

“Fair Punishment and Sentence in India¹”

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The hour is necessary to regulate the domain of criminal justice in every country in a world which is today aware of an alarming increase in criminal rates. The crucial and sensitive aspect of society has now become crime and punishment; customs and precedents no longer can lead to it. It is necessary to put into effect a fixed regime, and to reduce as far as possible the subjective element. This cannot be overlooked however, because the defendant is too harsh and ignorant of his rights, no penalties can be imposed against the defendant. The defendant is entitled to use certain fundamental human rights violated by the fixed penalty regime². Furthermore, it will also violate fundamental rights to give the judges' discretion to decide on penalties³.

The paper is about the concept of fairness and coherence when sentences are awarded⁴. A fundamental reasoning, a considerable improvement on the existing one, can be adopted. Before defining a penalty policy, a balance needs to be struck between the rights of both victims. There is no pronounced sentence policy in India's criminal justice delivery system as in the USA and UK. The article also states the need to implement a certain amount of coercive power within a parliamentary term, to uphold its own rights and international obligations, in certain principles and policies. This article outlines India's current policy on sentencing, the rationals and aims of the sentence, the nature and role of aggravating and attuning factors, the sentences given to different types of crimes and offenders. The role of sentence policy after the trial is also taken into account⁵.

Principles of criminal justice

A certain degree of social control exists within each society and there is an ethical moral rationale behind it. The concept of social control is based on justice principles. A certain type of penalty is inflicted on a person who depicts some kind of devioration from this prescribed behaviour, social custom or rule. Society to society and diversion to deviation will differ from this infliction. Both the crime and society are the result of the kind of infliction and punishment. Some societies only care about the victim, whilst others care not to punish but to reform the convict. A country's scheme for punishing its offenders can be called a policy of conviction. The sentencing policy reflects the judgment and the justification of a certain crime in society. It is the principal justification for the delivery of a country's criminal justice system. Guidelines on

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² Section 304 of CRPC

³ Section 354(3) of the Code of Criminal Procedure provides that the Court must give the reasons for the sentence awarded. <https://criminallawstudiesnluj.wordpress.com/2020/03/22/scope-of-judicial-discretion-in-sentencing/>

⁴ Article 21 of the Indian Constitution

⁵ Sec 53 under Chap. III of Indian Penal Code, 1860.

sentencing can be seen as a formulation for the calculation of what is right for a specific crime. This article does not focus on crime type but on punishment type and generality in the criminal justice system.

At the end of the day, punishment and sentencing are a union, but are distinct entities and often confused. Often they are interchangeably used and lead to contradictions. The penalty policy is the operationalization of the penalty⁶. A phrase defines and defines the punishment provided for in the land law. Judgments contain penalties for criminal matters. Substances, the sentence⁷ and the penalty mean that the latter impose a penalty where the former is an opinion.

Penalties in India were defined in Chapter 3 of Section 53 of the Indian Penal Code of 1860. Under Section 53 of the IPC, six types of punishments, including death⁸, life sentence, rigorous or simple prison, forfeiture of property and fines are available under Indian law. Forms of punishment must comply with certain criminal law principles. The type of punishment must be proportional, always proportionate to the crime committed, and the rights of the offender and of the general public should be taken into account.

The problem underlying today's criminal law is that punishment in criminal justice is not being carried out. No sentencing policy was established as clearly as punishment types, where both concepts constitute important criminal law aspects. A fixed system is needed due to the indeterminate and inconsistent punishment policy. A sentencing policy is needed in India to avoid the disparity in this regard. The aim of penalty policies is to promote a specific, fair society and to protect both the victim and the convict's rights. It helps with complaints as well.

In India, the punishment and sentencing for a specific offense lie in immense inconsistency and disparity. The following offenses under the Indian penal code are punished, for example

Murder

The punishment for murder is laid down in Section 302 of the Indian Penal Code⁹. The murderers are punished by: According to this section:

- 1) death;
- 2) Life in jail;
- 3) It is also subject to fine the convict

⁶ <http://racolblegal.com/sentencing-policy-in-india-an-overview>

⁷ [https://en.wikipedia.org/wiki/Sentence_\(law\)](https://en.wikipedia.org/wiki/Sentence_(law))

⁸ Section 302 of the Indian Penal Code

⁹ <https://indiankanoon.org/doc/1560742/>

The Indian Penal Code defines assassinations as part of Section 300¹⁰. Under this section, guilty homicide is deemed to be assassinations:

- 1) If the act was done for the purpose of killing.
- 2) If it is done for the purpose of causing body damage, the offender is aware that the offender will kill.
- 3) In the ordinary course of life, if it is done in an effort to cause any person body harm and the body injury that is supposed to be caused is sufficient to cause the death.
- 4) If the person who commits the act knows that it is extremely dangerous and could result in death or body injury, but that the act would still be killed .

