

Reforming Sentencing Policy in India: Moving Beyond the Punitive Paradigm

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Abstract

Sentencing is the ethical and constitutional expression of the criminal justice system. Sentencing in India is still highly discretionary, structurally arbitrary and philosophically based on colonial retributive practices placing incarceration over rehabilitation. It is the view of this paper that critically analyzes the Indian sentencing structure through the Indian Penal Code and the Code of Criminal Procedure, that there are no founded sentencing principles that should govern sentencing and as a result there is inconsistency in judicial decisions, congested prisons and the resultant recidivism. The paper seeks to demonstrate that the punitive sentencing model practiced by India cannot be congruent with the constitutional principles of dignity, equality, and reformatory justice based on doctrinal analysis, comparative jurisprudence, empirical prison information, and interdisciplinary (criminology and sociology) revelation. Based on the experience of other jurisdictions, including the United Kingdom, the United States and Scandinavian countries, the paper recommended the creation of a National Sentencing Commission, written sentencing principles, and incorporation of restorative and community-based options. In the concluding part of the study, the authors determine that sentencing reform is the key to changing the criminal justice system within India to the type of regime of restoration, proportionality and reintegration.

Introduction: Crisis of Sentencing Philosophy

in India.

The most important of moments in the criminal justice process is usually the sentencing where the abstract statement of guilt is converted into the concrete statement of state power. At this point the moral philosophy of a legal system can be observed. The mentality of a colonial penal still has a strong hold in this philosophy in India more so because of its formulation of equating justice with punishment and vice versa. Even with constitutional guarantees of human dignity, equality and fairness, sentencing practices, nonetheless, remain characterized by overreliance on incarceration, judicial discretion broadly and lacking in normative direction, and the fact that there is no systematic plan that guides the selection and amount of the punishment. The substantive basis of sentencing rests in the Indian Penal Code and the procedural mechanism is presented in the Code of Criminal Procedure. They collectively specify offences and ranges of sentencing. Nevertheless, neither of the two laws provides a principled basis on how to ensure that punishment is measured along those lines. This plan places sentencing to the more or less arbitrary discretion of a few judges. Although individualized justice requires discretion, a lack of it leads to inequality, uncertainty, and, in some cases, randomness. The issue is not so much theoretical. The structural effects, of this punitive orientation, are evidenced empirically. The Indian prison system is extremely overcrowded and under trial

inmates form a significant percentage of the population of prisoners. Otherwise, minor and non-violent offenders often end up serving a custodial sentence because they have no other option like work or probation. Prison rehabilitation programs are still poor and this is a factor that leads to high recidivism. Sentencing is therefore usually ineffective in reaching its so-called goals of deterrence, reform and social protection. This structural shortfall has been identified several times through judicial observations. A number of rulings by the Supreme Court of India have been concerned with the lack of sentencing directions and discrepancy in meting out penalties against similar crimes. The alchemy of rarity, like the doctrine of the rarest of the rare in capital cases, was judicial attempts at disciplining discretion though those principles stay as tied to particular situations as they are not directed to the overall sentencing system. This essay presents the thesis statement that sentencing crisis in India is a crisis of philosophy. The mainstreams point of view is that punishment is seen as the ultimate goal and not as a step towards restoration, reintegration, and fair proportion in terms of justice. The prevailing incarceration as the primis response to crime is a sign of an obsolete conception of justice that is inconsistent with current constitutional principles and new criminology knowledge. Criminal justice systems throughout the world are slowly progressing towards programmed sentencing policies, restorative practices, and evidence-based corrections. Sentencing guidelines, sentencing commissions, and community-based alternatives are also institutionalized in jurisdictions like the United Kingdom, the United States, and Scandinavian countries. Such systems show that judicial discretion does not have to conflict with consistency, fairness, and rehabilitation. India is at a pivotal point in which sentencing policy will have to be re-conceived. It is not merely desirable but essential to implement reform that will bring confidence in the criminal justice system, lessen overcrowding in various prisons, tack recidivism, and harmonize sentencing regulations with constitutional morality. This paper aims to critically evaluate the current sentencing system, understand the systemic inefficiencies

of the system, offer lessons of what other countries could do and how India could reform its sentencing system in a way that is not based on the punitive paradigm but a more balanced, humane and principled system of justice.

