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‘DISPARITY IN SENTENCING PROCESS’

AUTHORED BY – GHANISHTHA SHRIVASTAVA

ABSTRACT

A nation's sentencing guidelines reveal the spirit, sense, and morality that are prevalent there. Limiting the prevalence of a crime by reprimanding, helps to set a certain degree of punishment and subsequently the law of a given culture, rehabilitation, or any other acceptable or necessary process. Nonetheless, the concept of punishment and sentencing guidelines has changed and grown over the years. Its sentencing policy now differs as a result of this ongoing change. Particularly depending on the judges' discretion, or their conclusions and judgments, there is a disparity. This causes a systemic discrepancy and a recurring pattern of inequality in what constitutes the best and most appropriate "punishment" for a certain offense. This is a prevalent problem existing in criminal justice systems. Especially in a country like India which has such huge diversity and distinctions, making disparities on such factors comes in handy. Various reasons lead to inequality and it varies as the context change. Inequalities in sentencing is quite a subjective topic as it can be both intentional and even unintentional. But in both instances, it is indeed weakening the legal system and denies the rights of people who become victims in such cases.

The purpose of this research paper is to examine the injustices that the Indian justice system currently faces, that is the introduction of the topic and, from there, to identify problems leading to such disparity and potential solutions to this problem which has long plagued the Indian court system followed by comparative study with USA racial discrimination and few instances from Indian context.

Keywords: Disparity, punishment, the justice system, diversity, rights, inequality

SYNOPSIS

OBJECTIVE

1. Understanding the sentencing disparity through its brief introduction
2. Highlighting the main reasons why the disparity exists and how it can be curbed
3. A case study into the disparity existing in the country of USA to draw the comparison
4. Supporting the topic by mentioning relevant instances in the Indian Context

RESEARCH QUESTION

1. Whether there are any reasons behind the existence of disparities during sentencing and how can it ultimately be brought down?
2. Whether disparity in the sentencing process only happens in a diverse country like India?

RESEARCH METHODOLOGY

The study is based on the doctrinal method of research and both primary and secondary sources are taken into consideration while making it like websites, books, and other internet sources. The type of study done here is descriptive, analytical, comparative, and explanatory study. This research deals with collecting & analysing information within the boundaries of the topic.

Primary source: statutes and acts.

Secondary sources: books, articles, websites

LITERATURE REVIEW

- Damayanti Bhattacharjee, 'Disparity in sentencing policy in India' INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES

I have used the aforesaid article to understand the reasons why the disparity in the sentencing process exists and how this can be treated and other remedies

- Julian C. Jr. D'Esposito, 'Sentencing Disparity Causes and Cures' JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY

This article consists of the situation prevailing in the country of the United States of America regarding the fact that how race plays a major role in determining sentences of the guilty in an offense.

- S.P. Sathe, 'Economic and Political Weekly Jayalalitha and crisis management' JSTOR

This article has been used to about Jayalalitha and her involvement in certain cases. Her instance has been used as one of the examples to understand the disparity in the sentencing process

MODE OF CITATION

Harvard Bluebook 20th edition.

INTRODUCTION

Sentencing disparity refers to the differences in the severity of punishment given to individuals for similar offenses. In India, sentencing disparity is a prevalent issue, and it can be attributed to various factors such as socioeconomic status, caste, religion, gender, and geographical location. For instance, studies have shown that individuals from lower socio-economic backgrounds or marginalized communities may receive harsher punishments compared to those from higher socio-economic backgrounds or privileged communities. Similarly, individuals from lower castes or minority religions have faced harsher punishments compared to those from higher castes or majority religions.

Gender-based sentencing disparities can also occur, where female offenders may receive more lenient punishments compared to male offenders for the same offense. Additionally, sentencing disparities can occur based on the geographical location of the crime, where individuals in urban areas may face harsher punishments compared to those in rural areas.