In Section 300 there are also exceptions¹¹ to situations in which a guilty murder in certain situations is not considered to be murder.

- 1) If the act is perpetrated because of serious sudden provocation, it kills a person who gave the provocation;
- 2) When the act is done to promote public justice by a public servant that is authorized to perform the act;
- 3) When the action is taken to defend itself against further harm (private defense rights);
- 4) When the act is carried out with the victim's consent;
- 5) If the act results from a sudden struggle.

Theft

The offense against Theft is subject to property offenses ranging from section 378 to 462. Sections 378 through 382 deal with theft. Theft is an offense in which a person's mobile property is removed and removed without his or her consent. Section 378 of the IPC¹² defines theft. The penalty for acts of robbery was also defined in section 379 of the IPC¹³ at the same time. Section 378 of the Indian Penal Code defines theft as, for the purpose of such take, any person who wishes to take moving property without honesty and from the possession of any person without his or her consent, moves the property to commit theft.

¹⁰ Section 300 of ipc <https://www.latestlaws.com/bare-acts/central-acts-rules/ipc-section-300-murder/>

¹¹ Exception to offence of murder 300 of ipc <https://www.legalbites.in/law-notes-ipc-exceptions-to-offence-of-murder>

¹² <https://indiankanoon.org/doc/1280620/>

¹³ <https://lawrato.com/indian-kanoon/ipc/section-379>

Five explanations to Section 378 are attached to clarify if an act is theft in order to establish the offense under Sec 379 IPC.

The following ingredients are required to constitute the crime of robbery:

- 1) The accused must take the property with a dishonest intention¹⁴.
- 2) The property needs to be moving¹⁵
- 3) The property must be removed from someone else's possession, resulting in one incorrect gain and another in unjust loss;¹⁶
- 4) The property has to be moved in order to obtain property by disappointment;
- 5) Taking must be without the consent of that person (explicitly or implicitly)¹⁷.

RAPE ¹⁸

A man who, except in the case following, has a sexual relationship with a woman in the event of one of the following six descriptions is said to commit "rape":

(First) — Without her permission.

(Third) — with your consent, if you have obtained your consent by putting you or anyone you are looking for fear of death or hurt.

(Fourthly)—with your permission when you know he's not your husband, and that your consent is given as she believes that he's another man she's lawfully married to or believes herself to be.

(fifthly) If, with their consent, they can not understand the nature and consequences of the consent given by them, when they give such consent because they are unhealthy of mind or intoxicated or are administered personally or by any other stupefying or unhealthy substance.

(Sixthly) — If she is under sixteen years of age, with or without her consent. Explain.—The sexual intercourse necessary for the offense of rape can be sufficiently penetrated.

(Exception)—The sex with a man's wife is not rape, the wife is not under the age of fifteen.

Anyone committing rape offenses will be punished by a strict prison term of not less than 10 years, but life imprisonment, which will mean imprisonment for the rest of the natural life, and

¹⁴ Ramratan v/s state of Bihar, AIR 1965 SC 1926

¹⁵ Himachal Pradesh v/s Prem Singh (1989) 3 Crimes 12(15)

¹⁶ State of Maharashtra v/s Vishwanath, AIR 1979 SC 1825

¹⁷ K.N Mehra v/s State of Rajasthan AIR 1957 SC 369

¹⁸ Section 375 of indian penal code

also liable to a fine. In addition, a juvenile, depending on the situation of the case, may be tested as an adult. The Ministry of Women and Child Development proposed this amendment¹⁹ in 2014. This was in the background of a woman's gang rape in a bus in Delhi in 2012²⁰, which resulted in her death. One of the perpetrators was a 17-year-old who brought forward the amendment to the Department (though this can not have been applied retrospectively). In the age group the then Minister, Maneka Gandhi, quoted an increase in the number of offenders; activists for child rights objected to this change. The J. S. Verma Committee also suggested that it was not inclined to cut a young person's age from 18 years to 16 years. In 2015, the change occurred.

