

Assessing Appropriate Punishment

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ABSTRACT

Uniform though a prisoner has the right to request, condemning is often seen as the most significant and last stage of the criminal justice system. It has the psychological impact of bringing justice to a satisfactory conclusion. However, the fact that in our country, the assessment of suitable punishment is based mostly on imprecise phrases such as aggravating or mitigating conditions or severity do not serve the aim of criminal justice administration. It's considered ambiguous because what one judge finds aggravating or extenuating need not/will not be the same for another. Few Committee Reports have proposed the laying of systematic guidelines to solve this problem. The purpose of this article is to highlight the current method for determining appropriate punishment, as well as the necessity for organized sentencing guidelines based on judicial precedents and Committee Reports. The study concludes that, in order to avoid this disparity in sentencing, the judiciary must establish a clear set of guidelines for sentencing policies, as well as "For particular actions that do not need the ultimate sentence but do necessitate a more serious sentence, life incarceration with repentance or release.

KEYWORDS

Convict, Punishment, Precedents, Remission, Vague.

1. INTRODUCTION

The climax of the legal discovery, legal action, indictment, and judgement are all steps in the operation, is the sentencing of a convict. Thus, the significance of condemning rests in the fact that it serves as the look of fairness as well as a future deterrence to potential lawbreakers. The choice of suitable punishment following an offender's conviction is frequently a complex task that needs considerable deliberation[1]. Though the law specifies the form and extent of the penalty that can be imposed for a crime, it is up to the Court to decide on a sentence that is appropriate for the crime and the offender in each case. The maximum penalty specified by law for every offense is meant for the most serious of its type, and it is rarely essential to go to the bulk in practice. The severity of punishment in any given case is strongminded by a quantity of factors, including the crime's purpose, seriousness, and character of the perpetrator, as well as his age, antecedents, and any mitigating or aggravating circumstances[2]. Neither the legislature nor the judiciary have developed formal sentencing rules in India at the moment. Few Committee Reports have advocated for the creation of consistent sentencing criteria so that criminals who commit similar offenses do not get disparate punishments. This article has been written in such a manner that it highlights the current sentencing method and the necessity for legal condemning strategies while pointing out the flaws in the current system[3].

2. DISCUSSION

2.1 The Concept of Penology Has Changed Over Time

The notion of Penology was ingrained in Indian history from the beginning, according to the evidence. It arose from the word "danda-niti" literally translates "judgment concept". Danda (punishment) was formed as a derivation of Dharma, according to Manu, India's foremost lawgiver. Despite the fact that criminology is a relatively new study in the West, it was a well-established discipline in our country before the Christian era. The Vedic, Smritisastras, and Kautilya's Arthasastras are examples of Vedas, include a wealth of literature on danda-niti or criminology.

The Power of Courts is covered in Chapter III of the Criminal Procedure Code. It establishes the maximum range of punishments that courts can inflict founded on their groups. It is indispensable to note that the penalty imposed for many types of offenses is more than the above-mentioned maximum; nevertheless, the magistrate cannot violate the sentencing limitations in such situations, although he does have the option of forwarding the accused to the CJM under S.325 CrPC. A punishment of prison in default issued under S.30 CrPC cannot be more than a quarter of the maximum duration of prison that the Magistrates may pronounce under S.29 CrPC. It may, therefore, be combined with a substantial term of incarceration for the greatest period allowed under S. 29. In the event of a conviction of several offenses in a single trial, the Court may impose different sentences under S.31 of the CrPC. It is, nevertheless, subject to IPC S.71. These are the powers of the courts in terms of sentence, and they must be scrupulously followed. But that's not all; the Code gives judges considerable leeway in determining the length of a sentence once a conviction has been established[4].

Once a conviction is determined, the judge has broad discretionary powers under the Code. Sections 235, 248, 325, 360, and 361 of the Code deal with sentence. S.235 is a section of Chapter 18 that deals with the Court of Session's trial procedure. It directs the court to deliver an acquitted or guilty judgment, and to proceeded to paragraph 2 of the chapter if a conviction is obtained. Article 2 of the article outlines the procedure to be shadowed when sentencing someone who has committed a criminal. The provision establishes a quasi-trial to guarantee that the offender has an opportunity to speak for himself and express his view on the punishment to be imposed. The convict's arguments may or may not be relevant to the corruption or rightfully noise. It's merely for the court to gain a sense of the convict's social and personal circumstances and determine whether any of them will have an impact on the punishment. 6 Facts such as the convict's being a breadwinner, for example, may serve to mitigate his sentence or the circumstances in which he works.