2. History Development of the Restorative Traditions into Colonial Retribution.

An effective sentencing policy reform in India needs to comprehend the development of the current punitive orientation. The philosophy of incarceration-based punishment did not in Indian sentencing. Instead, the initial jurisprudence can be understood as indicating subtle conceptions of proportionality, restitution, reconciliation, and moral correction, which were supplanted by the colonial codification and retributive penal theory.

Punishment in ancient Indian legal conceptualization, exemplified in books like the Arthashastra and the Manusmriti, has a conceptualization of punishment within the context of dharma. Justice did not mean merely to cause pain to the offender but towards restoring social order. Responses that were liked are fines, restitution, apology, and exile.

Imprisonments were not common types of punishments. The intention of the person who committed it, social conditions and effects on the victim were considered and an early understanding of proportional and individualized justice was identified.

The medieval era of Islamic jurisprudence encompassed various categories which included hudud, qisas and tazir. At least in the context of tazir, the judges show discretion to punish as per the facts of the case. The compromising, compensation and the reconciliation of the offender and the victim were universal, particularly in a personal harm. The penal structure did not award prison with priority. Rather, moral correction, restitution and community order were promoted. This reparative orientation was dramatically changed by the British colonial rule. A policy encouraging deterrence was internalized within the Indian Penal Code through the enactment of the Indian Penal Code influenced by utilitarian philosophers like Macaulay. Crime was perceived as a crime against the state and not an individual or the society.

Punishment was standardized, codified and prison-oriented. The jail became the major tool of punishment policy.

The colonial state needed a standardized and easy to administer system so as to keep order among a huge number of people. This led to sentencing being strict in its form but imprecise in its direction. Criminal categories were pegged to the punitive scales, though no normative reasoning existed on how to establish the level of punishment to apply in the scales. There was judicial discretion but philosophically blind. The native practices of restitution and reconciliation were being outshone.

This punitive paradigm was reinforced procedurally by the Code of Criminal Procedure of 1898, which was succeeded by the Code of Criminal Procedure. As procedural fairness was getting better with time, the philosophical ground of sentencing was not altered

dramatically. Prison was still viewed as the logical course of action when it comes to dealing with criminal behavior.

With the adoption of the Constitution upon achievement of independence, there came the values of dignity, equality, and justice. But there was no similar reform of sentencing philosophy. Courts started to interpret penal clauses by referring to Articles 14 and 21, however, these interpretations were limited to court cases, they could not modify the framework of the structure left after the colonialists.

Criminal trials that have tried sentencing rationale, especially in capital penalty jurisprudence, highlight this conflict. The Supreme Court in *Bachan Singh v. State of Punjab* added the doctrine of rarest of rare to discipline discretion. Although important, this principle pertained to the cases associated with the death penalty only but did not apply to the rest of sentencing.

The historical flow thus indicates a progressive phase shift of reconstructive customization as an entrenched, deterrence-oriented,

, incarceration-burdened punishment system. This drift can be blamed on the occurrence of the current crisis of sentencing inconsistency and

overcrowding of prisons. Reform initiatives should be cognizant of the fact that the legal culture of India had in the past had a more balanced sense of justice wherein punishment

was not equated with incarceration.

This historical development is essential because sentencing reform is not the importation of foreign ideas in India but rather a reassertion of a more reasonable, more humane philosophy, which preceded the colonial colonization and enforcement of rationalities of the penal.

3. Existing Statutory Framework and the Issue of Unchecked Judicial Discretion.

The sentencing practice in India is based on two main laws, the Indian Penal Code and Code of Criminal Procedure. The two establish offences together, are the ones to give the range of punishment, and the means by which a sentence is imposed. But, regardless of this ornate lawmaking structure, there is a fundamental flaw in the system. It offers alternatives to punishment without spelling out the guidelines of using these alternatives. This leads to formless discretion.

Section 53 of the IPC divides the punishments into death, life imprisonment, simple or rigorous imprisonment, forfeiture of property and fine. Different offence specific sentences give either a fixed sentence or range of sentence. An example is that murder under Section 302 IPC is treated as death or life imprisonment whereby theft under Section 379 IPC gives a chance of three years imprisonment, or fine, or both. These clauses mark the boundaries of judicial authority but they do not provide a framework to inform judicial discretion in these boundaries.

