
A JUDGE'S PREDICAMENT: THE INTERPLAY OF JUST DESERTS AND INDIVIDUALIZED SENTENCING

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ABSTRACT

Sentencing is the most crucial stage of a criminal trial and is determined by the facts and circumstances of the case, the offender's character and background, whether or not he possesses moral turpitude, his personal circumstances, and other similar factors. It is widely held in India that the penalty ought to be appropriate for the offence committed as well as the offender. The courts have a great deal of discretion, which the sentencing judges must use with extreme caution. The task of a sentencing is therefore the most challenging because, if he places greater weight on the offence, the punishment must be based on the principles of retributive justice in order to achieve deterrence or if the punishment is to be commensurate with the offender's personality, it must be lenient in order to achieve the goals of rehabilitation. Beyond reasonable doubts, the victims of crime may not share the ideology of reformation, therefore an overly lenient punishment might incite the resentful victim to exact revenge. However, an excessively severe punishment would drive society back to prehistoric barbarism and prevent it from adopting a compassionate stance. Therefore, it is evident that the sentencing judge's predicament is made worse by the lack of a standardised sentencing policy in India. With no legislation or norms for sentencing in India, this article aims to determine how the concepts of just desert and individualisation of punishment are at odds with one another and explores how a balance might be struck in this area.

Keywords: Sentencing, Crime, Legislation, Judges, Punishment, Just Desert

Introduction

Crime is defined as an act of violence that disturbs the conscience of society and instils terrifying terror in those involved. There are some activities that society views as inherently hazardous, and it becomes necessary to stop them, either by labelling them outlaws or dealing with them strictly¹. Since crime is a persistent issue in all societies in various forms, it is unavoidable and ubiquitous. In reality, some sociologists have also highlighted the contradictory link between crime and society, arguing that social cohesion among its constituents is fostered by crime². Generally speaking, the public feels sympathy and sympathy for the victim, but they also harbour resentment and animosity against the criminals. The judiciary, correctional facilities, and law enforcement organisations are the three main pillars of the criminal justice system. Each of these elements strives to maintain societal safety and fairness by using judgement within the bounds of the law. Each branch of the complicated criminal justice system must carry out its responsibilities within the legal parameters. The smooth operation of these three branches is essential to the efficient administration of justice. The criminal justice system begins with the first information report being registered and concludes with the court's sentencing³. The court determines the accused's real sentence at the sentencing phase of the criminal justice system. Although punishing the perpetrator is the cornerstone of criminal justice delivery, it is the least effective aspect of criminal justice administration in our nation⁴. The final objective of any criminal justice system is to penalise the offender, and sentencing closely follows the conviction step⁵. The legislative and the judiciary, however, have neither established any rules or regulations to help the court give him a fair penalty. The several types of punishment that can be imposed by the courts upon conviction for committing an offence are outlined in Section 53⁶ of the IPC. It covers things like death, life in jail, harsh or simple incarceration, property seizure, fines, etc. Any criminal justice system's fundamental goal may be ascertained by examining how it punishes criminal behaviour. It is impossible for everyone to respond to a criminal conduct in the same way in an adversarial system like ours, when other players are involved in addition to the accused and

¹ Hon'ble Mr. Justice D. Murugesan, Speech Delivered at South Zone Regional Judicial Conference on Enhancing Timely Justice: Strengthening Criminal Justice Administration, (Nov. 29, 2009), available at <http://tnsja.tn.gov.in/article/Safeguarding%20by%20DMJ.pdf> (last visited Dec. 1, 2024).

² S.M. Afzal Qadri, *Ahmad Siddique's Criminology, Penology and Victimology* (7th ed. 2016).

³ A. Lakshminath, *Criminal Justice in India: Primitivism to Post-Modernism*, 48 JILI 26, 46 (2006).

⁴ *Soman v. State of Kerala*, (2013) 11 S.C.C. 382.

⁵ *Sentencing and Punishment Policy in India*, available at <https://www.probono-india.in/blog-detail.php?id=152> (last visited Apr. 1, 2022).