Addressing sentencing disparities in India is crucial to ensure that the legal system is impartial and fair to all individuals, regardless of their backgrounds or circumstances. The Indian judiciary has taken steps to address these disparities, such as creating guidelines for judges to follow in sentencing and establishing special courts to handle cases involving marginalized communities. However, more needs to be done to ensure that equal justice is accessible to all citizens.¹

¹ IPLEADERS, <https://blog.ipleaders.in/disparity-of-sentencing-policy-in-the-criminal-justice-system/> (accessed 24th May 2023).

REASONS FOR SENTENCING DISPARITY

Whether there are any reasons behind the existence of disparities during sentencing and how can it ultimately be brought down? ²–

ECONOMIC AND SOCIAL STATUS

Sentencing disparities can occur based on a person's socio-economic status, where individuals from lower socio-economic backgrounds may receive harsher punishments compared to those from higher socio-economic backgrounds. Apart from receiving harsh punishments, people who cannot afford to give bail amount tend to remain in jail for an indefinite period, while others who can arrange for an amount get out easily

CASTE AND RELIGION

The caste system is deeply ingrained in the Indian social structure, and there have been instances where individuals from lower castes or minority religions have faced harsher punishments compared to those from higher castes or majority religions. Even the judges and the deciders may have certain biases and perspectives for a certain class of people. Marginalized communities have less access to basic amenities like education, employment, and support systems, which are a few of the factors considered by the court while determining any case.

Dhananjay Chatterjee versus State of West Bengal ³–

The victim was an 18 years old girl residing in an apartment. She would usually complain about constant teasing by the accused who was the watchman of that building. One day when the victim was all alone at her home, the accused allegedly raped and murdered the victim. During the trial, he pleaded not guilty, and the trial court sentenced him to the death penalty. Accordingly, after the whole trial even the supreme court upheld this decision. He was hanged 14 years after the commission of the crime and the last words he said were that he was innocent and everyone is killing him.

There were many anomalies in the case no bloodstains on the accused, non-recovery of any fingerprints of the accused on the victim's body, discrepancies in statements of witnesses, no

² Damayanti Bhattacharjee, 'Disparity in sentencing policy in India' Vol 3 Issue 4 INTERNATIONAL JOURNAL OF LAW MANAGEMENT AND HUMANITIES, pg. 1108 – 1110 (2020).

³ Dhananjay Chatterjee v. State of W.B., (2004) 9 SCC 751.

forced sexual intercourse as per post-mortem reports, delay in calling the police, etc. Many people did not consider this case to have been proven beyond a reasonable doubt since proper procedure was not followed.

*Santosh Kumar Singh versus State through CBI (Priyadarshini Mattoo)*⁴–

The accused repeatedly bothered a law student, and once, when she was home alone, the accused Santosh Kumar brutally raped her before killing her. Santosh Kumar was the son of a high-ranking police officer. There were substantial pieces of evidence that proved the guilt of the accused and the trial court acquitted him. He came from a privileged background with many connections and it was alleged that his father's position affected the investigation and judicial proceedings. It was only after a huge public outcry that the court took the matter seriously and the decision was overturned.

Capital Punishment is awarded in the rarest of rare cases only. While drawing the above two contrast, it should be noted that in one case the offense was not even proved beyond reasonable doubt and he was sentenced to death. These kinds of cases spark controversy as to whether Dhananjay was awarded death just because he was a poor watchman and accused Santosh Kumar got an edge over the because he belonged to a privileged family and his father held an influential position.

GENDER

Gender-based sentencing disparities can occur where female offenders may receive more lenient punishments compared to male offenders for the same offense. This could be the result of gender stereotypes. Women are perceived to be less dangerous than men. Their sole role in society is that of nurturers, caregivers, and submissive people. This generates an inherent feeling of empathy leading to giving lenient punishments to women.

*Neeraj Grover Murder Case (Maria Susairaj)*⁵ –

Neeraj visited Maria's apartment which grew suspicion in the mind of Emile Jerome who was a naval officer and in a relationship with Maria. He flew to the city and saw them together in the

⁴ Santosh Kumar Singh vs. State Through CBI, 2007 CriLJ 964, 133 (2006) DLT 393.

