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SENTENCING POLICY AND JUDICIAL DISCRETION: BALANCING UNIFORMITY AND INDIVIDUALISATION IN RAPE JURISPRUDENCE

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Abstract

"In our Judicial system, we have not been able to develop legal principles regarding sentencing."[1]

Criminal jurisprudence in India is stagnant in several aspects of sentencing. "*Criminal law requires careful adherence to the rule of proportionality in imposing punishment*."[2] There are some guidelines which have been set only for the death penalty,[3] ignoring other kinds of sentencing, such as rape sentencing.

"*Punishment awarded by courts for crimes must conform to and be consistent with the atrocity and brutality with which the crime was committed*."[4]

Despite comprehensive statutory provisions against rape in India, sentencing outcomes continue to reflect significant disparities even where the facts are on similar lines, undermining both uniformity and deterrence objectives.

Despite recommendations by the Justice Malimath Committee (2003) and the Committee on Draft National Policy on Criminal Justice (2008), headed by Prof. N.R. Madhav Menon, and several judicial suggestions on the need for standard sentencing guidelines, the set sentencing policy was not implemented in India.

This research article examines the interplay between judicial discretion and sentencing policy in rape jurisprudence. It undertakes a doctrinal analysis of rape sentencing decisions of the Supreme Court (SC) and High Courts (HC), thereby focusing on judicial reasoning in

[1] State of Punjab v. Prem Sagar and others (2008) 7 SCC 550 (India)
[2] C. Muniappan v. State of Tamil Nadu, (2010) 9 SCC 567 (India).
[3] Neel Kumar v. State of Haryana (2012) 5 SCC 766 (India).
[4] State of MP v. Kashiram, AIR 2009 SC 1642 (India).

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punishment determination and highlighting how the absence of structured guidelines leads to inconsistency and arbitrariness. The research article advocates reforms such as sentencing guidelines and judicial training to reduce arbitrariness and examines this issue through a global lens. It argues that while individualisation is necessary, unregulated discretion undermines constitutional equality and the rule of law.

Introduction

Sentencing is the process by which a court applies its judicial mind to the merits of the case and imposes punishment. Section 235 of the Code of Criminal Procedure, 1973 (CrPC)[5], now section 259[6] of Bhartiya Nyaya Suraksha Sanhita (BNSS), provides that the courts are empowered to pass appropriate sentences after conviction. Also, in the case of Bachan Singh v. State of Punjab, the court stated that

"Sentencing is the stage in the criminal process where the law seeks to determine the punishment proportionate to the gravity of the offence and circumstances of the offender."[7]

Sentencing policy provides a clear framework and guidelines for determining punishments and the judgment that the case demands, ensuring fairness and equality. In addition, judicial application fills the gap and applies these guidelines to the specific details of each case.[8] But the same should not be exercised arbitrarily.[9] The fact that the legitimacy of the criminal justice system can be undermined if the punishment fails to bear a rational nexus to the seriousness of the offence, thereby defeating the fundamental aim of criminal adjudication.[10]

"Awarding disproportionate sentences, especially those that showcase undue leniency[11]*would undermine public confidence in the law's efficacy. The awarding of just and proportionate sentences remains the solemn duty of the Courts, and they should not be swayed by non-relevant factors while deciding the quantum of sentence."*[12]

While the legislature has set minimum and maximum punishments under the Indian Penal Code and now the Bharatiya Nyaya Sanhita, judges still have the final say on whether to impose the minimum or maximum punishment for a particular offence.[13] and on deciding sentences. The

[5] Code of Criminal Procedure, No. 2 of 1974, § 235 (India).
[6] Bharatiya Nyaya Suraksha Sanhita, 2023, § 259 (India).
[7] Bachan Singh v. State of Punjab, (1980) 2 SCC 684 (India).
[8] Abha Shukla, Sentencing Discretion in India: Arbitrary Sentencing and Modalities to Arrest Arbitrariness - A Comparative Study
[9] Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat (2009) 7 SCC 254 (India).
[10] A. S. Kowshikaa, Sentencing Disparity in the Indian Criminal Justice System, Journal of law and Legal Research Development, July 2024; https://www.jllrd.com/index.php/journal/article/view/17
[11] Sadhupati Nageswara Rao v. State of A.P., (2012) 8 SCC (India).
[12] Surinder Singh v. State, 2021 SCC OnLine SC 1135 (India).
[13] Mohd. Hashim v. State of UP, (2017) 2 SCC 198 (India).