⁶ *Indian Penal Code, 1860*, § 53, Acts of Parliament, 1860 (India). *Bharatiya Nyaya Sanhita (BNS)* § 4 (2023).

victim. The victim may feel more strongly about the illegal behaviour, while the accused may think that his actions were appropriate in light of the case's facts and circumstances.

The judge and other paraphernalia are selected to come to an agreement on whether any wrongdoing occurred and, more crucially, what steps need to be taken to correct the error. In a victim-centric approach, the victim is put back in the same situation as before the damage was caused. The use of this concept may be impossible in situations where the victim has experienced bodily, emotional, or psychological injury, but it can be employed in cases of economic crimes and tortious conduct. In these situations, retaliation, rehabilitation, and deterrence appear to be effective strategies⁷. Retribution is based on the idea of "an eye for an eye and a tooth for a tooth" and is only intended to punish those who commit crimes. In general, it means that individuals should receive what they are rightfully entitled to. A fair desert model of justice is based on two basic expectations: (a) the penalty should be appropriate for the offence and proportionate to the victim's worth; and (b) the punishment should be administered equitably. Regaining the accused person's place in society is the goal of rehabilitation. The goal of the deterrence theory of punishment is to punish criminals in order to discourage future offenders. Notably, there are two ways to employ deterrence: (a) penalising the perpetrator to prevent others from committing the same crime (b) to deter the guilty from committing further crimes⁸.

As Beccaria famously stated⁹, the only goal of punishment is to stop the offender from harming other people in the future and to discourage others from doing the same. In order to produce the most lasting and effective imprint on people's minds while causing the least amount of physical suffering to the condemned, penalties and the manner in which they are administered must be chosen in accordance with proportionality¹⁰. The accused is deemed innocent unless proven guilty under an adversarial criminal justice system such as India's. The prosecution has the complete burden of establishing guilt beyond a reasonable doubt, and any benefit of doubt that may exist tips the scales in favour of the accused. The accused is granted a number of rights, including the right to silence, the right to not testify in his own defence, etc. The

⁷ R. Niruphama, *Need for Sentencing Policy in India*, Calcutta Research Group, available at www.mcrg.ac.in/Spheres/Niruphama.doc.

⁸ MHRD Government of India, *e-content for Post Graduate Courses*, available at http://epgp.inflibnet.ac.in/epgpdata/uploads/epgp_content/S001608/P001739/M022054/ET/1520919223Etext.pdf (last visited Dec. 4, 2024).

⁹ Cesare Beccaria, *On Crimes and Punishments* (translated by Havell, 1864) (originally published 1764).

¹⁰ Cesare Beccaria, *On Crimes and Punishments and Other Writings*, 26 Richard Bellamy ed., Richard Davies & Virginia Cox trans. (Cambridge Univ. Press 1995).

adversarial system holds that facts submitted by the prosecution and defence before an impartial judge will reveal the truth. The trial is confrontational, oral, and ongoing. The court permits cross-examination of the witnesses in order to discredit the other side and uncover information that the other party has not revealed. The judge in an adversarial system has no active responsibility to find the truth, hence he performs a passive role.

As a result, the system is skewed disproportionately in favour of the accused and shows little consideration for the victim's situation. The just desert model of punishment examines the past, emphasises the offence, and emphasises the need to comfort and cure the victim's injuries¹¹. Its main goal is to penalise the offender. Individualisation of punishment is a forward-looking idea that is grounded in utilitarianism. The proportionality principle is the primary factor taken into account when determining the severity of the penalties in both punishment models¹².

Principle of Just Desert

According to T.M. Scanlon, the just desert principle is "the idea that when a person has done something that is morally wrong, it is morally better that he or she should suffer some loss as a punishment."¹³ He contends that when someone engages in illegal activity, he should be punished for the injury or loss he has caused and that the system should perform this duty, ensuring that the criminal endures hardship which is the purpose of the penal system.

