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ARTICLE

Determination of Sentences in India: Policy and Practice

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Abstract

Judiciary and litigation are the two most prominent types of activities within the legal profession. The judicial aspect of the profession entails the interpretation of laws and the administration of justice in a fair and impartial manner. As a concept, justice entails protecting society from offenders and evildoers who deviate from society's norms and engage in illegal behaviour by punishing and sentencing them. Due to the predominance of the human factor in the legal profession, which has such a significant impact on the lives of all members of society, it is crucial to investigate whether there is a guiding force behind dispensing justice and, if so, how effective these guidelines or policy measures have been. As crime rates rise and societal standards fall in the contemporary era, the legal profession grapples with the complexities of modern criminal behaviour. Particularly in the realm of judicial sentencing, there is a need for guidelines that account for the diversity of crimes and their individualistic nature. In India, long pungencies in court cases and a decline in the State's conviction rate further exacerbate these issues. This paper examines the pressing need for comprehensive, well-structured sentencing guidelines that promote transparency, fairness and efficiency in the judicial process. Through a detailed review of recent high-profile court cases and an analysis of current practices and policies, this paper highlights the urgency of reform in the sentencing process to enhance public trust in the legal system. This article provides additional information on the subject.

Keywords judiciary; sentencing; criminal justice; legal profession; crime rates; conviction rate; sentencing guidelines; judicial system in India; legal reform

INTRODUCTION

A rapid rise in crime rates marks the contemporary era,[1] including serious offences such as rape (Mishra and Pachauri 2018), murder and socio-economic financial offences (Chugh 2020). This rise, juxtaposed with falling societal standards,

[1]See the *Crime in India 2020* report (National Crime Records Bureau 2020). The report is the oldest and the most prestigious publication by the National Crime Records Bureau (NCRB). The data are collected by the state crime records bureaux from the district crime records bureaux and sent to the NCRB at the end of every calendar year under the reference.

demands a comprehensive and effective law enforcement framework (Shivani 2022). This compelling need for reform is all the more crucial, as traditional punitive measures seem increasingly ill-suited to the complexities of modern crime. Our legal framework should be effective in curbing the current state of affairs and be adaptable to the constantly evolving dynamics of crime. However, amidst these challenges, our judicial system faces a complex conundrum.

Before delving into the heart of the matter, there is no straight-jacket formula for the curse of discipline, as each departure produces a unique set of results. Understanding the individualistic nature of crime leads us to a complex conundrum within our judicial system. Despite the diverse nature of crimes, an accused's sentence is overwhelmingly determined by the specifics of his or her conviction. In India, the decline in the State's conviction rate is also questioned in light of the "perfunctory investigations" conducted by the State investigation authority.[2] Due to the same issue, there is a backlog of cases being heard by the High Court to determine an individual's sentence, while the accused spend decades in judicial custody while the trial has yet to commence (Chowdhury 2022).

A pending appeal while the convict is in judicial custody and has undergone certain years of sentence on a case-by-case basis violates his/her fundamental right as protected by Article 21 and is "cumbersome" to the larger bench determining his/her sentence.[3] Delving deeper into the issues marring our judicial system, we encounter the problematic stance of the government as well.

Following the "principle of analogical reasoning", in a country where the government has a "recalcitrant attitude" toward appointing High Court judges, while the result of long pendency of cases results in inadequacies within the system on cases being heard, it directly adjudicates into the policy and practice for determination of sentence according to the discretion of the judicial system, taking into account the long pendency of cases.[4] This recalcitrant attitude breeds systemic inadequacies, leading to extensive delays in case hearings, affecting the determination of sentences. The longer these cases pend, the more discretion the judicial system is forced to exercise, often at the cost of consistency and fairness. To help the judicial system in the determination of sentencing, there is an urgent need for some form of guidelines (Frase and Mitchell 2018). What further exacerbates the situation is the lack of clear-cut guidelines for sentence determination, leaving it largely subject to individual interpretation and thereby creating the potential for discrepancies.

In criminal law, "sentence" refers to the conduct of the Court during a *prima facie* trial in which the accused is presumed guilty despite the assumption of innocence

[2]The Honourable Mr Justice B. Pugalendhi expressed his concern in the case of *Balamurugan v. State* represented by the Inspector of Police, Thirupachethi Police Station, Sivagangai District [Crime No. 62 of 2010] Crl.A(MD) No. 39 of 2015. Retrieved 20 July 2023 (https://www.livelaw.in/pdf_upload/pdf_upload-384436.pdf).

