

## **SENTENCING LIMITATIONS OF THE JUDICIARY**

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### **Abstract**

*The Author wants to shed some light on the limitations the judiciary has to keep in mind while sentencing a convict in the court of law. The author figures out that there is a lack of sentencing guidelines to the judges that leads to varied award of punishments for the same crimes by different convicts. The judges were given this power to take into consideration of the nature of the crime, the circumstances and the mental and physical element of the accused. Comparing empirical data with international laws of the US and UK to India, the authors show the need of bringing the same as pointed out by many law commissions. The author also found out that death penalty only diminishes reformation and creates a contrast with what other countries are doing. The author also points out other limitations such as lack of awarding adequate fines, applying probation act, filing under children courts and legal aids amongst other and provides suggested changes.*

**Keywords:** *Judiciary, Sentencing Guidelines, Death Penalty, Sentencing limitations, Malimath Committee.*



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### **Introduction**

Indian Criminal Law is the guiding force and the protector of the citizens of India from offenders. But, Crime rates in India have only increased in every social, economic and political way and the root cause of the same can be the weak criminal justice system.

The sentencing policy approach enunciated by the Criminal Judicial System is sadistic and feudalistic. Sentencing in India ranges from death penalty to the imposition of fine. An offender is given a sentence as a form of punishment for his criminal wrongdoing and the process of this is called sentencing. Firstly, the trial is held wherein the court comes to a conclusion and either acquits the accused or charges him as guilty. Secondly, then the judges grant an award of sentence to this criminal. This punishment as per the Malimath Report, 2003 should be adequate enough to create deterrence but be human at the same time.

Although the criminal law has become more stringent, several clauses such as the introduction of death penalty for the rapes may be a step back from the reformatory theory, India follows. Amongst the reforms the sentencing policy needs, is the lack of sentencing guidelines which leads to inadequate sentences to the offenders based on each judge's interpretation and doesn't create a strong deterrence for the offenders to refrain from committing crime. The grey areas in the sentencing framework creates major concern for protection of human rights during the process of sentencing.

### **Lack of sentencing guidelines**

In India, there is a lack of structured sentencing guidelines, many governmental authorities in regards to it has prompted the need to adopt the same. The Committee on Reforms of Criminal Justice System (the Malimath Committee), strongly emphasised the need to implement the same to remove discretion and uncertainty from awarding sentences. The problem is that for many offences either maximum or minimum punishments have been provided which leads to a wide exercise of discretion at the hands of the judges. In *State of Punjab v. Prem Sagar & Ors.* And *Soman v. State of Kerala* The Supreme Court observed the need for sentencing guidelines by either the legislative or the judiciary to provide just punishments to the accused before he's charged guilty.

In, England and Wales, the Criminal Justice Act 2003 establishes the framework for sentencing, essentially the statutes provide a maximum sentence and the Sentencing Council, an another statutory body provides sentencing levels for each offence, the court looks into the guidelines and have to give their reasons if they are delineating from the guidance. This type of sentencing is followed by all of common law countries except USA. The United States issued formal guidelines that the sentencer has to choose from a narrow range of sentence length and have to provide compelling reasons form departing from the grid.

This sentencing procedure of India provides a broad discretion to the courts as compared to the US and UK which may lead to abuse of powers and allows personal grudges of the judges to influence an accused sentence. It is evident from *Modi Ram and Lala v State of Madhya Pradesh*, where the district court, the high court and the supreme court varied the sentence from one year, to eight years and then to three years respectively. This absolutely shows the ambiguity in the sentencing policy of India. In, *Rameshwar Dayal V. State of Uttar Pradesh*, the SC looked at two cases having similar facts where the judges had awarded 4 years and 3 months respectively. It should be the right of the victim and the right of the accused to get the

correct and adequate justice. The courts are overburdened with work and do not have time to reflect on each sentence efficiently and this makes the judges wide discretion useless. The judges are taking the sentences very leniently, even though imprisonment is being given, the term granted is short and is not retributive.