The just desert principle's proponents contend that outside influences, such as socioeconomic circumstances, have no bearing on an individual's behaviour and, as a result, they have no faith in the criminal justice system's restorative strategies, such as reformation or offender rehabilitation. The "just desert" idea is supported by three arguments: the ethically deserving argument, the fair play argument, and the censure argument. Moore said, "We should punish offenders because, and only because, they deserve to be punished"¹⁴. For a retributivist, punishment is appropriate only when the recipients deserve it. This is the fundamental idea that underpins the argument for moral justification. Therefore, we discover that the just desert theory of criminal punishment both advocates for precise criminal sentencing that disregards

¹¹ Government of India, *Report: Committee on Reforms of Criminal Justice System*, available at https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf (last visited Nov. 11, 2024).

¹² Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1789).

¹³ T.M. Scanlon, *What We Owe Each Other* (Harvard Univ. Press 1998).

¹⁴ M. Moore, *The Moral Worth of Retribution*, in Ferdinand Schoemann (ed.), *Responsibility, Character and the Emotions* (Cambridge Univ. Press 1987).

the offender's personality and suggests less judicial discretion¹⁵. It simply means that a criminal should be punished according to the principles of "equality, fair play, and censure" rather than the retribution principle, which holds that "an eye for an eye and a tooth for a tooth" is not the basis for deservedness.

Principle of Individualization of Punishment

Bentham advocated for punishment that was commensurate with the offence. The imposition of pain or limitation deters people from pursuing happiness or pleasure, according to his utilitarian ideology. When he talks about the common good, he means the whole of everyone's interests. According to Bentham, the goal of legislation is to increase happiness. However, punishment is a component of laws and is an unpleasant thing in and of itself. This is the reason utilitarians find it difficult to defend punishment on the surface. Bentham thus seeks to answer two problems using utilitarian moral theory: When is it appropriate to punish, and what are the bounds of right punishment?¹⁶ In response to the first query, utilitarians hold that punishment is appropriate when its benefits and advantages outweigh its costs when it comes to utility.

The following interpretations are possible for this¹⁷:

1. In order to shield society against future acts of violence, it may occasionally seem essential to lock up a violent criminal. The advantages of removing someone from the community in such a situation greatly outweigh the costs he bears.
2. It is human nature to consider the effects of our activities. The purpose of punishments is also to discourage criminal behaviour. According to utilitarians, imposing a minimum or proportionate penalty can aid in lowering the number of crimes committed.
3. Because rehabilitation prevents a person from becoming a criminal and turns him into a law-abiding, productive citizen, utilitarians support it. Although rehabilitation and deterrence may have comparable outcomes, their underlying ideologies are very different. While rehabilitation indicates that the offender will no longer wish to commit the crime, individual deterrence

¹⁵R.A. Duff, *Trials and Punishments* (Cambridge Univ. Press 1986).

¹⁶ *Punishment - Retribution, Rehabilitation and Deterrence*, available at <https://web.uncg.edu/dcl/courses/viceCrime/pdf/m7.pdf> (last visited Dec. 19, 2024).

¹⁷ *Ibid*.

indicates that the offender is terrified to commit the crime.

Bentham also established the bounds of punishment, stating that it is pointless and ineffective when it is unwarranted, ineffective, unprofitable, and unnecessary.

Individualization of Punishment and Just Desert: A Comparison

According to the just desert theory of retribution, the crime done is the main emphasis and the past is examined¹⁸. It seeks to calm or comfort the victim while punishing the offender with the intention of discouraging future criminal activity. Conversely, the utilitarian principle serves as the foundation for the philosophy of individualization of punishment. It looks to the future and views the purposes of punishment as reformation, deterrence, and incapacitation. The goal of the rehabilitative approach is to help the guilty individual change while he is incarcerated so that he can rejoin society as a contributing member. Judges have the authority to customize sentences based on the specific facts and circumstances of each case thanks to their discretion in sentencing.

As the Supreme Court has repeatedly stated, the penalty ought to be appropriate for the offence committed. Whether the proportionality metric should be based on utilitarian or retributive principles has not been made apparent, though. Both the just desert and individualization of punishment concepts are typically taken into account while determining the appropriate punishment, particularly for egregious offences. Due to the utilitarian approach's inability to effectively reduce crime, despite its various dimensions of rehabilitation, deterrence, and incapacitation, revenge has become a dominant reason for punishment. America has implemented a system of set sanctions for specific offences as a result. As the name implies, fixed penalties do not allow for the judiciary's discretionary actions, and they are applied solely in accordance with the recognized standards of just desert and sentence proportionality. How combining these ideas can lower crime rates and guarantee a society free from criminal activity is still up in the air¹⁹.