[3]The Honourable Mr Justice Sanjay Kishan Kaul and the Honourable Mr Justice M. M. Sundresh express concern while the Supreme Court registers the *suo motu* case on long pendency of criminal appeals in Allahabad High Court. The *coram* of Honourable Judges decided to lay down the guidelines regarding the grant of bail to convicts of sentences due to delay in the hearing.

[4]The Honourable Supreme Court urged the government to follow the timeline for judicial appointments in the case of *M/S Indian Solar Manufacturers Association v. Solar Power Developers Association & Ors.* SLP(C) No. 11623/2021. Retrieved 20 July 2023 (https://www.livelaw.in/top-stories/centres-not-appointing-hc-judges-for-years-after-collegium-clearances-judicial-delay-supreme-court-179194).

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(Lubitz and Ross 2001). The situation in which a convict whose appeal is pending and who has already served a significant portion of his sentence in judicial custody also presents a serious concern. Consequently, any outcome that follows a conviction is a sentence. It is a well-debated topic that there is a need for legitimate sentencing rules to eliminate disparities in punishment (determination of sentencing).

A fair and balanced sentencing system is a cornerstone of any robust judicial structure. The predicament of a convict who has served a considerable part of their sentence while an appeal is yet to be decided places a burden on the larger bench responsible for sentencing decisions. This situation is not only cumbersome but also risks infringing upon the individual's fundamental rights, as protected under Article 21, thereby underscoring the need for judicial efficiency and due process.

Judicial decisions such as those made in recent high-profile cases only underscore the variability of sentencing. The Honourable Supreme Court of India recently enhanced the sentence of Congress Leader Navjyot Singh Sidhu with a sentence of one year to be found guilty under Section 323 of the Indian Penal Code 1860 (IPC)[5] quoting, "The hand can also be a weapon by itself." However, the Honourable Apex Court gave a different sentence to some other accused in different cases, where the accused was found guilty under Section 323 of the IPC.[6] The sentence of imprisonment was found fit to reduce it from six months to the period undergone, while the Honourable Apex Court underlined that "At the time of occurrence, they were not armed." These disparate outcomes highlight India's current approach and practice, where aggravating and mitigating factors are considered when imposing a sentence.

This can lead to different punishments for offenders who have essentially committed the same crime. The call for comprehensive, well-structured sentencing guidelines is more urgent than ever in light of these pressing issues. Such guidelines would provide a systematic approach to sentencing and promote transparency, fairness and efficiency within the judicial process, enhancing public trust in the legal system.

SENTENCING FUNCTION IN INDIA AND ITS INTERPRETATION

Two universal principles form the foundation of sentencing policy in every civilized society. One is the principle of "just deserts"; the other is "individualization". The Indian judicial system, although quite comprehensive, has grappled with the lack of standard sentencing guidelines, leading to inconsistencies and discrepancies in the application of sentencing principles, particularly the principles of "just deserts" and "individualization". First, the principle of "just deserts"[7] is based on the theory of penological retribution. The theory of retribution is founded on the maxim "an eye

[5]*Jaswinder Singh (Dead) Through Legal Representative v. Navjot Singh Sidhu & Ors*, Review Petition (Crl.) No. 477 of 2018 in CRL.A. No. 60 of 2007 with Review Petition (Crl.) No. 478/2018 in CRL.A. No. 58/2007 and Review Petition (Crl.) No. 479/2018 in CRL.A. No. 59/2007. Retrieved 20 July 2023 (https://indiankanoon.org/doc/70176279/).

[6]*Suryakant Baburao @ Ramrao Phad v. The State of Maharashtra and Others*, Criminal Appeal No. 1161 2019 (Arising out of SLP(Crl.) No. 8894 of 2018). Retrieved 20 July 2023 (https://indiankanoon.org/doc/102708669/).

[7]*Naveen @ Ajay s/o Datta Ji Rao Gadke v. The State of Madhya Pradesh*, Criminal Appeal No. 3830/2018. Retrieved 20 July 2023 (https://www.livelaw.in/pdf_upload/pdf_upload-359170.pdf).

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for an eye".[8] According to the principle of just punishment, there should be strict guidelines for punishing offenders. There should be no discretion in prescribing identical punishments for identical offences. This principle holds that the perpetrator should be punished similarly if committing an offence.

The principle of "just deserts" is deeply rooted in retributive justice, emphasizing the belief that punishment should fit the crime. This principle argues for proportionality, where the severity of the punishment matches the severity of the crime. However, without established guidelines, applying this principle can lead to disparities. In essence, two offenders who commit the same crime might receive substantially different sentences depending on various extralegal factors, such as the individual judge's beliefs or the particularities of the case.