The CrPC compliments this framework with prescriptive sentencing procedure. Section 235(2) mandates the court to listen to the accused on whether they should be sentenced or not on conviction. Section 354(1)(b) requires one to enter the reasons why the sentence is imposed. These procedural controls encourage the concept of transparency, but lack substantive norms. Judicial officers are required to explain reasons but the law does not say that these reasons should be legally sound. The structure of this design is that sentencing largely depends on the personal philosophy of the judge who is in charge. Two criminals who commit the same crime in more or less similar situations might be given entirely different sentences depending on variations in the perceptions of judges on issues of gravity, deterrence, reform or impact on society.

Although justice being applied on an individual basis is preferable, the lack of established rules turns the flexibility into uncertainty.

Inequalities of minimum sentences only worsen the problem. There are those that have obligatory minimum terms like rape and others that are equally harmful to the society but have set the minimum unspecified. This unequal treatment gives disproportional results throughout the sentencing system. In addition, lack of alternatives in an organized system promotes causation of incarceration as the default penalty, which is despite minor or non-violent crimes. Even the court has seen the hazards of such uncontrolled discretion. In State of Punjab v.

Prem Sagar, the Supreme Court of India noted that there has never been a coherent policy in sentencing in India and that judicial discretion tends to operate in a vacuum. Equally, in the case of Santa Singh v. State of Punjab, the Court has highlighted the importance of rational and principled sentencing and that arbitrary punishment is retrogressive of fairness.

4. Sentencing and Prison Overcrowding, and Recidivism.

The real-world implications of unconstrained discretion in sentencing can be observed to generate two crises of the Indian criminal justice system: extreme overcrowding of prisons and recidivism rates. These are not one-off administrative vices but rather direct consequences of a sentencing ideology that takes default to incarceration without reasonable consideration of unitary or proportionality, alternatives to incarceration, and long-term rehabilitation.

The work of Indian prisons is far more than justified by their license. Periodically released data established by the National Crime Records Bureau have shown occupancy rates that are above the infrastructure in most states. There is a relatively high proportion of untried convicts among the prisoners. There are a lot of those who are detained longer than the maximum sentence allowed against their crimes. This can be closely correlated with sentencing patterns that bring normalization to detention and jailing even to lesser and minor offenses.

This lack of non-custodial sentencing alternatives so exacerbates the overuse of

custodial punishment. There are statutory forms of probation, community service, restorative conferencing, and rehabilitative programs but these are seldom put into practice. Without sentencing policies, judges frequently move to incarceration, as it is the surest and administratively most convenient punishment. The outcome is a prison complex that is overwhelmed with criminals who would otherwise have been handled using other means.

The overcrowding is disastrous to the reformative purpose of punishment. The inadequacy of space, sanitation, psychological support or even the lack of vocational program services in a prison results in stress and violence as well as socialization into crime. Such conditions tend to support criminal inclinations instead of correcting behavior. The penalty that comes along with imprisonment, as well as a lack of social services provided upon release, only gets the ex-inmates further estranged in lawful social activity.

Such an environment is a leading factor to recidivism. In the cases when the prisoners are released without any education, skills, counseling, and other reintegration services, they have a very low chance to go back to lawful living sources. Social ostracism, joblessness, and mental anguish often drive them back into the criminal communities. In this way, the prison turns into a place rather than a place of reform but a revolving door which is used to recycle crime.

This cycle is also contributed by sentencing inconsistency. Whenever there is a wide disparity in the punishments given in case of similar offences, the system does not send any clear normative message with regards to the consequences of crime. Deterrence is undermined in the case of seemingly arbitrary sentences. In addition, marginalized individuals with ineffective law representation will face stiffer custodial penalties, increasing social injustices in the criminal justice system.

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These concerns have been identified by judicial observations. In numerous determinations that relate to undetried imprisonment and prison life, the Supreme Court of India has stressed on the necessity of

avoiding spurious imprisonment. Nevertheless, they can only be observed periodically without systemic sentencing reform.

The association between sentencing practices and the conditions in prisons proves that the given issue is not logistic but philosophical. Overcrowding is not the consequence of crimes but an attitude of punishment that sees imprisonment as the chief manifestation of justice. Recidivism does not merely represent a failure of individuals but a system, a system that ignores rehabilitation at the sentencing phase.

Solving these crises thus necessitates a reconsideration of sentencing. Prisons will continue to be overcrowded and recidivism a structural element of the justice system and not an exception unless courts are directed to explore alternative viewpoints of incarceration, proportional punishment policies and long-term offender reintegration.