⁵ THE PRINT, <https://theprint.in/india/jealousy-love-murder-before-shraddha-there-was-killing-of-neeraj-grover-gory-tandoor-case/1222079/> (accessed 24th March 2023).

apartment followed by a heated argument, and in anger, Emile stabbed Neeraj to death. Maria witness all this and even helped Emile to get rid of the body cutting it into pieces, burning it, and dumping it in different places. Both the accused were convicted, Emile was awarded a life sentence while Maria was imprisoned was 3 years.

Karan Kakkad Murder case⁶–

Karan Kakkad was a film producer found dead in his apartment. Later, it was established that he was murdered by Vijay Palande, a friend he had made in exchange for benefits like his properties. Dhananjay Shinde, who was with Vijay, assisted him in dismembering the body and getting rid of it. The case was duly proved and Vijay was imprisoned for life and even Dhananjay was given a life sentence for his involvement in disposing of the body.

In the above two cases, Maria's and Dhananjay's roles were very similar, there could be barely any difference. They both aided the crime and helped get rid of the body by dismembering it. But then Maria was announced to only 3 years in jail while Dhananjay was imprisoned for life. Both had the same roles in their respective cases that are aiding the murder. This grows suspicion of the fact that gender causes disparity in sentencing to some extent.

GEOGRAPHY

Sentencing disparities can occur based on the geographical location of the crime, where individuals in urban areas may face harsher punishments compared to those in rural areas.

AVAILABILITY OF LEGAL REPRESENTATION

One factor that can lead to disparities in the sentencing process is the availability of legal representation. Individuals who cannot afford legal representation may not receive a fair trial or may receive a harsher sentence than those who can afford to hire a lawyer. Any lawyer explains his/her client of the whole judicial process to make the way out but since most people do not get to avail such an opportunity, other people get an edge over them. It is the state's duty to provide

⁶ THE PRINT, <https://www.indiatoday.in/india/west/story/karan-kakkad-murder-brother-on-body-recovery-99384-2012-04-16#:~:text=By%20Headlines%20Today%20Bureau%3A%20A,on%20Tuesday%20rejected%20police's%20claim.> (Accessed 25th March 2023)

free legal aid in India but there have been cases where the state failed to do its duty.⁷ Also, since you do not have legal representation your defence mechanisms weaken leading to a disadvantage in plea bargaining. In this case, the persons end up in jail for a long time as compared to someone who can negotiate in the bargaining, thereby making it unfair.

ACCESS TO INFORMATION

Access to information is also a crucial factor in ensuring a fair sentencing process. Individuals who do not have access to information about their legal rights, the charges against them, or the possible sentences may not be able to make informed decisions or present a strong case in court.

Hussainara Khatoon versus State of Bihar ⁸–

This case made clear how poorly the state of Bihar's justice system is functioning. There were a huge number of people being held without due process in jails, and some people were being wrongfully found guilty and given worse punishments than they deserved, the only cause of all these delays was the convict's inability to afford a lawyer to represent them. Justice P.N. Bhagwati held that Article 39A and Article 21 both implicitly guarantee the right to free legal representation as a necessary component of a "reasonable, fair, and just" process for anybody accused of a crime. And the state must provide this information to the accused at any cost.

BIASES OF JUDGES AND COURT OFFICIALS

Judges or court officials may also have biases that can affect the sentencing process. Judges and court officials may have their personal beliefs which can reflect in their decision making. This includes ingrained stereotypes on socio-economic status, caste, religion, gender, and geographical location. These biases can lead to inconsistent and unfair sentencing decisions. Like if a judge has conservative views on a particular way of committing a crime, he might give harsher punishments despite the fact that alternative mitigating factors are present.

Tukaram versus State of Maharashtra ⁹–

One girl was raped by two policemen behind the police station itself. The trial court acquitted

⁷ THE HINDU, <https://frontline.thehindu.com/the-nation/urgent-requirement-new-legal-aid-system-to-ensure-justice-for-the-poor/article65791609.ece> (accessed 27th March 2023)

⁸ Hussainara Khatoon (I) v. Home Secy., State of Bihar, (1980) 1 SCC 81.