Consider this example: Person "A" commits the theft of a bicycle, while Person "B" commits the theft of a vehicle. According to the principle of "just deserts", both should receive the same punishment. However, would not it be unfair to punish them equally?

Section 379 of the IPC, which discusses the punishment for theft, gives the judge the discretion to impose a maximum of three years in prison, a fine, or both. Let us modify the example so that both individuals stole a "car". A judge may impose varying punishments for the same serious offence, highlighting the role and impact of judicial discretion. This abundance of judicial discretion poses potential issues, especially regarding consistency and fairness.[9]

It is remarkable that in India, a country of more than one billion people, we lack "sentencing acts" and statutory guidelines for determining sentences, given that most Western nations have them (Mustafa 2018). In the past two decades, 71 blackbucks have been killed, but we are unaware of any other five-year prison sentences for "blackbuck hunting" other than the famous conviction of Bollywood superstar Salman Khan (Jain 2018). Is it an art or a science to calculate a convict's sentence? What elements do judges examine while deciding the most appropriate punishment? We will analyse the second foundation principle to understand the concept and policy better.

The other principle is that of "individualization", which contrasts sharply with the principle of "just deserts".[10] This principle states that individual factors like the intention of the criminal, how the crime was committed, the crime's magnitude, the crime's abhorrent effect, and other mitigating or aggravating factors should be kept in mind while sentencing. It is based on the utilitarian principle of the greatest good for the greatest number (Bentham 1907 [1789]). This theory provides discretion to the judges in laying down sentences for punishing the offenders and, according to Section 31 of the Code of Criminal Procedure, 1973 (CrPC), leaves full discretion with the Court to order sentences within the Indian jurisdiction.[11] Given these complexities, comprehensive sentencing guidelines could play a crucial role in harmonizing these two principles

[8]See Government of India, Law Commission of India (2014). This report talks of the relevance of the Law Commission of India's 35th Report of 1967 and the maxim "an eye for an eye".

[9]*State of Gujarat v. Patel Akshaykumar S/O Kaushikbhai Ishwarbhai*, R/Criminal Confirmation Case No. 1 of 2016, R/Criminal Appeal No. 634, 1150 of 2016.

[10]*R. v. Bissonnette*, 2022 SCC 23, Supreme Court of Canada; File No. 39544. Retrieved 20 July 2023 (https://www.canlii.org/en/ca/scc/doc/2022/2022scc23/2022scc23.html).

[11]See the judgement by the Honourable Mr Justice R. Banumathi in the case of *O. M. Cherian @ Thankachan v. State of Kerala & Ors*., Criminal Appeal No. 2387 of 2014. Retrieved 20 July 2023 (https://indiankanoon.org/doc/50906798/).

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while ensuring fairness, transparency and consistency in the judicial process. This principle considers the offender's personal circumstances and the crime's specific context. By this principle, two individuals committing the same crime might receive different sentences based on differential factors like their background, intention during the crime, and the effect of the crime, among others.

While the "just deserts" and "individualization" principles often represent opposing viewpoints within criminal justice, most judicial systems, including India, seek to establish a delicate balance between them. Nonetheless, in the Indian context, the glaring absence of explicit sentencing guidelines magnifies the inherent tension between these two principles, frequently culminating in an inconsistent and potentially inequitable pattern of sentencing.

Under Section 235(2) of the CrPC, the presiding judge is obliged to provide an opportunity for the convicted party to be heard on the issue of sentencing after their conviction. This statutory provision enables the judge to contemplate and assess various factors relating to the offence and the offender. Nevertheless, without clear sentencing guidelines, this discretionary power vested in the judge may result in an erratic and inconsistent application of "just deserts" and "individualization" principles.

To illustrate, consider the case of theft. A judge who firmly adheres to the "just deserts" principle may advocate for identical punishment for all transgressors, irrespective of their circumstances. Conversely, a judge more inclined towards the "individualization" principle may dispense varying sentences depending on the defendant's economic status, motivation or prior criminal records. As a result, the interpretation of the same law may yield divergent punishments across different courts, thus engendering a need for uniformity and predictability in sentencing.

Additionally, the principle of proportionality, inherent in the doctrine of "just deserts", also finds its place in Article 21 of the Indian Constitution, securing the rights to life and personal liberty. The non-existence of sentencing guidelines may culminate in penalties that infringe upon this fundamental constitutional tenet, as it becomes challenging to gauge the proportionality of the punishment relative to the gravity of the crime without a defined standard.