5. Constitutional Morality, Victimology, and Reformatory Justice: Requirement.

The most significant constraint regarding the sentencing practice in India is that it is offender centric and state centric, and the victim is peripheral. Crime is addressed as a specially targeted crime upon the state and punishment is meant to be countered as a reaction of the state towards the criminal. The victim and the expectations as well as role in the justice process have little consideration in the sentencing stage. Such an imbalance destroys restorative justice and constitutional morality.

The procedural law provides recognition of the victims in a low context. Criminal Procedure Code allows compensation in accordance with Section 357 and acknowledges the involvement of victims into some of the proceedings. But, the compensation is not a part of a larger sentencing philosophy but is discretionary. Structured victim impact assessment and possibilities of mediated settlement between offender and victim are not usually used in sentencing decisions.

This addition is not congruent to Article 14 and 21 constitutional values that feature.

Equality before law offers equality and equity in penalty whereas right to life and dignity accords victim and offender. The sentencing model that merely aims to punish the offender but becomes silent on the harm caused to the victim is incapable of delivering substantive

justice. Constitutional morality requires that sentencing strike a balance between accountability and restoration.

A framework to attain this balance is provided by the reformatory theory of punishment. Reformatory justice does not as much deny responsibility. Rather it aims at explaining the reasons why a person commits crime and also trying to reform the offender in to a law abiding citizen. This practice is correlated with the constitutional vision of human dignity and social reintegration. It also understands that, a large number of perpetrators are socio economically disadvantaged and in such circumstances, crime has in most cases been associated with structural deprivation and not crime per se.

In a number of judgments of the Supreme Court of India, the judicial acceptance of reformatory ideals can be observed. In Mohd. In the case of Giasuddin v. State of Andhra Pradesh, it was pointed out by the Court that punishment must be corrective and no longer retributive. A similar sentiment is voiced in the cases supporting the idea of probation and human treatment of inmates. However, these principles are still haphazard and have not solidified into a consistent sentencing doctrine. The areas that intersect victimology and reformatory justice are restorative practices which include victim offender mediating, restitution, apology, and serving the community. These systems recognize the harm to the victim as well as the offender being able to mend without needless imprisonment. These practices alleviate hostility, enhance healing and lead to accountability in a way that cannot be attained through imprisonment. In addition, reformatory justice works on the recidivism issue by targeting on education, development of skills, psychological counseling and by reintegrating them. In cases where these elements are introduced in sentencing, punishment will be a tool or medium of releasing the offender to social recovery as opposed to social ostracism. There is a more fundamental philosophical void in the lack of such considerations in more mundane sentencing.

The existing framework confounds the severity with justice and ignores the fact there are more humane, proportionate, and restorative answers that can be brought to bear on offenders and the larger community. Including the victim impact, restitution, and

rehabilitation into sentencing would put criminal justice in line with the constitutional morality and with modern criminological knowledge.

Hence, sentencing reform should go beyond the tightly-focused question of how much punishment should be placed to a more expansive question of what form of justice sentencing should attempt to accomplish. It is only through a reformative and victim conscious approach that punishment and dignity can be reconciled, accountability and restoration can be achieved and morality and legality can be reconciled.

6. Sentencing Lessons and Models in comparison to India.

The flaws of the Indian sentencing system are more evident in comparison with the jurisdictions which have not abandoned judicial discretion in favour of the institutionalized principled guidance. As experience elsewhere shows, the advance of consistency and proportionality and rehabilitation can be achieved by sentencing guidelines, special commissions and community based alternatives.

In England and Wales, offence specific guidelines are issued by Sentencing Council of England and Wales required by statute to be taken into account by the courts. These rules give ranges of sentences and mention aggravating and mitigating factors and suggest custodial and non custody. Judges still hold a discretion; however, it exists in a systemic set up that often encourages equality in the similar cases. Sentencing remarks would need to show an interaction with the guidelines being transparent and accountable. Under the United States federal system the United States Sentencing Commission created sentencing grids, formulated on the severity of the offence and criminal record. Despite being advisory post judicial review, these guidelines still affect sentencing outcomes and minimize unnecessarily existing disparities. The system can act on developing criminological insights by using the empirical data collection and periodical revision.

