

“SENTENCING POLICY IN INDIA”

DISSERTATION

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UNDER SUPERVISION OF:

SUBMITTED BY:

**Ms. SONALI YADAV
SINGH**

NAME KM EKTA

(LLM)(CSL)

(ASSISTANT PROFESSOR)

ROLL NO: 1190997029

SoLS, BBDU

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DATE;

PROFESSOR)

PLACE...

Ms. SONALI YADAV

(ASSISTANT

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KM EKTA SINGH

LLM (CSL)

ROLL NO: 1190997029

UNIVERSITY: B.B.D UNIVERSITY

LIST OF ABBREVIATIONS

- AIR all India report
- JT judgment today
- IPC Indian penal code
- Cr.P.C criminal procedure code
- SC supreme court
- HC High court
- s/302 section/302
- WB west Bengal state
- TN TamilNadu state
- UP Uttar Pradesh
- U/S under section
- AD anno domini
- COS court of session
- Mag. Magistrate
- CJM chief judicial magistrate
- ES act explosive substances(amendment) act 2001
- AP Andhra Pradesh
- Cons. Constitution
- CJI chief justice of India
- FAA prevention of food adulteration act
- EBC eastern book company
- ILI Indian law institute
- CLA central law agency
- Prof. professor
- Govt. government
- NCT national capital territory of Delhi

LIST OF CASES

- 'A'
 - Afzal guru's case
 - Alluddin vs. state of Bihar AIR 1989
 - Ajmal kasab's case
- 'B'
 - Bachan Singh vs. state of Punjab AIR 1980
 - Bariyar vs. State of Maharashtra JT 2009
- 'D'
 - D.K. Basu vs. State of West Bengal (1997)
 - Dhananjay Chatterjee vs. State of West Bengal
 - Delhi rape case 2012[Nirbhaya Rape Case]
- 'E'
 - Ediga anamma vs. state of AP AIR 1973
- 'G'
 - Gopal vinayak godse vs. the state of Maharashtra
- 'J'
 - Jagmohan Singh vs. state of up
 - Jeeta Singh' case
- 'K'
 - Kenda vs. Government of Malay
 - Kehar Singh vs. Union of India AIR 1965
- 'L'
 - Laxman Naik vs. State of Udisa
- 'M'
 - Meneka Gandhi vs. union of India (1978)
 - Mithu vs. State of Uttar Pradesh
 - Machhi Singh vs. State of Punjab
- 'N'

Nagpur rape case

- **'P'**
Panchhi and ors vs. state of up AIR 1998

- **'R'**
Ranjendra Prasad vs. state of UP
Ram narayan vs. state of up (1973)2 SCC, 86

- **'T'**
T.V. Vatheeswaram vs. State of Tamil nadu

Tulsiram case (1985)

- **'S'**
State of Maharashtra vs. Shukhdeo Singh AIR 1992
Santosh Kumar Rajendra Prasad vs. state of Uttar Pradesh AIR 1973
State vs. Sanjeev Nanda Case [sc]
Sunil datt Sharma vs. state (govt.of Delhi) AIR 2013 SC 2342

- **'Y'**
Yakub Menno case

TABLE OF CONTENT

CHAPTER – 1 (INTRODUCTION).....	
I. Introduction.....	
II. Objectives.....	
III. Research methodology.....	
IV. Hypothesis.....	
V. Literature review.....	
CHAPTER – 2 (SENTENCING POLICY AND HISTORICAL PROSPECTIVE).....	
I. Meaning of sentence.....	
II. Importance of sentencing.....	
III. Justification of sentencing.....	
IV. Objective and subjective justification of sentencing.....	
V. Historical prospective of sentencing polices;	
1.1 In ancient period.....	
2.1 In medieval period.....	
3.1 In British period.....	
4.1 Formation of Indian penal code.....	
CHAPTER – 3 (SENTENCING POLICY AND DISCRETIONARY POWER).....	
I. Discretionary power;	
1.1 Meaning of discretion.....	
2.1 Discretion under Indian laws.....	
II. Sentencing dilemma.....	
1.1 Hegel’s philosophy of rights.....	
2.1 Discretionary power of courts under Indian law.....	
3.1 Need of introduction of sentencing guidelines.....	
III. Theories of punishment.....	
1.1 Philosophies:	
a) Utilitarian philosophy.....	

- b) Retributive philosophy.....
- 2.1 Deterrent theory.....
- 3.1 Retributive theory.....
- 4.1 Reformatory theory.....
- 5.1 Expiatory theory.....