Thus, the existing deficit of sentencing guidelines in India leads to an inconsistent application of the "just deserts" and "individualization" principles, creating the potential for inequity, unpredictability and contravention of constitutional rights. A robust implementation of comprehensive sentencing guidelines could offer a more structured framework that harmonizes these two principles, ensuring greater fairness, transparency and consistency in sentencing. Furthermore, such guidelines would bolster the credibility of the judicial process and sustain public confidence in the justice system.

THE NEED FOR SENTENCING GUIDELINES IN INDIA

The urgent necessity for comprehensive and well-structured sentencing guidelines in India cannot be overemphasized. As discussed earlier, the wide scope of judicial discretion and the absence of standardized sentencing policy often result in a wide discrepancy in the determination of sentences for similar offences. This, in turn, undermines the basic principles of justice – fairness, consistency and predictability. It is pertinent to note that the courts in India have repeatedly recognized the need for structured sentencing guidelines.

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The Honourable Supreme Court of India has repeatedly observed that it is time for the legislature to revisit sentencing policy reflected within the country. This sentiment was echoed and clustered in numerous judgements of the Honourable Apex Court of the Country, whereby the punishment should act as a deterrent and is expected to be proportionate to the gravity of the offence. A penalty should serve as an adequate deterrent, not less than what is necessary to dissuade potential crimes. The common thread running through these judgements is the need for a comprehensive and objective sentencing policy that bridges the gap between the crime and its punishment.

An ideal sentencing guideline in India should seek to harmonize the principles of "just deserts" and "individualization" and also ensure a balance between retribution and rehabilitation. In light of the above, the following recommendations can be made.

Establishing a Sentencing Commission

It is incumbent upon the Government of India to contemplate the establishment of a Sentencing Commission analogous to the paradigmatic frameworks prevalent in the United Kingdom and the United States. Comprising eminent legal scholars, seasoned practitioners of law, astute social workers and distinguished retired judges, this Commission would be entrusted with formulating detailed and contextually pertinent sentencing guidelines. The elucidation of legal literature, conjoined with the analysis of empirical evidence, propounds the premise that initiating a Sentencing Commission can serve as a potent instrument in mitigating the prevalent inconsistencies and disparities plaguing the sentencing process (Tata 2007). A case in point is the Sentencing Council for England and Wales, which has efficaciously promulgated comprehensive guidelines that hold binding authority over all courts within its jurisdiction (Roffee 2015). Similarly, the US Sentencing Commission has indelibly influenced the standardization of the sentencing process across the United States (Frase 1999). It is of paramount importance to carefully consider the unique sociocultural tapestry that characterizes India while conceptualizing a Sentencing Commission. This body must meticulously navigate the delicate equilibrium between addressing issues of disparity in sentencing and maintaining an acute sensitivity towards the intricate and diverse nuances of Indian society. It is a pursuit that requires both judicious insight and an understanding of the distinctive characteristics of the Indian socio-legal landscape.

Standardizing the Principles of Sentencing

The sentencing guidelines should provide a clear and standard interpretation of the sentencing principles, including "just deserts" and "individualization". This would eliminate ambiguity and ensure a uniform application of these. A plethora of legal scholarship underscores the necessity of standardizing the interpretation of sentencing principles. Clear guidelines that articulate the balance between the "just deserts" and "individualization" principles can minimize the potential for judicial discretion to result in inconsistent outcomes (Roberts 2005). "Just deserts", which focuses on the proportionality of the punishment to the crime, is considered a cornerstone of fair sentencing. Conversely, the principle of "individualization" allows for consideration of individual circumstances, such as the offender's record and the specific context of the

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crime (Tonry 2009). Striking a balance between these principles is complex, but ensuring that sentences are fair and equitable is crucial (Bagaric 2000). Therefore, a standardized interpretation of these principles provides a consistent framework that guides judges in applying sentencing. It also provides predictability in the sentencing process, which enhances the criminal justice system's legitimacy and upholds the public's trust and principles across different courts (Roberts et al. 2003).