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same was observed in Harendra Nath Chakraborty v. State of West Bengal:

"*If the legislature has provided for a minimum sentence, the same should ordinarily be imposed, save and except some exceptional causes which may justify awarding a lesser sentence than the minimum prescribed.*"[14]

As a result, noticeable differences persist in sentencing in rape cases, even in factually similar cases.[15] In X v. State of Maharashtra, the Court highlighted the importance of precedent in sentencing to ensure uniformity.[16]

India lacks a uniform and standardised sentencing policy leading to significant differences in sentences for similar factual circumstances across HC, and even the SC. Thus, forbidding the very essence of sentencing to create deterrence and reformation, as pointed out in State of Punjab v. Prem Sagar[17], especially for rape cases, where similar cases can receive different punishments and sentencing. This variation highlights the conflict between judicial discretion and the need for a consistent sentencing policy, which is the main focus of this research.[18]

1. Theoretical Framework of Sentencing:

Punishments and sentencing are influenced by theories as per the requirements of the case. The nature and gravity of the offence become crucial factors in determining the applicability of these theories. The theories are:

1.1. Retributive Theory: Oldest form of punishment. Based on the concept of vengeance. The proponents are also concerned with just desert and proportionality. Use of this theory is seen in the extremely heinous offences following the "rarest of rare doctrine", and was applied in the Nirbhaya judgment [19], wherein the death penalty was awarded.

1.2. Deterrent Theory: The objective of this theory is to act as an exemplary punishment for prevention of commission of a similar crime in the future. There is an incitement of fear resulting in abstention of crime. In deciding a rape case, the MP HC[20] placed reliance on

[14] Harendra Nath Chakraborty v. State of W.B., 2009 2 SCC 758 (India).
[15] Mrinal Satish Discretion, Discrimination and the Rule of Law: Reforming Rape Sentencing in India 63 (Cambridge, 2016).
[16] X v. State of Maharashtra, (2019) 7 SCC 1 (India).
[17] State of Punjab v. Prem Sagar, (2008) 7 SCC 550 (India).
[18] Deepthi Arivunithi, B.A., B.L.; District Judge, State of Tamilnadu; "Rarest of the rare case" – the Sentencing Policy in India; https://www.tnsja.tn.gov.in/article/Sentencing_Policy_in_India_final.pdf
[19] Mukesh & Anr. vs State of NCT of Delhi & Ors, (2017), 6 SCC 1, (India)
[20] State of MP vs Munna Choubey & Anr., (2005), 2 SCC 710, (India)

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Mahesh v. State of M.P. (1987) [21] and observed:

"It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

1.3. Reformative Theory: This theory focuses on reforming the perpetrator/ offender so as to rehabilitate and re- integrate them back into the society. In the recent times, this theory has gained popularity across the globe, in consonance with the human rights approach. This is the least suitable to heinous offences such as rape and murder. It was observed [22]

"It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim. The court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim."

1.4. Preventive Theory: This theory seeks not to avenge the crime but to prevent the criminal from committing an offence in future. It seeks to protect society from the perpetrator. The theory is closely linked to the deterrence theory and was applied in the case of RG.Kar Medical College rape case [23] wherein the convict was sentenced to life imprisonment for the remainder of life.

Thus, in each rape case, the courts did not follow a uniform theory of punishment, substantially impacting the sentencing.

2. Sentencing Policy in India in Line with Rape Jurisprudence

-*"Judges play – at all levels – a vital role. It is their role to be impartial at all times. If they falter, especially in gender related crimes, they imperil fairness and inflict great cruelty in the casual blindness to the despair of the survivors"*[24]

A sentence is the punishment imposed on a person convicted in a criminal trial.[25] In recent

[21] Mahesh v. State of M.P. (1987)[21] 2 SCR 710), (India)
[22] State of MP vs Bala @ Balaram, (2005), 8 SCC 1, (India)
[23] State of West Bengal vs Sanjoy Roy, (Sealdah Ct, Kolkata, Jan 2025)
[24] APARNA BHAT & ORS v. STATE OF MADHYA PRADESH & ANR 2021 (4) Scale 312
[25] The Concise of Oxford Dictionary, P-058. Oxford University Press, Calcutta. P.58

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years, the alarming rise in violent crimes against women has brought judicial sentencing under intense scrutiny. Inconsistency weakens the credibility of the criminal justice system and undermines public confidence.[26]

2.1. Absence of a Structured Sentencing Framework

The Malimath Committee, in its 2003 report, pointed out that sentencing is one of the weakest aspects of Indian criminal law.