The legal structure of the criminal justice system in India

The main components of India's criminal law are the Evidence Act of 1872, the Criminal

¹⁸ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (Clarendon Press 1789).

¹⁹ Dr. Anju Vali Tikko, *Individualisation of Punishment, Just Desert and Indian Supreme Court Decisions: Some Reflections*, Vol. II *ILI Law Review* 2017.

Procedure Code of 1973, and the Penal Code of 1860. The Prevention of Corruption Act of 1986, the Prevention of Food Adulteration Act of 1954, the Narcotic Drugs and Psychotropic Substances Act of 1985, and the Sexual Harassment (Prevention, Protection and Rehabilitation) Act of 2013 are just a few of the special and local laws that supplement the Indian Penal Code of 1860. However, the efficacy of the procedural legislation that enforce the substantive penal laws determines how effective the latter are. This is what every criminal justice system is all about²⁰.

The Indian Penal Code, Section 53²¹ under Chapter III prescribes five types of punishments - death sentence, life imprisonment, simple and rigorous imprisonment, forfeiture of property and fine. Solitary confinement is defined in Section 73²² Section 54²³ and Section 55²⁴ deals with commutation of sentence of death and commutation of sentence of life imprisonment respectively. Section 57²⁵ states that life imprisonment shall be construed as an imprisonment for a period of 20 years. The Criminal Law Amendment Act, 2013 under Sections 376A,²⁶ 376D²⁷ and 376E²⁸ has changed the dimension of life imprisonment to mean an imprisonment of not less than twenty years but which may extend to imprisonment for the remainder of a person's natural life.

The Criminal Procedure Code (hereinafter CrPC) stipulates unequivocally the subordinate judiciary's jurisdiction to hear cases and impose appropriate penalties. Both the Sessions Court and the High Court have the authority to impose any punishment. The State's High Court must, however, validate the death sentence imposed by the Sessions Court.

The Legislative Scheme of Individualization of Punishment

A discretionary sentencing paradigm is provided by the crime-related legislation, such as the IPC and other specific laws. Although the code specifies the maximum penalty that can be imposed on an accused individual upon conviction, the judiciary has the power to decide on

²⁰ Thomas J. Miceli, *The Paradox of Punishment* 91 (Palgrave Macmillan 2019).

²¹ *Indian Penal Code*, § 53, Act No. 45 of 1860 (India).

²² *Indian Penal Code*, § 73, Act No. 45 of 1860 (India).

²³ *Indian Penal Code*, § 54, Act No. 45 of 1860 (India).

²⁴ *Indian Penal Code*, § 55, Act No. 45 of 1860 (India).

²⁵ *Indian Penal Code*, § 57, Act No. 45 of 1860 (India).

²⁶ *Indian Penal Code*, § 376A, Act No. 45 of 1860 (India).

²⁷ *Indian Penal Code*, § 376D, Act No. 45 of 1860 (India).

²⁸ *Indian Penal Code*, § 376E, Act No. 45 of 1860 (India).

the exact amount of punishment. In its 47th report, the Law Commission of India noted the following regarding the sentence's ascertainment measure:

A proper sentence is a combination of a number of factors, such as the type of offence, the circumstances that led to or exacerbated the offence, the offender's prior criminal history, if any, age, professional or social history, background in terms of education, home life, sobriety, and social adjustment, the offender's emotional and mental state, the likelihood of rehabilitation, the likelihood that the offender will return to a normal life in the community, the possibility of treatment or training for the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, of such a deterrent in respect to the particular type of offence involved²⁹.