Considering Aggravating and Mitigating Circumstances

The guidelines should list common aggravating and mitigating factors that must be considered while sentencing. This would ensure that all relevant factors are taken into account and would reduce the scope for individual bias. Such a methodology would ensure the holistic consideration of all germane factors, thereby curbing the potential for individual bias and promoting a more equitable and balanced application of justice. Aggravating circumstances typically refer to aspects of the offence or the offender's past conduct that may increase the severity of the sentence. This may include, for instance, the use of a deadly weapon during the commission of the crime, the severity of the harm inflicted, the vulnerability of the victim, or a history of similar offences (Cassell and Luna 2011). Conversely, mitigating factors, such as lack of prior criminal history, evidence of remorse, or substantial cooperation with law enforcement, might reduce the severity of the sentence imposed (Frase 2009). Articulating these factors in sentencing guidelines provides a reference point for judicial discretion, anchoring decisions within established norms (Roberts 2005). This transparency and structure are critical in ensuring that cases are treated alike, thus upholding the principle of equality before the law. They also provide nuanced consideration of individual circumstances, thereby balancing the principles of "just deserts" and "individualization" in sentencing (Tonry 2009). By delineating common aggravating and mitigating factors, sentencing guidelines can help foster consistency and fairness, while ensuring the punishment is proportionate and tailored to both the crime and the offender.

Guidelines for the Use of Discretion

The guidelines should provide a clear roadmap for exercising judicial discretion in sentencing. However, there have been judgements on all this while deciding the ambit of judicial discretion. The concept in itself is complicated with the peril in existence due to the change of factual matrix from case-to-case basis. The Sentencing Commission may highlight clear pretexts and categories of offences, which would prevent the arbitrary use of discretion and ensure a more balanced and fair approach to sentencing. The use of discretion is later discussed in the "Sentencing Deterrence and Denunciation" section below.

Regular Review and Update of Guidelines

The sentencing guidelines should not be static. A mechanism should be in place to regularly review and update the guidelines, considering the changing societal values and crime patterns.

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Implementing comprehensive sentencing guidelines would help alleviate the current inconsistencies and disparities in applying sentencing principles. However, it must be noted that guidelines alone cannot solve all issues associated with sentencing. They must be complemented with other reforms, such as improving the efficiency of the judiciary, enhancing the transparency of court proceedings, and ensuring the independence and accountability of the judiciary.

SENTENCING DETERRENCE AND DENUNCIATION: POLICY AND PRACTICE

In India, it has been observed that a combination of both policies, deterrence and denunciation, must be implemented.[12] Both theories, with a combination, are superlatively suited for India's societal demographics, and, as a result, there are guidelines for sentencing offenders, but they are not very strict and leave room for judges to apply their minds to the given facts and circumstances and determine the sentence (Roffee 2015). As a result, judges in India have too much discretion concerning punishment. Some judges base their decisions on the deterrence theory. At the same time, some follow the reformation theory (Premani 2021). Therefore, the judge's sentence would be based on the theory of punishment that the judge believes to be correct. Thus, we do not observe a unified theory of punishment. Consider, for example, the sedition law, for which Section 124A of the IPC specifies the punishment. The offence is punishable by between three years and life in prison. This gives the judge too much discretion.

Though given, this structure's drawback is some arbitrariness, which academics and practitioners have repeatedly condemned. In March 2003, the Malimath Committee (the Committee on Reforms of Criminal Justice System) gave a report (Government of India, Ministry of Home Affairs 2003) that underscored the requirement for condemning rules to limit the vulnerability in granting sentences expressing that the IPC prescribes only the minimum and maximum punishments for offences without laying down any guideline for infliction of punishment in proportion to the crime. Therefore, each judge exercises discretion, resulting in a sentencing system that needs more uniformity. This requires a thorough examination by an expert statutory body (Government of India, Ministry of Home Affairs 2003:170).

Further, the Madhav Menon Committee, in the year 2008, repeated the fact that the nation is in dire need of a sentencing policy. Also, in the case of *State of Punjab v. Prem Sagar & Ors*[13] the Apex Court observed that we have failed to have a uniform sentencing system. On similar lines to the Malimath Committee report, the Supreme Court, in the case of *Soman v. State of Kerela*[14] stated:

> 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

[12]Ibid.

[13]*State of Punjab v. Prem Sagar & Ors* [Arising out of SLP (Crl.) No. 4285 of 2007]. Retrieved 20 July 2023 (https://indiankanoon.org/doc/1889684/).

[14]*Soman v. State of Kerela* (2013) 11 SCC 382. Retrieved 20 July 2023 (https://indiankanoon.org/doc/27726153/).

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> 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.