⁹ Tuka Ram vs. State of Maharashtra, 979 AIR 185 1979 SCR (1) 810 1979 SCC (2) 143 ACT.

both the accused stating there was a lack of evidence. The victim was habituated to having sex, so the judge stated that she must have consented in order to satisfy herself. Additionally, the victim's lack of resistance further establishes her consent. She should have yelled, but instead chose to remain silent. The presence of semen on the officer's uniform was found and the judge termed it a nightly discharge. Altogether the judge said this incident was of 'casual sex'. In this case, the judge had a prior and biased perception about the victim and the remarks reflected a lack of understanding.

Finally,

By their very nature, individualist sentencing systems result in inequity and inconsistency. This legal framework came to India via the British legal system. While with this customized system, the outcome is never the same and there are frequently observable variations.

The reason behind the widening difference is that unlike in other countries, there is no unifying sentencing purpose that is to be given importance by the judges while passing judgment. This means judges can have varied propositions in addressing a case and thus its punishment.

Judicial variability refers to the individual variances between judges in terms of their approach to sentencing that exist naturally by virtue of their individuality.” This variation always occurs during sentencing, primarily as a result of the judge's discretion. This typically happens during challenging or severe sentencings like the death penalty, life in prison, etc.

The absence of guidance arises because India does not have legislative \or judicial guidelines like the other countries. In the end, this absence eliminates the proportionality necessary to minimize inequities during punishment.

REMEDIES

CONSISTENCY

There is an urgent need to frame certain guidelines and rules that can ensure equality and consistency during the sentencing process. These rules would be to restrict the judge from considering specific and materialistic factors. This can lead to the same crimes by different people getting consistent and relatively similar sentences. These rules would strictly avoid any bias to

influence the decision.¹⁰

AWARENESS AND EDUCATION

Learned Judges and court officials should be made aware of every consequence their decision might lead to. They should be informed about social and cultural sensitivity and bias, keeping any opinions or emotions aside, and promoting fair judgments.

TRANSPARENCY

If all the moves and decisions by the courts are made available to the public, it would become easier for the people to point out, identify, and address any disparity. Availability of all sorts of data across different categories like geographical, socio-economic, gender, etc. can reveal a pattern that can be worked upon.

FACTORS TO BE CONSIDERED

Sentencing and consequently recognizing the length and type of the sentence should ultimately rest upon the seriousness of the offense. Additional elements like the nature of the crime, the personality of the perpetrator, the list of previous offenses, the danger of such offenses, etc. should also be taken into consideration.

JUDICIAL PURPOSE

A key concern that exists is the lost rationale during sentencing, especially with the sentencing of large maximum periods. High maximum sentences have been imposed on offenders who neither need nor deserve them, even though their main purpose is to equip the court and protect society free of dangerous offenders and to cause deterrence.

This in turn takes away their opportunity for growth in the future. If offenses are not categorized it takes away the reason from them. Although "a limit on sentence duration would merely narrow the possibilities for inequity, it would also narrow the range of judicial discretion.

National and International governments and agencies should spend more money on research and

¹⁰ CRIMINAL LAW AND RESEARCH REVIEW, <https://crlreview.in/2020/06/20/just-desert-the-need-to-revamp-sentencing-in-india/> (accessed 1st April 2023).

involve more in the reformation of the existing vague policies.

And coming to The U.S. it should stop its two-sided sentencing policy that is one for wealthy people and one for poor people and people of colour.

CASE STUDY: SENTENCING DISPARITY IN THE USA

Whether disparity in the sentencing process only happens in a diverse country like India?

The sentencing disparity in the United States refers to the unequal treatment of individuals convicted of similar crimes due to factors such as race, ethnicity, socioeconomic status, and geographic location. This issue has been a longstanding problem in the American criminal justice system, with various studies indicating that it disproportionately affects minorities and marginalized communities.¹¹

One of the main factors contributing to sentencing disparities is the mandatory minimum sentencing laws that were enacted during the "War on Drugs" in the 1980s. These laws required judges to impose minimum sentences for certain drug offenses, regardless of the individual's circumstances or the severity of the crime. As a result, individuals convicted of nonviolent drug offenses often received harsh sentences, particularly those from low-income neighbourhoods and communities of colour.¹²

Another factor is the use of prosecutorial discretion, which allows prosecutors to decide whether or not to charge someone with a crime and what charges to file. Studies have shown that prosecutors are more likely to seek harsher penalties for minorities and individuals from lower socioeconomic backgrounds while giving preferential treatment to those with political connections or financial resources.

