



SAME CRIME, DIFFERENT PUNISHMENTS: THE CRISIS OF SENTENCING CONSISTENCY IN INDIA

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ABSTRACT

In India, two people who commit the same crime can end up with very different punishments. One might get a short jail term, while another could be sentenced to life imprisonment. This isn't just a rare mistake—it happens often because our courts give judges a lot of freedom but provide little guidance on how to decide sentences. As a result, decisions can feel random, depending more on the judge than the crime itself. This article looks at how this inconsistency—called sentencing disparity—shows up in serious crimes like rape, explores why it happens, and why it violates basic principles of fairness and equality under the Constitution. It also suggests ways to make sentencing more consistent, fair, and transparent, without taking away judges' ability to consider individual circumstances.

Keywords: Sentencing Disparity, Judicial Discretion, Fairness, Equality, Criminal Justice.

INTRODUCTION

“We have all been acculturated to believe that some people are more deserving of punishment than others.”

— Bryan Stevenson

Justice in any constitutional democracy is based upon the twin pillars of Equality and Fairness. The Indian Constitution embodies these ideals through Articles 14 and 21, promising equality before the law and Protection of Life and Liberty. Yet in the realm of criminal sentencing- the stage where law meets human fate- these ideals often appear aspirational rather than actualised. Courts across India, confronted with similar criminal conduct, regularly hand down markedly different sentences, which undermines the very principle of Justice. This phenomenon- where

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similarly situated offenders receive dissimilar punishments for comparable crimes — is commonly described as sentencing disparity.

Thus, sentence disparity in its true sense means unequal treatment in criminal punishment where offenders committing similar crimes receive different, often unfair, punishments due to factors like race, judicial bias, socio-economic status, geography, religion, and even sex, rather than just legal ones, undermining justice principles.

The concept of sentence disparity emerged prominently in Anglo-American criminology during the mid-twentieth century, particularly in response to concerns that unfettered judicial discretion was producing arbitrary and unequal outcomes. Scholars in the US and UK began documenting how factors related to race, class, geography, personal biases of judges, etc., were influencing sentencing decisions.

In India, where sentencing guidelines are largely absent and judicial discretion remains expansive, the risk of sentencing disparity is especially pronounced. This unsettling pattern raises a fundamental question: Is the Indian criminal justice system delivering justice or merely registering judgments that vary with the judge's pen?

This article argues that sentencing disparity in India is not an incidental shortcoming but a structural crisis born of unchecked judicial discretion and the absence of coherent sentencing policy. It contends that while judicial discretion is necessary for justice, when it is exercised without guiding principles or transparent frameworks, it becomes arbitrary and undermines the constitutional promise of equal treatment. A justice system that punishes identical crimes differently does not merely fail the accused—it erodes public faith in the Rule of Law itself.

UNDERSTANDING A SENTENCE AND ITS SIGNIFICANCE

Sentencing in criminal law refers to the formal legal process to determine the appropriate punishment or penalty for a convicted defendant, and occurs after guilt is established.¹ This process is key in the criminal justice system, translating the court's judgments into a concrete sanction. It involves penalties such as fines, imprisonment, probation and even a death sentence.

¹ Thomson Reuters, 'Criminal Law sentencing- Legal glossary' (Legal solutions, 2024) <<https://legal.thomsonreuters.com>> accessed 10 January 2026.

Sentencing is governed by Penal law, which comprises statutes that define crimes and prescribe punishments. A penal statute, as defined in Black's Law Dictionary, is a statute by which punishments are imposed for transgression of the law, civil as well as criminal.²

SIGNIFICANCE OF THE SENTENCE

The aim of sentencing is not merely punishment, which discourages people from doing wrongful acts due to fear, but it also aims to achieve broader objectives such as rehabilitation, deterrence, and the protection of society. Thus, the significance of sentencing is no single-fold but multi-faceted, going far beyond the simple imposition of punishment. It serves several key purposes, such as:

Protection of Society: Sentencing ensures the safety of society by removing dangerous individuals from public life so that the common people can live a peaceful life without any kind of fear or apprehension. This also increases the faith of people in the Law and Justice system of the country, thereby enhancing cooperation.

Deterrence: Sentencing discourages both the criminals from committing crimes further in future as well as the general public from committing the crimes by instilling a sense of fear of punishment. These people, before committing any crime, would think of the possible consequences of their actions.

Rehabilitation: Certain sentences, instead of focusing on punishing the offender, aim to reform him/her, preparing them to reintegrate into society. Modern societies are increasingly inclined toward rehabilitation rather than punishment in criminal sentencing.