In the CrPC, according to Section 360, it is compulsory to have the sentencing hearing where all the mitigating and aggregating circumstances must be heard. However, in reality, only one hearing is done. Hardly a second hearing is held (Rashid 2014).[15]

In the landmark case of *Santa Singh v. State of Punjab*,[16] while dealing with the true scope of Section 235(2) of the CrPC, the Supreme Court observed:

> This provision is clear and explicit and does not admit of any doubt. It requires that in every trial before a Court of Sessions, there must first be a decision as to the guilt of the accused. In the first instance, the Court must deliver a judgment convicting or acquitting the accused. If the accused is acquitted, no further question arises. However, if he is convicted, the Court has to "hear the accused on the question of sentence, and then pass sentence on him according to law". When a judgment is rendered convicting the accused, he is, at that stage, to be allowed to be heard concerning the sentence, and it is only after hearing him that the Court can proceed to pass the sentence.

A cumulative reading of the findings mentioned above highlights the numerous flaws in the Indian judicial system that require improvisation in the determination of sentencing laws. The IPC was enacted in 1860. It has almost been more than one century and six decades since its implementation. Consequently, the IPC's fines and penalties are the same as they were introduced, and parallel amendments have not been done since then. In the criminal justice system, proof must be beyond a reasonable doubt.[17] Secondly, if the accused is to be proven guilty, his guilt must be proven beyond a reasonable doubt, or otherwise, he is presumed innocent.[18] The judge's discretion in determining whether or not the defendant is guilty beyond a reasonable doubt undermines the Indian judicial system. This gives the judges arbitrariness and subjectiveness whether or not the guilt is established beyond a reasonable doubt. Effectiveness requires a framework for determining when and how to employ aggravating and mitigating factors to reach a conclusive and determinable decision concerning proof beyond a reasonable doubt.[19]

To summarize the above discussion, let us take the example of sentencing in the case of death penalties and how the sentencing policy has developed in India. The first case that talked about the death sentence and that provided the base for further

[15]See *State v. Selvi J. Jayalalitha & Ors*, 2014. See "In the Court of the 36th Addl. City Civil & Sessions Judge (Spl. Court for Trial of Criminal Cases against Kum. Jayalalitha & Ors)." 27 September 2014, retrieved 1 August 2023 (https://www.thehindu.com/news/resources/article17318620.ece/binary/Jayalalithaa_Assets).

[16]*Santa Singh v. State of Punjab*, 1976 (4) SCC 190.

[17]Latest view of sentencing policy concerning the judgement of the Honourable Supreme Court & High Court, Workshop List Title No. 94, Maharashtra Judicial Academy and Indian Mediation Centre and Training Institute.

[18]Ibid.

[19]Ibid.

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development was the case of *Rajendra Prasad v. State of Uttar Pradesh*,[20] where one accused, Rambharosay, was sentenced to life imprisonment and was out on parole. During the period out of jail, he murdered Mansukh.[21] He was tried for the murder of Mansukh and convicted of the same.

In the sentencing hearing, Justice Krishna Iyer emphatically emphasized that the imposition of the death penalty contravenes the provisions of Articles 14, 19 and 21 of the Constitution of India. Within the *obiter dicta* of the judicial decision, it was articulated that subjecting an individual to prolonged incarceration transforms their mental state into a vegetative existence, rendering executing such an individual futile and unjust. Moreover, Justice Iyer also highlighted the culpability of the prison authorities for their failure to facilitate the rehabilitation and reformation of the incarcerated individual (Swathi and Roja 2018).

Therefore, a discourse on the death penalty began from this judgement. The question of the constitutionality of the death sentence again arose in the case of *Bachhan Singh v. State of Punjab*.[22] This is the landmark judgement on the death penalty. This judgement stated that the death penalty should be given in rare cases. The death penalty should be given keeping in mind the following circumstances (Government of India 2015):

(i) Manner of commission of crime,
(ii) The motive for the commission of murder,
(iii) Anti-social or socially abhorrent nature of the crime, the magnitude of the crime,
(iv) The personality of a victim of crime.

These aspects, though, give a policy measure but do not curb discretion in any way. All these elements are subjective and subject to the satisfaction of the judge, which differs from judge to judge, their subconscious biases governing the decision. The example of the death penalty helps in highlighting the fact that it is just a misnomer that the statutes curb the discretion of the judges in sentencing, but, effectively, there are no curbing provisions. The policy guidelines laid down by the precedents provide a parameter for sentencing, but effectively they are of no good in curbing arbitrariness.