In accordance with Sections 235(2)³⁰, 248(2)³¹, and 255(2)³² of the CrPC, a distinct sentencing phase is intended to determine the sentence following a conviction. Following conviction, a separate date is set aside for hearings between the parties regarding the appropriate sentence. The required sentencing hearing will be overturned in an appeal if the punishment is imposed without providing a chance for the hearing. This section's main goal is to provide the judge with information about the convicted person's social and personal background, which could influence his sentencing. The trial comes to a close with the issuance of the final verdict at the completion of the hearing. The court may impose a fine, compensation, jail, or the death penalty, but the decision must be well-reasoned³³. A person on probation for good behaviour or after admonition may be released by the court in accordance with the provisions of the CrPC and the Probation of Offenders Act, 1958. The CrPC gives the relevant government the authority to suspend³⁴, remit³⁵, or commute³⁶ a convicted person's entire sentence or just a portion of it. A convicted person's life sentence may alternatively be commuted to a maximum of 14 years in jail³⁷. Therefore, it is evident that the Indian judiciary plays a significant role in the sentencing process and that its unbridled discretionary power must be used with extreme prudence and care. An examination of the following Supreme Court of India rulings further

²⁹ 47th Report, Law Commission of India, available at <https://lawcommissionofindia.nic.in/1-50/Report47.pdf> (last visited Dec 30, 2024).

³⁰ Criminal Procedure Code, 1973, § 235, Acts of Parliament, 1973 (India).

³¹ Criminal Procedure Code, 1973, § 235, Acts of Parliament, 1973 (India).

³² Criminal Procedure Code, 1973, § 235, Acts of Parliament, 1973 (India).

³³ Criminal Procedure Code, 1973, § 235, Acts of Parliament, 1973 (India).

³⁴ Criminal Procedure Code, 1973, § 235, Acts of Parliament, 1973 (India).

³⁵ Ibid

³⁶ Criminal Procedure Code, 1973, § 235, Acts of Parliament, 1973 (India).

³⁷ Ibid.

supports the idea that sentencing in India is a judge-centric process rather than a sentence-centric function based on principles.

The major change in the sentencing framework prior to the years of *Bachan Singh v. State of Punjab*³⁸ must be understood in order to comprehend the legislative system pertaining to life in prison and the death penalty. According to the Criminal Procedure Code of 1898, the default penalty for murder was the death penalty, and judges who decided to impose life in prison rather than the death penalty had to provide justification. There was no legislative preference between the two penalties, as seen by the revision made to the 1898 clause later in 1955 that eliminated the need for written justifications for not applying the death penalty.

Section 354(3), which established life in prison as the norm and the death penalty as an exception, brought about a dramatic change in the legislative policy of the CrPC. Judges tasked with determining sentences now had to give specific justifications for the death penalty. The Code, however, made no mention of what those particular grounds might be. Bachan Singh closed this gap in the system and produced a sentencing framework that applied to Section 354(3) of the CrPC, 1973, making room for the idea of individualizing sentence for death offences³⁹.

The sentencing framework that was suggested in *Bachan Singh's case*⁴⁰ was intended to help sentencing judges carry out their responsibilities under Section 354(3) of the CrPC when deciding between the death penalty and life in prison. Individualized sentencing became the subject of the Bachan Singh ruling, which mandated that the courts give careful consideration to all aggravating and mitigating circumstances pertaining to the offence and the offender. Therefore, in order for a case to qualify for a death sentence, the aggravating circumstances must be greater than the mitigating circumstances. Bachan Singh also mandated that the sentencing judges prove beyond a reasonable doubt that the alternative of life in prison under Section 302 IPC was unquestionably foreclosed⁴¹. In cases where the death penalty must be applied under Section 354(3), special reasons for doing so must be documented.

³⁸ *Bachan Singh v. State of Punjab*, (1980) 2 S.C.C. 684.

³⁹ Anup Surendranath, Neetika Vishwanath & Preeti Pratishruti Dash, *The Enduring Gaps and Errors in Capital Sentencing in India*, Project 39-A (Dec 31, 2024, 4:15 p.m.), available at <https://www.project39a.com/ops/the-enduring-gaps-and-errors-in-capital-sentencing-in-india>.

⁴⁰ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684

⁴¹ *Ibid*.