### **Non-reformative action through death penalty**

Death Punishment is a type of sentencing given by the court of criminal law for an execution of an offender. The deterrence theory that Stringent Sentences of death help reform the criminal justice system are wrong. According to Government statistics, since 1980 to 2013, the death penalty had been reduced and the crime rate had significantly improved or was fluctuating (206.2 in 1980 and 196.7 in 2012). But, shockingly with the emergence of the Amendment to the criminal law in 2013, and the emergence Section 376A which envisages the death penalty to the offenders of the rape resulting in death, the crime rate for rapes has not reduced but increased severely ranging from 27.1 in 2013 to 27.8 in 2019 (Conviction rate of crime of rape). Thus, death penalty does not have a large effect on crimes. According to National Bureau of Economic Research study on executions and homicides in the United States and Canada, and comparison with states where execution is abolished, it was found that death penalty is not the prime factor on murder rates.

The Parliament LARRDIS thus wrongly introduces the ideology of ‘killing’ the wrongdoer for the sake of protection of others. The aspect of capital punishment encroaches on one’s human rights and the fundamental right to live, absolutely restraining it, provided by Article 21 of the Constitution of India. The International Criminal Courts excludes this punishment as permissible. This sentence is actually very harsh and irreversible.

In, *Bachan Singh vs State of Punjab*, the Supreme Court has affirmed the punishment to act as a deterrent and in the ‘rarest of rare’ cases, it may be administered. The courts will have to provide special reasons to deprive one of their life and should opt for this option only after just consideration that any other sentence is “unquestionably foreclosed”. The judiciary or the legislature should try to find an alternative to death penalty. Thus, courts should not give death sentences as it does not deter and this is one of the limitations during sentences.

### **Other Limitations**

Fines are essentially penalty in terms of monetary forfeiture. There are many things one must take into account while determining the fine is, such that the profits of the offence, the amount of injury, the accused’s fortune. The fine should be retributive to the offence. The

Limitation during the sentencing of these fines is that India does not issue adequate fines. There should be a change and implementation of new fines, current fines forgets to take into account the economical advances and the inflation. This makes it tougher for the government to provide justice to the victim and no retributive action to the offender. The government also does not implement the Probation of Offenders Act, which essentially leads to deprivation of offenders rights and leads to oppression of them.

The Trial courts do not give any reasons while passing the sentences because there is not obligation by the statute to give so. Since the 1860's no new punishments have been incorporated in the Indian Penal Code. Neither Does the penal code create offences for emerging challenges. With time and hype in the technology new terrorism, cyber-crimes, sexual offences against women and offences against children have emerged. The existing laws are inadequate to fight these crimes "which have no limitations either in terms of space or geographical boundaries".

### **Suggested Changes**

The heart of the criminal law in India is the idea of reformative action and never the most brutal sentence to the accused, the judges having a wide discretion may be able to apply the same along with other principles to give each accused a difference sentence based on the facts and circumstances and also the quantum of hurt reached to the victim and victim's family. The Malimath Committee recommended the need to establish a statutory body much like the one in UK that would lay down the sentencing guidelines. This body would have highly experienced former judges of the Supreme Court, Former Chief justice of high court and educated legal professional with appropriate representation of women, social scientist, members representing the prosecution. The judiciary has also tried to inculcate certain principles of deterrence, proportionality and rehabilitation while sentencing. Sentencing disparities can also be reduced by training the judicial personnel in penology and keep them informed of the latest trends in the theory and practice.

Following the USA's model, the government should incorporate "imprisonment for life without commutation or remission" as an alternative to the death penalty. Which means that the state will not be allowed to commute or remit the sentence. Giving reasons to award a sentence must be made obligatory. Fines should be changed and bridge the gap between the previous and modern inflation values to actually be retributive to the crime. The Government should amend the penal code substantially to make the new crimes come under its ambit.

## Conclusion

In, Conclusion the sentencing policy in India is revolting as it completely disregards the rights of the offenders by not issuing sentencing guidelines for offences which leads to the wide discretion to the judges, leading to no uniformity. The application of death penalty even after courts and legislative's declination from the same is wrong and the legislative should come up with an alternative for the same. There should be new kinds of offences for emerging crimes which go over the boundaries set by the Indian Penal Code. The fines have also not been changed since the emergence of the code and does not take into account the inflation and changing economy, they are not retributive to the crime's offender's commit. There are a lot of criticism for the procedure and implementation of sentencing which the Malimath committee, J.S Verma committee and Madhav Melon committee has tried to bridge the gap of. There are still many limitations that the legislation should consider and legislate on for sentencing and the process of it.

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