Generally, most of the sentencing provisions provide that the sentence may be provided in the prescribed parameter or as the judge may deem fit in the interest of justice, where the interest of justice is never defined and could never be defined. The interest of justice is so broad and includes many aspects within its ambit. There are no guidelines that prescribe what the ambit of interest of justice is. Therefore, defects in the sentencing measures should be corrected to curb arbitrary sentencing and provide uniform sentencing measures for offences and crimes committed similarly.

CONCLUSION

Law is a tool to govern society and maintain discipline. It should be applied fairly and squarely to all people alike, and there should be no room for personal discretions to seep

[20] *Rajendra Prasad v. State of Uttar Pradesh*, 1979 SCC (3) 646.
[21] Ibid.
[22] *Bachhan Singh v. State of Punjab*, AIR 1980 SC 898.

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in for its application. The law in contemporary times in India is full of discretion and arbitrariness. The sentencing policy of India is one of the prime examples of this. There need to be policy guidelines laid down in India to guide judges' decision-making. Even though policy guidelines exist, they do not help lower the judges' arbitrariness. The sentencing measures and guidelines should be more effective in providing for a substance that increases uniformity in giving sentences and should not be open-ended so that they are left to the complete discretion and satisfaction of judges. It is high time that the sentencing measures for the same crime should be made uniform, discrepancies must be removed, and the arbitrariness in sentencing measures ends.

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TRANSLATED ABSTRACTS

Abstracto

La audiencia y los litigios son los dos tipos de actividades más prominentes dentro de la profesión legal. El aspecto judicial de la profesión implica la interpretación de las leyes y la administración de la justicia de manera justa e imparcial. Como concepto, la Justicia implica proteger a la sociedad de los delincuentes y malhechores que se desvían de las normas de la sociedad y se involucran en comportamientos ilegales al castigarlos y sentenciarlos. Debido al predominio del factor humano en la profesión jurídica, que tiene un impacto tan significativo en la vida de todos los miembros de la sociedad, es crucial investigar si existe una fuerza rectora detrás de la impartición de justicia y, de ser así, qué tan efectivas son estas directrices o han sido las medidas políticas. A medida que aumentan las tasas de criminalidad y los estándares sociales caen en la era contemporánea, la profesión legal se enfrenta a las complejidades del comportamiento delictivo moderno. Particularmente en el ámbito de las sentencias judiciales, existe la necesidad de lineamientos que den cuenta de la diversidad de delitos y su naturaleza individualista. Los largos episodios punzantes en los casos judiciales y una disminución en la tasa de condenas del estado exacerban aún más estos problemas. Este documento examina la necesidad apremiante de pautas de sentencia integrales y bien estructuradas que promuevan la transparencia, la equidad y la eficiencia en el proceso judicial. A través de una revisión detallada de casos judiciales recientes de alto perfil y un análisis de las prácticas y políticas actuales, este documento destaca la urgencia de reformar el proceso de sentencia para mejorar la confianza pública en el sistema legal. Este artículo proporciona información adicional sobre el tema.

Palabras clave poder judicial; sentencia; justicia penal; profesión jurídica; tasas de criminalidad; tasa de condenas; directrices de sentencias; sistema judicial en India; reforma legal

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ABSTRAIT

Le judiciaire et le contentieux sont les deux types d'activités les plus importants au sein de la profession juridique. L'aspect judiciaire de la profession implique l'interprétation des lois et l'administration de la justice de manière juste et impartiale. En tant que concept, la justice implique la protection de la société contre les délinquants et les malfaiteurs qui s'écartent des normes de la société et adoptent un comportement illégal en les punissant et en les condamnant. En raison de la prédominance du facteur humain dans la profession d'avocat, qui a un impact si important sur la vie de tous les membres de la société, il est crucial de rechercher s'il existe une force directrice derrière l'exercice de la justice et, le cas échéant, quelle est l'efficacité de ces lignes directrices ou mesures politiques. Alors que les taux de criminalité augmentent et que les normes sociétales chutent à l'ère contemporaine, la profession juridique est aux prises avec les complexités du comportement criminel moderne. En particulier dans le domaine de la détermination de la peine judiciaire, il est nécessaire de disposer de lignes directrices qui tiennent compte de la diversité des crimes et de leur nature individualiste. De longues peines dans les affaires judiciaires et une baisse du taux de condamnation de l'État aggravent encore ces problèmes. Cet article examine le besoin pressant de lignes directrices complètes et bien structurées en matière de détermination de la peine qui favorisent la transparence, l'équité et l'efficacité du processus judiciaire. Grâce à un examen détaillé des récentes affaires judiciaires très médiatisées et à une analyse des pratiques et des politiques actuelles, ce document souligne l'urgence d'une réforme du processus de détermination de la peine pour renforcer la confiance du public dans le système judiciaire. Cet article fournit des informations supplémentaires sur le sujet.