A much different philosophical approach to penal matters is adopted in Scandinavian countries, and more so in Norway. The model of correction focuses on less incarceration, conditions in prisons, education, and reintegration that are humane. Custodial sentences are only applied to gravitational

crimes while the community sanctions, electronic monitoring, and restorative programs are highly utilized. The emphasis is not to cause pain but to avert crime in the future by reintegrating the society. Recidivism is among the lowest in these countries.

What is shared in these systems is that they have institutional mechanisms that inform sentencing. Data is gathered, guidelines are given and trends monitored by sentencing councils or commissions. This evidence based practice substitutes intuition when making judgments. Notably, the independence of the judiciary is maintained. Judges may leave instructions but they should document them and can be reviewed by the appeals.

India does not have such a similar institutional set up. Sentencing decisions are still under the reliance of personal judicial philosophy, case law and case-specific arguments. Disparities will go unchecked in the absence of data driven oversight or enshrined tenets. Comparison models demonstrate that structured discretion does not mean the abuse of judicial power but an upholding of clarity.

7. Roadmap towards a National Sentencing Reform Framework.

Sentencing practice in India is lacking in both structural and philosophical aspects. Reform would thus have to be instigated institutionally, legislatively and judicially not in an incremental manner. A consistent sentencing policy should have its foundation on statutory principles which have to be approved by an institutional organ, but to be applied in a judicial practice that is not too discretionary, yet neither too consistent.

In accordance with Clause 7 of Article II of the Constitution, a National Sentencing Commission is established.

India needs to have a permanent statutory organ that is patterned after sentencing councils in other localities. The National Sentencing Commission ought to be made up of judges, criminologists, sociologists, prison administrators, and legal scholars. Its mandate would consist of the creation of guidelines on sentencing, empirical data on sentencing patterns, research of recidivism and proposing periodic reforms. This kind of body would transform sentencing into an evidence based practice as opposed to the feeling of the case in a court of justice.

7.2. Codification of Sentencing Principles

The guiding principles must be provided in the penal and procedural law directly in parliament. These values need to contain proportionality, parity, rehabilitation, victim restitution and community protection. Indian Penal Code and the Code of Criminal Procedure must be changed to enforce such principles to be applied by the courts when deciding on sentences.

7.3. Development of Sentencing Guidelines and Matrices

Specific sentencing grids on particular offenses ought to be made that establish aggravating and mitigating factors. Such matrices would not remove judicial discretion; rather they would focus it within limits of structures. Special reasons may make judges leave guidelines and they should be noted and can be subject to appellate review.

The expansion of non-custodial sentencing options is covered in

The emphasis should change to more legislative and judicial focus on probation, community service, restitution, restorative conferencing and electronic monitoring of non-violent and minor offences. Custodial punishment ought to be a last resort measure of last resort and not a routine response. This would directly lead to a reduction in the overcrowding of the prisons and increase rehabilitation.

7.5 Victim Impact and Restorative Practices Evaluation.

There should be victim impact statement and restitution opportunities during sentencing hearings. Special intervention can be engaged in the right cases to enhance healing and responsibility. This would redefine sentencing as a goal-oriented process that serves harm and not just punishment.

7.6 Data Driven Sentencing and Judicial Training.

Judges should undergo periodic education in criminology, psychology and correctional science. Empirical data on recidivism and offender profiles and rehabilitative success rates should be used to inform sentencing decisions. The judicial academies and Supreme Court of India can be at the centre of

this change.

7.7. The appellate review and transparency is

The structured sentencing would improve the appellate review since it sets standards on which sentences will be analyzed. Sentencing commentaries would be more transparent, contributing to accountability and trust among the population.

Conclusion

The current state of sentencing in India suggests the remnant of colonial deterrence-based oriented punishment and uninformed judicial discretion. The mixture has resulted in inconsistency, overcrowding, victimization, and chronic recidivism in prisons.

Reform is a question not of leniency but of constitutional fidelity, of rational justice.

Sentencing can shift a punitive rite to a looks-like-justice tool by a National Sentencing Commission, codified principles, structured guidelines, restorative practices and data driven rationales, which are reflected in judicial reasoning. This kind of reform would bring criminal punishment into line with the notions of dignity, proportionality, and social reintegration.

The policy of sentencing in India should change to being a punishment as vengeance to a punishment as a restoration. Only in that case, the criminal justice system will reflect the constitutional promise of fairness, equality, and humane governance.