Examining the Indian judiciary's sentencing and discretion procedures: Supreme Court rulings

The trial court found Bachan Singh guilty of killing three people and condemned him to death under Section 302 IPC. The three killings were characterized as being incredibly cruel and horrible. The matter was appealed to the High Court, which dismissed the appeal and upheld the death sentence. He went so far as to petition the Supreme Court. The sentencing process outlined in Section 354(3) of the CrPC was one of the issues that the Supreme Court's constitutional bench had to decide. The Supreme Court cited *Jagmohan Singh v. State of U.P.*⁴² in its historic ruling to uphold the legitimacy of the death penalty. It also attempted to draw a paradigm shift by taking into account aspects related to the criminal as well as the crime itself, which is the previous deed. The Supreme Court ruled unequivocally that murder carries the death penalty, taking into account the victim's personality, the crime's severity, the antisocial or socially repugnant nature of the act, and the manner and reason of the murder. As a result, Bachan Singh represents a turning point in Indian death sentence law. Therefore, these procedures serve as the foundation for every conclusion that is drawn in each and every instance.

The Supreme Court stated in the Bachan Singh case that the State, or the prosecution, had met its burden of proving why the lower court's decision should be upheld. The prosecution used the Supreme Court's rulings, the 35th Law Commission Report of India, the Jagmohan Singh case, and other comparable instances to support its position. The aforementioned pieces of evidence bolster the State's argument that the death sentence deters criminal behaviour.

The court accepted the prosecution's argument and placed the onus of proof on the petitioner to demonstrate that the death penalty for murder was so ludicrous, out of the ordinary, or exorbitant that it had no reasonable connection to the goal and intent of the law. In the majority ruling, the court dismissed the challenges to the constitutionality of the death penalty and sentencing process established under Section 302 IPC and Section 354(3) of the CrPC, despite strongly denouncing the appellant's actions and the wave of heinous criminal activity in India.

In the case of *Machhi Singh v. State of Punjab*⁴³, it was believed that the most uncommon theory presented in Bachan Singh's case required some degree of clarification. In *Machhi Singh*

⁴² Jagmohan Singh v. State of U.P., (1973) 1 SCC 20

⁴³ Machhi Singh v. State of Punjab, (1983) 3 SCC 470

v. State of Punjab, the court was particularly interested in the primary rules that must be adhered to while applying the aforementioned concept. A violent altercation between two families claimed seventeen lives. At the end of their prosecution, the appellant was one of four people given the death penalty after he and his friends were tried by the Sessions Court. The Supreme Court had to hear an appeal after the Punjab High Court upheld his death sentence.

The Supreme Court upheld Bachan Singh's case's rarest of rare doctrine when considering the appeal and improved the rules. The court believed that the death penalty was a harsh punishment that should only be applied in the most serious circumstances of extreme responsibility. Researchers, lower courts, and academics at large are all facing the difficulty of precisely identifying and highlighting the components of the most serious cases of excessive liability. The Supreme Court has said that, what can be interpreted as its reaction to the issue at hand, the circumstances of the criminal should be taken into account before deciding to apply the death penalty, in addition to the circumstances of the crime.

As a result, we conclude that two factors are crucial: the background or criminal history of the perpetrator and the events preceding up to the murder. Because of this, the offender has a fair chance of receiving a life sentence rather than the death penalty if he is a first-time offender with no prior criminal history. In these situations, the court's focus moves leniently from the victim and the criminal conduct to the offender's personality. Whether it is the most appropriate and objective reasoning to be prioritized is the question that now before us. If so, how can the rights of the victim, his family, and society at large be balanced with the proportionality of the penalty given to the convicted individual? Does someone have to commit a crime a certain number of times before they are considered a danger to other people's lives? These questions must be investigated and addressed with the victim's best interests in mind if the criminal justice system is to regain the trust of the general public. Based on the reasoning of the learned judges, the Supreme Court appears to have a single response to the questions at hand: the death penalty is an exception and life in prison is the norm. Therefore, only in cases where life in prison seems to be an entirely insufficient punishment will the death penalty be applied. The relevant facts of the offense must also be such that, when taken into consideration, the option of a life sentence cannot be exercised diligently. These Supreme Court lines of reasoning exacerbate the impasse. The word that governs such lines of reasoning is the judges' discretionary power, and there is no end-to-end rule for matters of discretion. Furthermore, the retributive and deterrence theories of punishment would be seriously compromised if the principle were to be

strictly interpreted as "life imprisonment is the rule and death sentence is an exception." Will a potential criminal be dissuaded from pursuing his illegal plans even if he is able to justify that life in prison is the norm and the death penalty is the exception? Murderous criminals may use it by lowering the degree of violence and extremism. It could function as a means of escape for them, in which case the sentence's purpose would be defeated.