Mots-clés pouvoir judiciaire; détermination de la peine; justice pénale; profession juridique; taux de criminalité; taux de condamnation; lignes directrices en matière de détermination de la peine; système judiciaire en Inde; réforme juridique

抽象的

司法和诉讼是法律职业中最重要的两种活动类型。 该职业的司法方面需要以公平和公正的方式解释法律和司法行政。 作为一个概念, 正义意味着通过惩罚和判刑来保护社会免受偏离社会规范和从事非法行为的罪犯和作恶者的侵害。 由于人的因素在法律职业中占主导地位, 对社会所有成员的生活产生如此重大的影响, 因此有必要调查司法公正背后是否存在指导力量, 如果有, 这些指导方针或措施的有效性如何□政策措施已出。 随着当代犯罪率上升和社会标准下降, 法律界正在努力应对现代犯罪行为的复杂性。 特别是在司法量刑领域, 需要制定考虑到犯罪多样性及其个人主义性质的指导方针。 法庭案件的长期棘手和该州定罪率的下降进一步加剧了这些问题。 本文探讨了对全面、结构良好的量刑指南的迫切需求, 以促进司法过程的透明度、公平性和效率。 通过对最近备受瞩目的法院案件的详细回顾以及对当前实践和政策的分析, 本文强调了量刑过程改革的紧迫性, 以增强公众对法律体系的信任。 本文提供了有关该主题的更多信息

关键词 司法; 量刑; 刑事司法; 法律职业; 犯罪率; 定罪率; 量刑指南; 印度司法制度; 法律改革

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خلاصة

يعتبر القضاء والتقاضي أبرز نوعين من الأنشطة في مهنة المحاماة ، ويتطلب الجانب القضائي من المهنة تفسير القوانين وإقامة العدل بطريقة عادلة ونزيهة. والأشرار الذين يخرجون عن أعراف المجتمع ويخرطون في سلوك غير قانوني من خلال معاقبتهم والحكم عليهم. نظرا لغلبة العامل البشري في مهنة المحاماة ، والتي لها تأثير كبير على حياة جميع أفراد المجتمع ، فمن الأمهية بمكان ما إذا كانت هناك قوة توجيهية وراء توفير العدالة ، وإذا كان الأمر كذلك ، ما مدى فعالية هذه الإرشادات أو تدابير السياسة. مع ارتفاع معدلات الجريمة وانخفاض المعايير المجتمعية في العصر المعاصر ، تتصارع مهنة القانون مع تعقيدات السلوك الإجرامي الحديث. في مجال الأحكام القضائية على وجه الخصوص ، هناك حاجة إلى مبادئ توجيهية تراعي تنوع الجرائم وطبيعتها الفردية. وتؤدي الحماسة الطويلة في قضايا المحاكم والانخفاض في معدل الإدانة في الدولة إلى تفاقم هذه المشكلات. تبحث هذه الورقة في الحاجة الملحة للحصول على إرشادات شاملة وجيدة التنظيم لإصدار الأحكام والتي تعزز الشفافية والإنصاف والكفاءة في العملية القضائية. من خلال مراجعة مفصلة لقضايا المحكمة رفيعة المستوى الأخيرة وتحليل الممارسات والسياسات الحالية ، تسلط هذه الورقة الضوء على الحاجة الملحة للإصلاح في عملية إصدار الأحكام لتعزيز ثقة الجمهور في النظام القانوني. توفر هذه المقالة معلومات إضافية حول هذا الموضوع

الكلمات ا لمفتاحية القضاء: الأحكام; العدالة الجنائية; المحاماة; معدلات الجريمة; معدل الإدانة; إرشادات الأحكام; النظام القضائي في الهند; الإصلاح القانوني

Parth Singh is a distinguished professional in India's legal fraternity. A graduate of O.P. Jindal Global University, he embarked on a diverse legal career, which included roles as the Law Clerk-cum-Research Assistant at the Honourable Supreme Court of India. His insights into India's complex judicial system and dedication to the pursuit of justice led to his appointment as an Empanelled Counsel for the State of Punjab. Currently, he serves as an Associate to the office of the Ld. Advocate General of Punjab. Throughout his career, Advocate Singh has shown an unwavering commitment to analysing and improving the mechanisms of India's judicial processes.

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