CHAPTER – 4 (sentencing practices and judicial trends).....

- I. Punishment under Indian law.....
- II. Competency of courts under Cr.P.C.....
- III. Judgment under Cr.p.c.....
- IV. Sentencing policy and natural justice.....
 - 1.1 Rules of natural justice.....
 - 2.1 Principles.....
 - a) Individualization of punishments.....
 - b) Principle of just desert.....
 - c) Principle of proportionality.....
 - d) Principle of equality.....
- V. Sentencing policy and Indian judiciary.....
 - 1.1 Sentencing and death penalty.....
 - 2.1 Sentencing and imprisonment for life.....
 - 3.1 Sentencing and imprisonment.....
 - 4.1 Case laws.....
- VI. Committees for sentencing reform.....
 - 1.1 Mali math committee.....
 - 2.1 Madhav menon committee.....
- VII. Judicial approach in determination of quantum of sentence.....

CHAPTER – 5 (SENTENCING DISPARITY).....

- I. Sentencing disparity;
- II. Reasons;
- 1.1 Abuse of discretionary power.....
- 2.1 Absence of sentencing guidelines.....
- 3.1 Case law.....

CHAPTER – 6 (CONCLUSION & SUGGESTION).....

- I. Conclusion.....
- II. Suggestion.....
- III. Bibliography.....

CHAPTER – 1

INTRODUCTION

"I believe that no country ever stood so much in need of a code of law as India and I believe also that there never was a country in which they want might be so easily supplied."¹;

Lord Macaulay.

¹ Indian penal code 1860 {bare act}

INTRODUCTION:

[“There is one and only one thing is modern society more hideous than crime namely, repressive Justice.”]

'Simon weil' (French Philosopher)²

Punishment is imposed for social discipline and do, Justice and if the punishment itself becomes unjust on account of unbridled and unregulated serif discretion nesting in the judiciary it would breed contempt about the justice delivery system and violate rule of law. Punishment may have reattributed or utilitarian philosophical underpinnings depend upon the hearings of the governing class. The principle of proportionality is the principal consideration in setting penalty level. Principle of proportionality and perceived procedural fairness are key factors bringing about compliance with the norms or law. Just desert as a thereof criminal punishment proposes reduced judicial discretion in sentencing and specific sentences for criminal conducts with little or no regard to the individual offender. The sentencing discretion vesting in the judge's genes them the space to individualize punishment depending upon specific facts and circumstances of a particular case.

2

Human Personality (Published in La-Table Ronde -1950)

In world, every society exists on a certain amount of social control, and particular moral ethical rationale underlying it. The concept of social control is guided by the principles of justice. When a person portray a certain type of deviation from this prescribed mode of behavior a social habit or rule, he is inflicted with a certain type of penalty. The Sentencing policy reflects the measure of judgment and the rationale, the society has for a certain crimes.

India does not have sentencing guidelines in material form which is provided by the legislatures. Time and again need for the same has been show and a number of committees also have recommended framing of sentencing guideless so as to avoid the dilemma faced by the court awarding sentence but all in vain

The Committee on Reforms of criminal justice system (Mali math Committee) a body established by the Ministry of Home affairs issued a report that emphasized the need to introduce sentencing guidelines in order to minimize uncertainty is awarding sentence. The committee emphasized the wide discretion judge have while deciding case and felt the need to minimize it by regulating law points and also power of judges to some extent.

The committed pointed out a new code for classification of offences. A social welfare polity should be adopted. In judicial trial³ Supreme Court observed that while exercising desertion in sentencing such as proportionality deterrence and rehabilitates' should be considered by courts. The lack of a proper sentencing policy not

³ Web reference .hindu.com

only the rights of evicting and convicts but also the basic the fundamental right of humors under the concentrations doing away with the discretionary powers of the judges totally is not possible but a certain guiding principles can be established which lower the amount of devotion that a judge may apply and establishing principle underlying the punishment policy.

OBJECTIVES OF RESEARCH:

- To understand various objectives and justification of sentencing.
- To understand the general principles of punishment
- To understand the concept of sentencing.
- To understand the role played by Indian judiciary as the safeguard of fundamental rights
- To understand the need of required sentencing policy
- To make the learner understand the legal provisions relating to sentencing.
- To understand the aim and purposes of sentencing and theories of punishments.
- To understand the sentencing practices.
- To understand the disparity in sentencing
- To understand the competency of court.
- To understand the sentencing dilemma

RESEARCH METHODOLOGY

This research has been conducted by data collection method. These data has been collected through primary and secondary resource . Researcher also analyzed the various types of theories regarding punishment. Primary data collected through: Books, Bare acts, Research journals, and Judicial pronouncement (judicial decisions). And secondary data collected by: Web reference, News papers, and Articles presented in the library.