Additionally, the use of plea bargaining has contributed to sentencing disparities. Prosecutors often offer plea deals to defendants in exchange for guilty pleas, with the promise of reduced

¹¹ OPEN SOCIETY FOUNDATION, <https://www.opensocietyfoundations.org/publications/racial-disparity-sentencing> (accessed 4th April 2023).

¹² Julian C. Jr. D'Esposito, 'Sentencing Disparity Causes and cures' vol. 60 issue 2, JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY (1969).

sentences. However, this system can be unfair, as those who cannot afford to hire a private attorney may be pressured into accepting a plea deal, even if they are innocent because they fear a harsher sentence if they go to trial.

The racial and ethnic disparities in sentencing are also evident in the use of the death penalty. Studies have shown that minorities, particularly Black defendants, are more likely to receive the death penalty than their White counterparts, even when the crime and circumstances are similar. Efforts to address sentencing disparities have included reforms to mandatory minimum sentencing laws, the increased use of diversion programs for nonviolent offenders, and the establishment of sentencing guidelines to promote consistency and fairness in sentencing. However, more work needs to be done to address the systemic issues that contribute to disparities in sentencing, including biases in the justice system, inadequate legal representation, and the over-reliance on incarceration as a solution to social problems.

BROCK TURNER AND COREY BATEY CASE

For example, here is the case of Brock Turner and Cory Batey, of different races, Cory being that of colour ¹³–

In 2016, Brock Turner, a Stanford University student, was convicted of three counts of sexual assault for assaulting an unconscious woman behind a dumpster. The judge sentenced Turner to just six months in jail and three years of probation despite the fact that he could have received a 14-year term. The judge emphasised Turner's lack of a criminal past and the potential negative effects of a longer sentence on his future.

In 2015, Cory Batey, a Vanderbilt University football player, was convicted of four counts of aggravated rape for assaulting an unconscious woman in a dorm room. He was sentenced to 15 to 25 years in prison by the judge, who cited the severity of the crime and the need for accountability.

Despite both cases involving similar acts of sexual assault, the sentences awarded to the guilty parties were vastly different. The lenient sentence given to Turner sparked outrage and renewed discussions about the issue of sentencing disparities in cases of sexual assault, particularly in

¹³ WRITING DE JURE, <https://writingdejure.web.unc.edu/2016/10/black-and-white-sentencing-in-america-the-brock-turner-case/> (accessed 5th April 2023).

cases involving white and privileged defendants.

This example underscores the importance of considering the role of privilege, race, and socioeconomic status in sentencing disparities and the need for the justice system to ensure equal treatment under the law.

OTHER INSTANCES IN THE INDIAN CONTEXT

2G SPECTRUM CASE ¹⁴–

One high-profile case in recent times is the 2G spectrum allocation case, in which several politicians and businesspeople were accused of corruption and irregularities in the allocation of telecom licenses. While some were acquitted, others were sentenced to varying jail terms. The sentence of former Telecom Minister A Raja was reduced from the original 7 years to just one year, while a normal man found guilty of a similar offense would have likely received a much harsher sentence.

CHIEF MINISTER JAYALALITHA ¹⁵–

Another example is the disproportionate assets case involving former Tamil Nadu Chief Minister J. Jayalalitha. She was convicted of amassing disproportionate assets and sentenced to four years in prison, this was followed by huge masses of protests. The sentence was later overturned on appeal and Jayalalitha returned to power. Suspicion was raised over these issues and even several applications were filed as to changing the jurisdiction from Tamil Nadu as they alleged that it was favouring one party. However, the Supreme Court of India upheld the conviction in 2017, but unfortunately, she passed away before the sentence could be executed.

