases, however, all the cases were equally grave heinous in nature.

In the absence of any uniform guidelines, the parties to the case don't feel justified and then they consequently appeal to higher courts to seek the remedy. Which further is a reason for the delay of justice for the victim.

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For example- In the case of **Mohd. Chaman Vs. State (N.C.T. of Delhi)**, the accused brutally raped and murdered the victim which was a one-year-old girl. The Trial court while deciding this case considered it amongst the rarest of rare cases and sentenced the accused to the death penalty. But on appeal, the High court overturned the judgement of the Trial court by stating that the accused didn't pose any threat to society.

The Supreme Court affirmed the reality that the superior court often comes across several cases which display anomalies regarding the sentencing policy. It is likewise mentioned that ninety percent of the trial court judgments are overturned by the superior courts. And the reason behind this is the absence of a consistent approach to sentencing.

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<sup>8</sup> Mohd. Akhtar vs The State Of Jammu And Kashmir

<sup>9</sup> Mukesh & Anr vs State For Nct Of Delhi & Ors

<sup>10</sup> Sunauvvar vs State Of U.P.

## **WHAT IS THE REASON BEHIND THE INCONSISTENCY BY THE COURTS IN AWARDING PUNISHMENTS TO THE ACCUSED?**

The proceedings of courts may be divided into two parts. Firstly, the court decides the liability of the accused. And secondly, while considering the provisions of Section-354, 361, 360, and 235 of the Crpc, it makes a decision regarding the quantum of punishment which is to be awarded to the accused. These provisions of Crpc make it obligatory for a judge to take into account the demographic information of the accused. As a result, overburdens the judiciary because while considering all the demographic information of the accused, a lot of time of the court is consumed, and therefore, the delivery of justice gets delayed. With 3.3 crore pending cases, the over-burdened judiciary usually compromises during the second stage of the proceedings i.e. while deciding the amount of punishment that is to be awarded to the accused which as a result shows a lack of consistency in sentencing.

### **CONCLUSION**

Imposing appropriate punishments on criminals is the way adopted by the courts to respond to society's cry for justice. Serving justice means that the court should impose punishment in a way that should reflect public abhorrence of the crime. The courts while imposing punishment keep in mind a lot of factors, i.e. rights of the accused, the rights of the victim, and the public at large. Also, giving undue sympathy to any of the parties to the case would harm the criminal justice system. Therefore, it becomes the duty of the court to impose appropriate sentences on the accused keeping in mind the gravity of the offence, and other relevant factors used to determine the quantum of punishment. For example- all the aggravating or mitigating factors must be considered while deciding the punishment. But, it is evident that there lies inconsistency and ambiguity in the sentencing approach of the judges. Therefore, it would be right to say that the country is in great need of sentencing guidelines, so that consistency shall be visible in the punishment awarded to the accused.