Retribution: Sentencing sometimes is not only done to punish the offender or deter others, but to morally balance the wrong done to people. The focus is on proportionality, meaning punishment should match the seriousness of the offence.

Sentencing is the final and decisive stage of criminal adjudication, where a conviction is converted into concrete consequences. It aims not only for punishment that is proportionate and aligned with societal notions of justice but also to create a better society to live in.

² Henry Campbell Black, *Black's Law Dictionary* (Bryan A. Garner ed, 11th edn, West Group 2024).

In India, however, sentencing takes place within a legal framework that grants judges considerable discretion but offers limited guiding principles. While this flexibility is essential to administer justice, it often results in uneven and unfair outcomes due to a judge's personal bias or other reasons.

THE LEGAL FRAMEWORK GOVERNING SENTENCING IN INDIA

India's sentencing system gives judges wide discretion but very little guidance. The Indian Penal Code prescribes broad punishment ranges for serious crimes. For instance, murder under Section 302 can lead to either the death penalty or life imprisonment, while rape under Section 376 carries sentences ranging from seven years to life. This flexibility is meant to account for different circumstances, but it often creates uncertainty.

The Criminal Procedure Code does not provide any clear standards for deciding the length or severity of sentences. Although the Supreme Court has identified aggravating and mitigating factors through case law, these remain general principles rather than a fixed rule. Judges are left to interpret and apply on their own. As a result, similar crimes can receive very different punishments depending on the judge. Despite repeated recommendations by the Law Commission³ to introduce sentencing

guidelines, no structured framework exists. The outcome is a system where discretion operates without clear discretion, leading to inconsistency in sentencing.

JUDICIAL DISCRETION AND SENTENCING OUTCOMES UNDER SECTION 376 IPC: A CASE LAW ANALYSIS

Scope of Judicial Discretion in Rape Sentencing: Section 376 of the Indian Penal Code prescribes wide sentencing ranges, typically extending from a minimum term of ten years to life-imprisonment and even the death penalty depending on the sub-section involved. While minimum sentences exist in certain aggravated forms, courts retain substantial discretion in determining the quantum of punishment within the prescribed range. This discretion is intended to help judges give fair punishments by considering the facts of the case and the background of the offender. However, in the absence of structured sentencing guidelines, such discretion

³ Law commission of India, *Punishment of imprisonment for life under the Indian Penal code (Law com No 39, 1968)*.

often operates without a consistent benchmark, resulting in different sentencing in similar cases.

Comparative Case Analysis: To examine how judicial discretion functions in practice, this section analyses selected cases involving rape under Section 376 where the factual circumstances are broadly similar, yet sentencing outcomes vary significantly.

Case 1: State of Punjab V Gurmit Singh (1996)⁴

Facts: The offence involved the rape of a minor girl by three accused, and one of the accused allegedly put his private part in the mouth of the victim. They held a position of dominance over the victim. The act involved coercion, but there was no extreme physical injury beyond the assault itself.

Sentence Awarded: Rigorous punishment of 5 years and a fine of ₹5,000 to each of the accused. In case of default of fine, further R.I. of 1 year.

Reasoning: Before this case came to the Supreme Court, the trial court disbelieved the prosecutrix and even assassinated her character, calling her a girl of “loose character”. The Supreme Court said that courts should carefully consider the victim’s evidence and not reject it for small mistakes, and give a punishment that matches the seriousness of the crime.

It also said that punishment must fit the gravity of the offence and other factors. The incident occurred on 30.03.1984 (more than 11 years ago). At that time, the accused were 21-24 years of age, and they also did not commit any crime after they were acquitted by the trial court. The prosecutrix, as well as the accused, may have got married after so many years. Hence, the punishment awarded is appropriate.

Case 2: State of Madhya Pradesh v. Madanlal (2015)⁵

Facts: The accused, Madanlal, was alleged to have raped a 7-year-old minor girl. A trial court convicted him under section 376(2)(f) IPC and sentenced him to 10 years of Rigorous imprisonment. On appeal, the Madhya Pradesh High Court controversially reduced the charge to section 354 IPC (assault or criminal force to a woman with intent to outrage modesty) and

⁴ (1996) 2 SCC 384.

⁵ (2015) 14 SCC 543.

cut the sentence to the period already undergone — influenced by a compromise between the accused and the victim's family. The State challenged this order in the Supreme Court.