SALMAN KHAN HIT AND RUN CASE COMPARED TO MOHAMMED IQBAL HIT AND RUN CASE ¹⁶–

In 2002, Bollywood actor Salman Khan was involved in a hit-and-run incident in Mumbai, India. Khan was driving a Toyota Land Cruiser when he hit a group of people sleeping on the pavement

¹⁴ BUSINESS TODAY, <https://www.businesstoday.in/industry/telecom/story/2g-scam-verdict-a-raja-kanimozhi-cag-vinod-rai-spectrum-87503-2017-12-21>, (accessed 6th April 2023).

¹⁵ S.P. Sathe, *Economic and Political Weekly Jayalalitha and crisis management*, Vol. 36, JSTOR, pp. 3659-3662 (Sep 2001).

¹⁶ HINDUSTAN TIMES <https://www.hindustantimes.com/entertainment/salman-khan-hit-and-run-case-court-rejects-activist-s-plea/story-C2QYjArZKbnP5rznvkrT9M.html> (accessed 8th April 2023).

outside a bakery in the Bandra area of Mumbai. One person was killed, and four others were injured in the incident.

The police charged Khan with various offenses, including culpable homicide not amounting to murder, which carries a maximum sentence of ten years in prison. The trial went on for more than a decade, with several witnesses testifying in the case.

In 2015, the court found Salman Khan guilty of culpable homicide not amounting to murder and sentenced him to five years in prison. However, he was granted bail the same day, and the sentence was later suspended on appeal.

The case was controversial, with many people alleging that Khan received preferential treatment due to his fame and influence. The case also highlighted the issue of road safety and the dangers of driving under the influence of alcohol.

In 2016, Mohammed Iqbal, a driver, was convicted of causing death due to rash and negligent driving in a hit-and-run case in Bengaluru, India. In this case, Iqbal was driving a car that hit a scooter, causing the rider to fall and suffer fatal injuries.

The prosecution argued that Iqbal was driving recklessly and under the influence of alcohol at the time of the accident. The court found Iqbal guilty of the charges and sentenced him to ten years in prison. The sentence was severe compared to other similar cases due to the gravity of the offense and the fact that the victim was killed in the accident.

The case highlighted the importance of responsible driving and the need for stricter enforcement of traffic rules to prevent such accidents. The decision also showed that the judiciary may be fair and unbiased in disputes involving regular people, even when there are no prominent figures or powerful political figures involved.

P. CHIDAMBARAM WHILE IN POWER AND HIS SITUATION WHEN HE SUBSEQUENTLY LOST HIS POWERS

The Central Bureau of Investigation (CBI) detained P. Chidambaram, a former finance minister and prominent member of the Indian National Congress party, in August 2019 on suspicion of

corruption and money laundering in connection with the INX Media case.

The case involved alleged irregularities in the Foreign Investment Promotion Board (FIPB) clearance granted to INX Media, a media company owned by the Mukherjee family when Chidambaram was the finance minister. The CBI had alleged that Chidambaram misused his power to grant FIPB clearance to INX Media in exchange for kickbacks.¹⁷

Initially, Chidambaram was granted interim protection from arrest by the Delhi High Court. However, when his party, the Indian National Congress, lost power in the general elections of 2019, the interim protection was lifted, and Chidambaram was arrested.

After being detained for more than a hundred days, Chidambaram was granted bail by the Supreme Court in December 2019. The court granted him bail after stating that the evidence against him was not strong enough to deny him bail.

It is important to note that the sentence or punishment is given to a person after a thorough examination of the evidence presented in court and the gravity of the offense committed, rather than the offender's political power or social status. In order to guarantee that justice is administered in a fair and impartial manner, the judiciary's independence and impartiality are essential.