In which case this discretion merits the minimum and what case the maximum merits depends on the discretion of the judges. In India, judges take account of different factors that guide the case, such as severity, liability, guilt and sentence. The judge's mind, personal prejudice and considers this sentence to be entirely an end result. In accordance with Article 354(1)(b)²¹, the criminal code states that a judge shall state the reasons for the judgment in awarded sentence, as well as Clause 3 of this same article, that if it concerns himself with a death or imprisonment for li, it must also be stated in Clause 3 of the same section, whereas a judge's discretion is to be judged with a sentence. Whilst deciding the case and justifying their position on the sentence awarded, the law in response to this question led to certain logics such as aggravating and mitigating conditions.

Circumstances or factors exacerbating the seriousness of the crime are these. While mitigating circumstances, the severity of the crime is reduced.

In the case of *Raju v. State of Karnataka*²², the Indian judicial authorities emphasized that the sentence of a conviction had not been reduced, only because the victims were allegedly immoral in law.

The Supreme Court observed, in *Soman v. State of Kerala*:

“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 of the charges.”

¹⁹ Juvenile Justice Amendment Bill, 2018

²⁰ Nirbhaya case

²¹ Section 354B – Assault or use of criminal force to woman with intent to disrobe
<https://legodesk.com/legopedia/section-354-ipc/>

²² <https://www.casemine.com/judgement/in/5acf48c018a681287db54aa1>

State of M.P. v. Bablu Natt²³, the Supreme Court observed that “The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with.”

The lower courts, in the case of Mohd Chaman v. State²⁴, saw the situation as the rarest case imposed by the death penalty, had brutally raped and killed one-year-old Accused. In the lower courts the death penalty was imposed, but when sent to the high Court for clarification, the convict was rejected and the sentence reduced.

The Indian courts have over a period of time indicated indirectly that a sentencing policy is needed by inconsistent decision-making and defective justification. The idea of aggravating and mitigating factors also depends on the case, the rare concept of the rare case is a case, but its factors are unknown. What could be brutal for one person may not be for the other person is entirely over and above his discretion.

After the trial is completed, the need for a sentencing policy does not end. This enters into play again when the offenders decide on their probation. Section 360²⁵ and Section 361²⁶ govern the release of convicts for good behaviour, and the recording of special reasons in some cases. Again, every prison authority, each prison circumstance and the type of crime committed by the offender depend on the concept of good.

The Malimath Committee, set up under the Ministry of Home Affairs, set up to recommend the prevalent criminal justice system, felt the need for a sentencing policy. The recommendation was made. In its decision on the case, the Committee emphasized the broad discretion of judges and felt the need to minimize this through its regulation of law issues and, to a certain extent, the power of judges. The Committee affirmed that an expert committee needed a thorough study on this matter. The committee noted a different, cognizable and uncognizable new crime classification code. There should be a social welfare policy. In 2008, the Committee of Madhava Menon reiterated the need for a policy to be drafted and set sentencing guidelines. The Committee reiterated the need.

The purpose of sentencing policy should be 'dissuading and protecting society from evils,' as set down in the White Paper (the sentencing policy, which was introduced into the British parliament), The failure to have a proper conviction policy violates not only the right of victims and convicts but also the fundamental human right under the Constitution, i.e. the right to be treated equally in accordance with the law. It is impossible to completely remove the discretionary powers of the judges. What can be established, however, are certain guiding

²³ State Of M.P vs Bablu Natt on 18 December, 2008 <https://indiankanoon.org/doc/1155765/>

²⁴ Mohd.Chaman vs State (N.C.T.Of Delhi) on 11 December, 2000

²⁵ Kamalakshu v/s State of Kerala <https://www.casemine.com/judgement/in/56b49566607dba348f012c06>

²⁶ Shajahan vs State Of Kerala on 29 July, 2010

principles which reduce the discretion of a judge and lay down a penalty-based principle to enable the Indian criminal justice system to adopt a more rights-based approach?

Conclusion

Justice for social members is of paramount importance in any legal system. Protection of rights by means of fair trials, and an adequate punishment mechanism that can strike a balance between the victim and the defendant, need to be envisaged. The cases can not be resolved any longer through the judges' granting of so much authority and the criminal justice system leaving the judges with whims and imaginations. Judges support their views with reasonableness, but this argument can not fulfill the needs of the delivery systems of criminal justice and leads to incoherent law. The need for India to achieve a coherent legal system is a sentencing policy that reduces this broad latitude. The guidelines for policy recommendations and policies should be adopted as standard by the Malimath Committee.

There's always such a rush to judgment. It makes a fair trial hard to get.
John Grisham