Reasoning: The Supreme Court rejected the High Court's approach that allowed compromise between the parties and reduced the sentence. It held that rape is a non-compoundable offence and cannot be compromised between the victim and the accused. No liberal or "soft" approach is permissible, especially when a minor is involved. Thus, Courts have no discretion to reduce a sentence based on a compromise, because rape is an offence against society and the victim's dignity.

Case 3: 2017 Unnao Rape Case⁶

Facts: In June 2017, Kuldeep Singh Senger, a sitting M.L.A. in Unnao, Uttar Pradesh, kidnapped and raped a 17-year-old girl. The victim's family faced threats and intimidation, and the father was later framed in a false case and died in custody.

Punishment: Life imprisonment for rape and related offences under section 376(2) IPC and POCSO Act.

Reasoning: The offence involved extreme gravity. The victim was a minor, and the accused abused his position of public trust as an MLA, committing repeated intimidation.

Even though section 376 has a maximum and minimum punishments for rape, courts can award life imprisonment when the offences involve extreme gravity, abuse of trust, repeated assault, or has severe impact on the victim's family.

Case 4: Tukaram v. State of Maharashtra (1979)⁷

Facts: A young tribal girl named Mathura was at a police station in Maharashtra when two policemen allegedly had sexual intercourse with her while she was in custody. The session court initially acquitted the accused, reasoning that there was no evidence of a struggle or injuries. The Bombay High Court reversed and convicted them, finding that passive submission due to fear of authority did not equal consent. The matter went to the Supreme Court. The Supreme Court acquitted the accused.

⁶ 2017 *Unnao rape case*, (Wikipedia) <<https://en.wikipedia.org>> accessed 11 January 2026.

⁷ 1979 SCR (1) 810

Reasoning: The Supreme Court held that Mathura had not resisted physically, there was no injury on her body and that she was used to sexual intercourse, and, therefore, the act was treated as consensual.

Here, the court failed to appreciate the power imbalance and coercion inherent in a police-custody situation.

COMPARATIVE ANALYSIS: SAME OFFENCE, DIFFERENT SENTENCES

A comparative reading of *Tukaram v. State of Maharashtra*,⁸ *State of Punjab v. Gurmit Singh*, *State of Madhya Pradesh v. Madanlal*, and the Unnao rape case of 2017 expose a disturbing inconsistency in rape sentencing under Section 376 IPC. Despite dealing with the same offence, courts arrived at radically different outcomes due to unstructured judicial discretion.

In *Tukaram v. State of Maharashtra* (1979), the Supreme Court exercised discretion in its most dangerous form- by acquitting the accused altogether. Consent was presumed from silence, and lack of injuries, and the custodial setting was ignored. This case reflects how discretion, when guided by patriarchal assumptions rather than legal principles, can completely deny justice.

In contrast, *State of Punjab v. Gurmit Singh* (1996)⁹ acknowledged the gravity of rape but awarded a sentence close to the statutory minimum. While the court recognised the seriousness of the offence, it failed to provide compelling reasons for not imposing a higher sentence, demonstrating under-utilisation of discretion even where the law permitted stricter punishment.

*State of Madhya Pradesh v. Madanlal*¹⁰ represents a middle ground. The High Court, on appeal, reduced the sentence to 5 years. The Supreme Court slammed the decision and restored the full 10-year R.I.

The Unnao rape case¹¹ represents the opposite end of the spectrum. Here, judicial discretion was exercised decisively to impose life imprisonment, grounded in explicit reasoning: abuse of authority, rape of a minor, intimidation of the victim, and societal impact.

Taken together, these cases demonstrate that the problem is not a lack of punishment provisions but a lack of sentencing consistency. Judicial discretion has oscillated between excessive

⁸ Ibid

⁹ *Gurmit Singh* (n 4) 389.

¹⁰ *Madanlal* (n 5) 543.

¹¹ 2017 *Unnao rape case*, (Wikipedia) <<https://en.wikipedia.org>> accessed 11 January 2026.

leniency and necessary severity, producing unequal outcomes for similar crimes. These cases collectively show that rape sentencing in India depends less on the offence itself and more on how individual judges perceive discretion, resulting in uneven justice.

SENTENCING INCONSISTENCY AS A CONSTITUTIONAL PROBLEM

When Judicial Discretion Becomes Arbitrary: Article 14:¹² Article 14 promotes Equality before the law and protects people from arbitrary state action. Sentencing is also an exercise of state power. So, even though judges have discretion, that discretion must be fair and reasonable.