In Soman v. State of Kerala (2012), it was observed 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.*"[27]

Drawing on the sentencing theory discussed by Andrew Ashworth, the Court acknowledged that the evaluation of punishment should consider the nature of violated interest, the effect on victim's life, the offender's guilt, and the closeness of the actual harm.[28]

"Unfortunately, the question of sentencing does not receive due importance in India, and the absence of any guidelines makes the task of the court more difficult and casts a heavy responsibility on it to calibrate the due punishment that might be awarded to a convict."[29]

2.2. Unfettered Judicial Discretion in Sentencing

The SC of India has reiterated that sentencing is a matter of judicial discretion.[30] However, without clear guidelines for its use, this discretion has become arbitrary. Courts across the country, including HC and the SC itself, have imposed a wide range of different sentencing in rape cases, even when the facts are similar, including the victim's age, crime type, aggravating or mitigating circumstances, number of offenders involved and level of violence inflicted, etc. The Madhava Menon Committee recommended that uncontrolled discretion in sentencing results in unequal treatment of offenders in similar cases, thereby violating the principle of equality before law under Article 14 of the Indian Constitution[31]. The Committee highlighted the need for a structured sentencing framework that balances deterrence, reform, and fairness and helps courts, especially trial courts, deliver reasoned, uniform and consistent

[26] Dhananjoy Chatterjee Dhana v. State of West Bengal, 1994 2 SCC 220 (India).
[27] Soman v. State of Kerala, (2013) 11 SCC 382 (India).
[28] Supra Note 19
[29] Jasvir Kaur v. State of Punjab, (2013) 11 SCC 401 (India).
[30] State of U.P. v. Sanjay Kumar, (2012) 8 SCC 537 (India).
[31] INDIA CONST. art. 14 (guaranteeing equality before law and equal protection of laws).

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punishments[32].

Despite several recommendations, India operates without a structured sentencing framework, leading to ongoing sentencing disparities, especially in rape cases.[33]

2.3. Sentencing Disparity in Rape Jurisprudence

Although courts have emphasised the importance of sentencing guidelines and evolved structured frameworks while imposing punishments, notably in cases involving the death penalty, the same framework remains unaddressed in the rape cases. To highlight the resulting problem of sentencing disparity, this paper undertakes a comparative analysis of select rape cases decided on similar factual circumstances.

2.3.1. Despite nearly identical factual circumstances, the cases of Dhananjoy Chatterjee v. State of West Bengal[34] and Santosh Kumar Singh v. State[35] resulted in markedly different sentencing outcomes, reflecting the absence of principled uniformity in India's sentencing jurisprudence. In the former case, the accused raped and murdered an 18-year-old girl. The SC regarded the offence as "inhuman, barbaric and ruthless," pointing that it erodes the collective conscience of society. Relying upon the principles laid down in Bachan Singh v. State of Punjab, the Court concluded that no mitigating circumstances existed and affirmed the death sentence, holding the case to fall within the "rarest of rare" category. Firstly, the court had to rely on a case which had no relation to rape due to the lack of guidelines in rape cases. Contrastingly, in the latter case, the accused raped and murdered a student of University of Delhi, the brutality of the offence, the vulnerability of victim, and the intentional nature of crime were similar to Dhananjoy Chatterjee, coupled with the distinguishing fact that the accused Santosh was a lawyer from a well-to-do family, in contrast to Dhananjay, who was a security guard. Still, the SC commuted the death sentence to life imprisonment, mentioning mitigating factors such as the accused's young age, marital status, parenthood and possibility of reform.

Such inconsistent application of the "rarest of rare" doctrine undermines the fundamental right to equality[36]. More critically, the contrast reflects an underlying concern of class-based disparity in sentencing. The outcomes highlight that sentencing in India risks becoming judge-

[32] Prof. N. V. Paranjepee "Criminology and Penology (including Victim logy), Central law Publication, Eighteenth Edition 2019, Pg no 55

[33] Chandi Prasad Khamari; Sentencing in India's Criminal Justice System: Judicial Interpretations and Comparative Analogies; International Journal of Innovative Research in Technology; July 2024; https://ijirt.org/publishedpaper/IJIRT166467_PAPER.pdf

[34] Dhananjay Chatterjee v. State of West Bengal, (1994) 2 SCC 220. (India)

[35] Santosh Kumar Singh v. State, (2010) 9 SCC 747 (India)

[36] INDIA CONST. art. 14

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centric rather than principle-centric.[37]

2.3.2 In the Unnao Rape case, the life convict Kuldeep Singh Sengar[38] have been granted an interim bail for the rape of a minor, it can be seen that the judicial discretion allowed dilution of punishment on medical grounds, reviving judicial arbitrariness concerns. Contrastingly, in State of Punjab v. Gurmit Singh[39] The SC emphasised that the rape of a minor shocks the collective conscience and demands a stern response. The discretionary latitude that courts enjoy without statutory or judicial guidelines for sentencing has produced results that seem inconsistent and unpredictable. This dissonance between principles proclaimed and those applied in practice illustrates the extent of the risk posed by unstructured discretion.