It's worth emphasizing that the section doesn't simply enable the prisoner to speak; it also permits the defense counsel to bring all possible mitigating elements to the court's attention, and if these considerations are challenged, the trial and defense

advice must establish their case. A judgement that does not comply with S.235 (2) may be overturned as a violation of normal fairness. However, if the sentence is carried out in accordance with S.360, this step is not necessary. S.248, which is included in Section 19 of the Code and deals with magistrate trials of warrants cases, guarantees that the accused is not prejudiced. Clause 3 stipulates that if the prisoner refuses to admit to a previous conviction, the court can assess if there was a previous conviction based on the facts presented[5].

In the guise of discretion, The judge in this case cannot use his powers beyond those allowed by the code at any moment. If the magistrate considers the act perpetrated is more serious and should be punished harshly, but it is beyond his authority to do so, he might submit the case to the Chief Court Judge with the appropriate paperwork and his opinion.

The majority of legal pleasure is found in S.360, which allows a prisoner to be released on good behavior probation or after admonition. The goal of this part is to try to rehabilitate offenders who do not pose a major danger to civilization. This is communicated by restricting the section's application to instances in which the following requirements are met:

- A woman who has committed a crime that is not punishable by death or life incarceration.
- A person under the age of 21 who is guilty of a crime for which the penalty isn't a murder sentence or a life sentence.
- A person over the age of 21 who has been convicted of a crime punished by a penalty or a maximum sentence of 7 months in jail.

When a defendant has no prior convictions, the court may use its authority and discharge him or her on a release with or without guarantees, taken into view various relevant factors such as age, situations at the time of the offence, character, mental condition, and so on. If a magistrate of the II category who is not authorised by the Supreme Court feels the individual under charged deserved to be treated under this provision, he or she may record his or her opinion and forward the case to a magistrate of the I category. Also, if the violation is of like a kind that the maximum sentence that may be imposed is two decades in prison or a modest penalty, the court may, after taking into account the different considerations relating to the prisoner, consent the offender deprived of slightly sentence at all after just caution. If the individual does to follow the regulations set forth in this section at the time of release, the court may take action against them, including re-arresting them. Either the criminal or the surety must live in the court 's authority or work there on a daily basis. in order to be released under these rules[6].

S.361 of the Code makes the application of S.360 essential wherever feasible, and in situations when an exception is made, it must be stated clearly. When a judge imposes a sentence that is less than the legal minimum, he or she must explain a special justification for doing so. The failure to report the particular cause is an irregularity that can lead to the sentence being overturned on the grounds of injustice. S.360 of the CrPC is substantially similar to the Probation of Offenders Act, 1958. It is more detailed in that it specifies the conditions that must precede a discharge decision, a monitoring order, and reimbursement to the harmed party are all possible outcomes, the probation officer's rights and responsibilities, and other details that may come within the scope of the area. It should be emphasized that S.360 would be repealed in states or portions of states when the Probation of Offenders Act is implemented[7].

2.2 The Current Procedure's Drawbacks

A look at the method mentioned above reveals that the present system's discretion is led by ambiguous phrases like

"conditions of the crime" and "cerebral condition and age." Though they can be identified, the legislation has yet to answer the question of when they will have an impact on the sentence. Every crime, for example, has surrounding choosing whether events count as alleviating and exacerbating conditions is up to the judge(s). As a result, if one judge finds a specific situation to be mitigating, it does not preclude another judge from dismissing it as irrelevant.

Because of this inconsistency, a few judges have abused their discretion based on personal preconceptions and biases. In *Gentela Vijayavardhan Rao v. State of Andhra State*, for illustration, the appeal burned a bus full of passengers with the intent to loot it, killing 23 people. The judges in the lower court sentenced prisoner A to death and convict B to ten years of hard labor. The prisoner called this into question. To justify its decision to maintain the verdict, the highest court noted from "Imposition of proper punishment is the mechanism by which the courts respond to society's desire for justice against criminals," says *Dhananjay Ghosh v. State of West Bengal*. To represent the government's condemnation of the crime, justice demands that courts impose penalties corresponding with the violation.