MISUSE OF PAROLE BY SANJAY DUTT

Sanjay Dutt was found guilty in July 2007 and began serving his five-year prison sentence in May 2013 for his involvement in the 1993 Mumbai serial explosions case, in which he was discovered to have illegally possessed and destroyed an AK-56 rifle in violation of the arms act. After his conviction, he was granted parole and furlough many times till his release from jail in 2016. In his conviction period out of 307 days, he was granted parole for 118 days, however, records show that more than 40 percent of his punishment he spent out of jail on parole. In October 2013 he was granted a furlough of one month and after that in December 2013, he was granted parole for 1 month which was extended for 2 more months. Tushar Pabale, through attorney Nikhil Chaudhari, filed a PIL in 2014 alleging that Sanjay Dutt's frequent paroles

¹⁷ P. Chidambaram v. Central Bureau of Investigation, 2018 SCC OnLine Del 13340.

represent a widespread abuse of the parole system. The PIL also claimed that 600 parole applications are currently pending with the Maharashtra government, but Sanjay Dutt's parole was granted quickly. Sanjay Dutt was defended by the state government in this case by claiming that his wife was receiving treatment for tuberculosis. The court responded by stating that there are many prisoners whose family members suffer from various illnesses but they are not granted parole. The court also added that while we are not saying that someone's rights should be restricted because they are influential, pain and suffering are universal. The further court also added that it seems that there are different sets of rules for celebrities and different for ordinary citizens, and the court also stated what is the purpose behind punishment if any prisoner gets so much of paroles. So here Bombay high court stated that authorities must exercise their discretion properly and further added that there is a need for reforms to address the pendency of paroles and directed the state govt to set up a committee of officials from the home department and law and judiciary for suggestions regarding amendments in the law.¹⁸

SIDDHARTH VASHISHT @ MANU SHARMA VS STATE NCT OF DELHI ¹⁹–

In this case, the incident happened on 30th April 1999 at about 2 a.m. when Manu Sharma murdered Jessica Lal. Manu Sharma has a strong background in a rich political family. Delhi high court on 20th December 2006 convicted him for life imprisonment and he was granted parole on 24th September 2009 and extended for one more month. The grounds on which Manu Sharma applied for parole are to take care of his old mother as she was ill, to attend the religious rites of his late grandmother, and to manage the family business of Piccadilly Industries as he is the largest shareholder of the company, but Manu Sharma instead of this found in Delhi pub partying with his friends in the night on 10th December 2009. Meanwhile, it was found that his ill mother was attending different social gatherings and functions in Delhi¹⁰ and it was further found that his grandmother passed away in April 2008 and Manu Sharma made this as a ground for parole after one year and seven months of his grandmother's death. In November 2011 again, Manu Sharma was granted parole of 5 days for his brother's marriage by Delhi high court on the condition that he should go to bars, clubs, and discos. Here the main point comes in that Manu Sharma was granted parole even after the violation of parole regulations in his previous parole. Justice Shali pointed out that, the behaviour of Manu Sharma while on parole shows that he has violated the parole regulations as he has visited discotheques, so "he need not attend all (wedding

¹⁸ *Id.*

¹⁹ Sidharth Vashisht v. State NCT of Delhi. AIR 2010 SC 2352.

functions).” Here, the Delhi Police reverses its earlier position of opposing Manu Sharma's parole. In an earlier request to the Delhi High Court, the Delhi Police stated that we have an objection to Sharma's plea because his prior behaviour indicates that he has abused the parole. However, now the advocate representing the Delhi Police stated that we did not oppose Manu Sharma's parole and that we would have "no objection" if he provided the court with an assurance that he will not leave Ambala and Karnal. Since 2009 Manu Sharma has been granted at least 7 paroles till his release from jail in 2020, even after the violation of parole regulations. It was also found that till September 15, 2009, the Delhi government have granted parole to 11 prisoners out of 132. Out of these 11 one is Manu Sharma. Many other prisoners have applied for parole before Manu Sharma but they didn't granted parole.²⁰

CONCLUSION

The criminal justice system's growing discrepancy in sentencing practices has a negative impact on society by deteriorating the psyche of both offenders and those who have been persecuted. This issue is not specific to any one nation; rather, it affects everyone on a worldwide scale. Furthermore, nothing will change no matter how much time passes if national and international governments and agencies do not conduct in-depth research into the issue and get involved in revising the current policies. Another important factor contributing to this problem, which consistently raises obstacles in the criminal justice system's sentencing guidelines, practices that are nebulous but remain in use.

²⁰ TEHALKA MAGZINE, https://www.tehelka.com/story_main43.asp?filename=Ne281109parole_and.asp (accessed 6th May 2023).