Another noteworthy disparity can be seen in Tukaram v. State of Maharashtra[40]The manner in which the SC upheld the trial court's initial judgment, stating that the prosecutrix's evidence is fabricated. A landmark judgment, infamous for its ruling. The court relied on a patriarchal stereotype that, since the prosecutrix was "habituated to sexual intercourse" her failure to physically resist the act undermined the credibility of her allegation of rape

2.3.3. The disparity of sentences can be seen in Nirbhaya gang rape case[41] and Bilkis Bano[42] where in the former case, the SC upheld Death penalty, holding that the case had outraged conscience of society and warranted harshest punishment to ensure deterrence, dignity and uphold constitutional values. In the latter case of gang rape of the victim, a pregnant woman, and murder of her family during communal violence, the convicts were sentenced to life imprisonment but were later granted premature remission. This again demonstrates that even in cases involving similar brutality and moral magnitude, punishment depends on discretionary judicial and executive choices rather than on structured or remission standards.

3. Sentencing Policies in Other Jurisdictions:

3.1. Sentencing Policy of the United Kingdom:

The Sentencing Council was established in 2010 by the Coroners and Justice Act 2009 to promote transparency and consistency in sentencing. Judges and Magistrates must follow the guidelines, unless doing so would be contrary to the interests of justice. The Council is an independent body responsible for developing sentencing guidelines, monitoring their

[37] Dr. Anju Vali Tikoo, Individualisation of Punishment, Just Desert and Indian Supreme Court Decisions: Some Reflection, ILI Law Review Vol. II, 2017; https://ili.ac.in/pdf/tikoo.pdf
[38] Kuldeep Singh Sengar v. State of Uttar Pradesh, (2020) 14 S.C.C. 64 (India).
[39] State of Punjab v. Gurmit Singh, (1996) 2 S.C.C. 384 (India).
[40] Tukaram v. State of Maharashtra, AIR 1979 SC 185
[41] Mukesh v. State (NCT of Delhi), (2017) 6 S.C.C. 1 (India).
[42] Bilkis Yakub Rasool v. State of Gujarat, (2024) 1 S.C.C. 1 (India).

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application, assessing their impact, and promoting awareness and public confidence in sentencing. It is statutorily accountable to the Parliament and the Ministry of Justice. It also identifies issues which can be resolved without a full revision, with or without consultation. The Sexual Offences Definitive Guidelines are applicable to rape cases for offenders aged 18+, whereas General Directives operate for minors. Harms are grouped, culpability is divided, based on the harm and culpability, starting point of punishments is provided. Once the starting point is established, the aggravating and mitigating factors are considered to decide on the appropriate range. The 9 steps for rape sentencing are specifically laid down.

The U.K. guidelines are structured, easy to understand, and result in consistency as well as transparency.

3.2. Sentencing Policy in USA:

The U.S. Sentencing Commission is an independent agency created by the Sentencing Reform Act of 1984 in response to widespread disparity in federal sentencing. It was established to create federal sentencing guidelines and to oversee federal sentencing. These guidelines are non-binding rules brought in 1987. Guidelines are not mandatory because they may result in a sentence that fails to prove the facts beyond a reasonable doubt, violating the Sixth Amendment.[43] When a judge departs from the guidelines and uses discretion, he must provide adequate reasons for the increased/decreased sentence. When a court of appeal reviews sentences imposed under the guidelines, it presumes the sentence is reasonable.[44] As per the 2024 Sentencing Guideline, the offence of criminal sexual abuse has a base level of 38 for convicts and 30 otherwise, stipulating conditions where base levels are to be increased, thereafter, criminal history category and base levels give the sentencing months range[45].

The USA guidelines, are also structured and give greater scope for discretion on individualisation when needed due to its advisory nature.