The ideas of deterrence and punishment are reflected in this decision. However, this cannot be classified as either wrong or right because it is the result of the beliefs of the judges who make up the bench. In *Mohd Chaman v. State*, on the other hand, the courts dramatically lowered the death punishment to life imprisonment owing to the view that the suspect is not a risk to civilization and so his life does not need to be taken. A unique-and-a-half-year-old toddler was raped and murdered by the defendants in this case. The death sentence was issued by courts, who considered the circumstances to be the unusual of the unusual [8].

The Supreme Court overturned this decision because it did not believe the offense was enough worthy of the death penalty. The Court previously said in *Darshan & Anr. v. Haryana* that "the concept in *Bachan Singh's* decision has not been totally accepted since then.", and that precedence still appears to be given to the nature of the crime." In this case, the Court made a few key points that are worth noting: -

- In *Bachan Singh's* case, this Court did not agree with the aggravating and mitigating factors approach. However, this technique requires a re-evaluation because, in any case, there is little or no consistency in its implementation.
- Aggravating circumstances are those that pertain to the corruption, whereas justifying conditions are those that narrate to the illegal. It is impossible to compare the two using a balance sheet. Both factors are separate and unconnected. The use of aggravating and mitigating factors should be reconsidered.
- Both the offense and the offender are equally significant in the sentencing procedure. Unfortunately, We haven't given the sentence-making procedure the attention it deserves, resulting in judge-centric sentencing rather than principled sentencing in capital cases.
- Remissions are a legal requirement. However, the legislature has included some procedural and substantive safeguards in the legislation to prevent it from being used arbitrarily. These must be strictly followed.

2.3 Sentencing Guidelines Are Required

The need for standardized and set sentencing standards is urgent, as the current system, as *J Krishna Iyer* points out, is founded on the notion that " Each saint has a history, and every sinner has a future."

The judiciary has clearly realized the necessity for uniform sentencing criteria, as evidenced by a few pronouncements. "One complicated issue pertaining to the punishment procedure

is the absence of homogeneity in the amount of punitive action given by distinct court system for the same or similar offences," the Supreme Court stated in *Rajeev Dayal v. State of Uttar Pradesh*, adding that the topic of discrepancy had not been adequately settled thus far.

Later, in *Mohd. Chaman v. State*, the Supreme Court noted that imprisoning the sentencing discretion of a judge or jury in the strait-jacket of comprehensive and rigorous criteria is not feasible nor desirable, citing a judgment by the Supreme Court of the United States in *Gregg V. Gorgia*. Nonetheless, these rulings demonstrate that wide parameters, rather than iron-clad criteria, might be established to reduce the possibility of arbitrary application of the death sentence for murder and other crimes under the criminal code[9].

The Supreme Court observed the absence of specified criteria in the matter of *Soman v. State of Kerala*: Wrongdoer punishment is at the core of legal justice, yet it is also the weakest aspect of our nation's military court system. These are no statutory or lawfully defined guidelines to assist the trial court in determining the appropriate sentence for a defendant who is proven guilty of the charges.

Aside from judicial declarations, a few committees have proposed the creation of standard sentencing guidelines. The Malimath Committee published a report in March 2003 that stressed the necessity for condemning strategies in instruction to decrease ambiguity in sentencing. The Body also recommended that a statutory committee be created "to outline sentencing guidelines" in order to add certainty to the sentencing process[10].

3. CONCLUSION

In order to impose the most appropriate When it comes to imposing a degree of penalty on an individual for a crime, striking a reasonable balance amongst consistency and judge flexibility is crucial. The large differences in sentence for identical offenses show that India's criminal justice system has failed. The Legislature or the Judiciary must propose The most essential piece in the juvenile judicial system, sentencing policy, embodies the authority of law in a country.

This is because, in addition to inequalities in sentencing, such as in cases of the death sentence or rape, there are other offences in the IPC that plainly reveal comparable inequities. It is past time for us to learn from the finer points of effective justice systems throughout the world in order to strengthen and improve our criminal justice system. In the conclusion, it is said that the judiciary must present I a defined set of rules in terms of sentence rules; and (ii) life incarceration with the possibility of mitigation or release" for certain offenses that do not warrant the ultimate sentence but do necessitate a greater harsh punishment.

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