When we compare rape cases decided under Article 376 IPC, a clear problem appears. Courts give very different punishments even when the facts are similar. In some cases, courts focus on deterrence and impose life imprisonment. In others, they stress reform and give only the minimum sentence allowed by law. What makes this troubling is that courts often do not clearly explain why they chose one punishment over another.

This creates arbitrariness. If two offenders commit similar crimes but receive very different sentences without proper reasons, equality before the law is violated. Article 14 requires that similar cases be treated alike unless there is a clear and rational reason to treat them differently. When sentencing decisions lack such reasons, this requirement is not met.

Judicial discretion is not wrong by itself. However, when discretion is exercised without clear standards, it becomes subjective. In the absence of sentencing guidelines, the punishment may depend more on the personal thinking of the judge than on consistent legal principles. This unpredictability weakens equality before the law and reduces trust in the justice system.

Fairness in Sentencing: Article 21:¹³ Article 21 protects personal liberty and requires that any restrictions on liberty must follow a fair, just, and reasonable procedure. Sentencing is a stage where a person's liberty is taken away. Therefore, fairness under Article 21 applies strongly to sentencing decisions.

In many rape cases, sentencing is treated casually. Courts often use general expressions such as "gravity of the offence" or "interest of justice" without explaining how these ideas justify a specific sentence. Such vague reasoning makes the sentencing process unfair and unclear.

¹² Constitution of India, art 14.

¹³ Constitution of India, art 21.

Inconsistent sentencing affects both the accused and the victim. The accused cannot reasonably predict the legal consequences of conviction. Victims, on the other hand, face a system where punishment appears uneven and uncertain. This lack of clarity and reasoning fails the requirement of fairness under Article 21. Although the Supreme Court has repeatedly said that sentencing must be proportionate and based on reasons, these principles are not properly applied in practice.

Judicial Concern but No Real Change: The Supreme Court has often warned that inconsistent sentencing is a serious problem. It has recognised that unregulated discretion can lead to inequality and unfairness. The Law Commission has also recommended a sentencing guideline to bring consistency.

Despite these warnings, India still has no formal sentencing framework. As a result, trial courts have no clear benchmarks, appellate courts interfere inconsistently, and sentencing law develops in a scattered way. This leads to punishment that is unpredictable, disproportionate, and poorly explained.

The four cases, Mathura, Gurmit Singh, Madanlal and Unnao, show how sentencing under section 376 IPC is inconsistent and often unpredictable. In Mathura, the accused were acquitted despite clear evidence of custodial rape, highlighting arbitrary leniency. Gurmit Singh and Madanlal demonstrate moderate sentences even where the facts could justify stricter punishment, with little explanation from the courts. Unnao, on the other hand, shows a reasoned use of maximum punishment due to aggravating factors. These defences illustrate how judicial discretion, when exercised without clear principles, can result in unequal treatment of similarly situated offenders, violating Article 14, which guarantees equality before the law. At the same time, the lack of structured reasoning and transparency in sentencing undermines Article 21, which requires fairness, justice and reasoned procedure, leaving both the accused and the victims uncertain about the legal consequences of the offence. Collectively, these cases show that sentencing cannot be left entirely to subjective discretion; it must operate within a framework that ensures equality, fairness, and accountability.

REFORMING SENTENCE PRACTICES IN INDIA

Structured Guidelines: Introduce clear frameworks for weighing aggravating and mitigating factors— age, severity, Abuse of trust, prior record—while keeping room for judicial discretion.

Mandatory Reasoned Orders: Courts must explicitly state why a particular sentence was chosen, linking factors to the outcome, ensuring fairness under articles 14 and 21.

Appellate Standards: High courts and the Supreme Court should adopt consistent criteria for reviewing sentences to reduce arbitrary disparities.

Judicial Training: Judges should be trained to apply sentencing principles systematically, balancing deterrence, retribution and reform.

CONCLUSION

Sentencing in India gives judges a lot of freedom, but without clear rules, similar crimes often get very different punishments. As we saw in the cases, even when the facts are almost the same, some offenders get short sentences while others get life imprisonment. This inconsistency is not just unfair—it also goes against the Constitution. Article 14 says everyone should be treated equally, and Article 21 says punishments should be fair and reasonable. When judges give very different sentences for similar crimes, these rights can be affected. The system can improve. Clear guidelines, reasoned sentencing orders, proper appellate review, judicial training, and monitoring of sentencing patterns can make outcomes fairer and more consistent. These reforms would help judges use their discretion in a proper way while making sure justice is equal and reliable for everyone.