The Supreme Court ruled that before exercising the option, a fair balance between the aggravating and mitigating circumstances must be done, the balance sheet of aggravating and mitigating factors must be created, and the mitigating circumstances must be given due weight. Giving restorative and rehabilitative philosophies of punishment priority only serves the perpetrator and ignores the victim. Justice must be provided to everyone and cannot be administered in a vacuum. It must be both forward-looking enough to guarantee that the convicted person does not end up becoming a burden on society and backward-looking enough to resolve the victim's grievance.

Conclusion

Punishment and crime are two sides of the same coin. Since the beginning of time, there has been discussion and disagreement regarding crime and punishment. Since there are no legal rules governing punishment in India, sentencing practices vary widely and disparately. India does not have a statutory sentencing policy, in contrast to a number of other nations whose laws have established sentencing criteria. The maximum and minimum penalties for offenses are the sole guidelines provided by the Penal Code, 1860. As a result, judges have broad discretionary authority within the minimum and maximum penalty levels set by statute.

It is quite difficult to choose the appropriate punishment, and it must be done carefully after hearing from all parties and assessing the presented information. When there are no statutory guidelines, the judge's discretion takes precedence. Ensuring consistency, logicity, regularity, stability, and dependability in judgments is the main difficulty. Sentencing is a difficult, burdensome, and demanding process because judges are under pressure to be more uniform and definitive. There are several instances in India where comparable incidents may have resulted in shorter and varied penalties, even though the ultimate outcome of all illegal activity is the same.

The type of crime, the offender's age, personality, prior criminal history, the manner of

committing the crime, aggravating and mitigating circumstances, whether the convicted person poses a threat to society or has the potential to change, etc. are some of the intervening circumstances that influence the judges' decisions. In the case of *Bachan Singh*, the Supreme Court noted "Obviously, we cannot feed all of these situations into a judicial computer because they are astrological imponderables in a society that is imperfect and prone to change." The court further stated that the death penalty is an exception to the rule that a person convicted of murder is subject to life in prison. Only in the most exceptionally rare circumstances, when all other options are undeniably closed, may the dignity of human life be taken through the instrumentality of the law. The scope of mitigating considerations in the context of the death penalty does not need to be interpreted liberally or expansively, as this would exacerbate the problem of sentencing individualization and further harm society as a whole. Structured criteria for sentencing have not been provided by the Indian judiciary or legislation. Section 354(3) CrPC's legislative provision merely acts as a basis until a more thorough and reliable sentencing guideline is developed. An offender who has been found guilty under section 235(2) of the CrPC is given the chance to explain why he shouldn't receive the maximum punishment. This sentencing hearing clause is more akin to a mercy plea, allowing the convicted party to present arguments unrelated to the facts at hand. In the form of criteria and guidelines that lower courts must follow when using their judicial discretion, the Supreme Court has issued judicial guidance. This is insufficient, nevertheless, in terms of calculating the appropriate sentence because the individualization of sentencing raises many questions about the severity of the penalties that courts will impose under almost identical circumstances.

The Indian judiciary has reached a mature stage and merits a suitable sentencing strategy. It is impossible to view leaving the sentencing process up to the judge's discretion as the best criminal administration practice. A significant hole has been created in India's justice system by the lack of statutory sentence guidelines. In order to include uniformity, certainty, and logic in sentencing, the Indian sentencing system's individualization, non-uniform, and random sentencing status must be abandoned. The court will be better equipped to address the community's demands for justice. By addressing the idea of individualization of sentence, sentencing guidelines would not only highlight the just desert and retributive theories of punishments but also reduce the uncertainties surrounding sentence award.