3.3. Sentencing Policy in India:

India does not have uniform sentencing guidelines. The BNS 2023 stipulates the kinds of punishments [46]. The sentencing policy stems from basic penal ranges for all offences,

[43] United States v Booker, 543 U.S. 20 (2005)
[44] Rita v United States, 127 S.Ct. 2456 (2007)
[45] U.S. Sent'g Comm'n Sentencing Table (Nov 1 2025), https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2025/Sentencing_Table.pdf (pdf)
[46] Sec 4. The punishments to which offenders are liable under the provisions of this Sanhita are— (a) Death; (b) Imprisonment for life; (c) Imprisonment, which is of two descriptions, namely: — (1) Rigorous, that is, with hard labour; (2) Simple; (d) Forfeiture of property; (e) Fine; (f) Community Service

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precedents, and punishment theories. Under BNSS, discretion is provided to the judge for Judgment of Acquittal or Conviction.[47] In order to release on probation for good conduct,[48] special reasons to be recorded in certain cases.[49] Despite repeated judicial recognition of the issue and efforts by committees, sentencing remains a grey area.

This paper explains the guidelines in these two countries to highlight the lacuna in India's legal system, so we can learn from their best practices.

4. Recommendations and Way Forward

"Sentencing policy guides judicial discretion in achieving a particular sentencing outcome. It is needed to address concerns about unfettered judicial discretion and the lack of uniform and equal treatment of similarly situated convicts."[50]

4.1. Formulation of Statutory Sentencing Guidelines

The foremost requirement is to establish legally binding sentencing guidelines, which can be enacted as a statute or added to the Bharatiya Nyaya Sanhita. Drawing inspiration from the U.K., levels of harm in rape cases should be systematically mentioned and aligned with levels of culpability, stipulating aggravating and mitigating factors within the legal limits; the nature of the crime, the convict's background, the impact on the victim; the application of sentencing jurisprudence, including deterrence, retribution, rehabilitation, reparation, and community protection.[51] It would ensure that the punishment matches the seriousness of the offence while also considering uniformity.

It is important that statutory sentencing guidelines should not be applied with rigidity or strict adherence in every case, as this could lead to prejudice, particularly where the facts need differential treatment. Therefore, sentencing guidelines could work as presumptive standards. The inclusion of terms such as "may" alongside mandatory clauses and "shall" alongside suggestive or directive clauses would permit courts to depart from the guidelines for compelling reasons, ensuring that judicial discretion is not eliminated but structured. Such an approach balances consistency with individualised justice and affirms that sentencing must ultimately rest on a reasoned application of the judicial mind on the merits. Advisory guidelines for judges and the recording of adequate, detailed and specific reasons from the departure of

[47] Bharatiya Nagarik Suraksha Sanhita, 2023, § 258, (India)
[48] Bharatiya Nagarik Suraksha Sanhita, 2023, § 401, (India)
[49] Bharatiya Nagarik Suraksha Sanhita, 2023, § 402, (India)
[50] State of U.P. v. Sanjay Kumar, (2012) 8 SCC 537 (India).
[51] Hazara Singh v. Raj Kumar (2013) 9 SCC 516, (India).

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the guidelines, if strictly followed, would help attain such a balance between individualisation and uniformity.

4.2 Setting up a Sentencing Commission

A statutory independent body should be set up to develop guidelines for different categories of offences, time-to-time revise them if needed, monitor their application, and assess their impact, supported by empirical research that would help identify trends, disparities, and areas for improvement.

Also, appropriate training could be provided to judges to ensure the smooth utilisation of the sentencing framework.

5. Conclusion

The mockery of the judicial system was seen in the Priyadarshini Mattoo case[52], wherein the trial court acquitted the accused, the HC sentenced him to death, and the SC imposed life imprisonment. The same case had different outcomes in different courts. In several cases, the courts also exercised discretion and allowed compromise in certain rape cases until the SC settled on allowing no compromise. Thus, the disparity resulting from discretion exists not only on a case-by-case basis but also depends on the court in which it is decided. The sentencing guidelines need to see the light of day, drawing inspiration from the best practices of the U.S.A. and U.K, to reform our criminal justice system and uphold the rule of law.

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33. Santosh Kumar Singh v. State through CBI (2010) 9SCC 747, (India)

Statutes

1. Bhartiya Nagarik Suraksha Sanhita
2. Bhartiya Nyaya Sanhita
3. Constitution of India
4. Indian Penal Code
5. Code of Criminal Procedure

Web links

1. Sentencing Guidelines for England and Wales, About Sentencing Guidelines, https://sentencingcouncil.org.uk/about-sentencing/about-sentencing-guidelines/.
2. United States Sentencing Commission Guidelines, https://www.ussc.gov/guidelines.