Researcher also discussed with classmates and teachers on the topic and find out the reliable data to solve the research problems. Researcher went through all legal books and journals by which collected the authentic data and completed the research successfully.

HYPOTHESIS

This research has conducted on the topic named with sentencing policies in India. Researcher studied regarding books and journals and also went through web references, and made the certain assumptions and tried to prove it under this research. Which are following below?

- India has no sentencing policies, that's why sentencing disparity takes place under the decision of courts.
- Indian judiciary has delivered the perusal judgments to measure the nature of cases. And provides "appropriate, adequate, just, and proportionate sentence"
- Appropriate, adequate, just, and proportionate sentence must be followed by rules of natural justice and rules against bias. And discretionary power of the courts must be covered under this rule.
- Then this decision should be taken as reasoned decision known as ratio decidendi.

LITERATURE REVIEW

During the research, researcher studied various books, bare acts and research journals to conduct the research.

In the bare act,' the constitution of India, published by eastern book company. The publisher mentioned the updated and authorized data which helped researcher to use these updated data as primary data for the research. On the page no.13 a case law; state of W.B vs. Anwar Ali sankar, AIR 1952 SC 75, held that "a law conferring absolute and uncontrolled discretion in an authority negates the protection given under article/ 14. Researcher used this line as direction to complete the research. This bare act also contains authorized case laws for the collection of reliable data.

BARE Acts i.e. criminal penal code, Indian penal code published by central law agency contain the authentic and authorized content regarding the punishment, these bare acts framed the background for this research. And helped in describing about form of punishment and competency of courts. The term 'discretion' achieved the correct and reliable meaning by the judgment of the courts.

Researcher also analyzed the research journals to collect the data for the research. And also studied books regarding. Penology and victimology i.e. 'Criminology ', penology', and victimology' written by prof. N.V.Paranjape published by central law agency.

CHAPTER-2

❖ SENTENCING AND HISTORICAL PROSPECTIVE

"The king administered justice himself and if busy, the matter was entrusted to a judge."



What is the Sentencing?

⁴"Punishment alone can procure safety and Security of life when the law of punishment is kept in abeyance it genes use to the law of jungle. He adds that punishment if ill awarded under the influence of greed and anger owing to ignorance is also harmful and against natural justice."

In legal sense:

'Sentence' May be defined as some pain or loss (of life, freedom, rights or property) deliberately imposed upon the individual without his consent if not against his will. Prima facie it is morally wrong to inflict pain or loss deliberate on a person without his consent

❖ Importance of Sentencing:

Having presented a case for the requirement for having a sentencing rule and policy. There have been various suggestions and juristic opinion on what would constitute and ought to constitute sentencing policy. Criminal law theorists believe that sentences serve two purposes.

⁴ Title; "Suppression of Anti social elements" [Kautilya's Arthashastra A manual of dandaniti.]

- ✓ First, they serve the goal of deterring future crime by both the convict and by other individuals contemplating a committal of the same crime.
- ✓ Second a sentence serves the goal of retribution which posits that the criminal deserves punishment for having acted criminally when sentencing a judge must impose the last severe sentence that still achieves both goals while also considering the need for societal protection.

The goals of sentencing are inherently contradictor and always involve a balancing of competing goals. Three goals are:-

- **Deterrence**
- **Denunciation**
- **Rehabilitation**

❖ **⁵Justification of Sentencing:**

As we knows India has no sentencing guidelines exist and Judges retain wide discussion in sentencing but the courtly now mechanism i.e. Executive or legislature or judiciary in place to provide general guidance. Judicial trends present the series through the decision that identify relevant sentencing factors. The research paper examines the procedure for sentencing through laws under code or other provided laws. And also

⁵ Research journal; sentence , sentence process and power of courts

discuss by clarifying the procedure and its application of sentencing guideline in India.

Under criminal procedure code 1973 provides widely discretionary powers to judge once the conviction is resolved. This discretionary power must be used under the amid of **principle of just, proportionality and just desert**. These principles have been observed through discussions of courts. These research analyses the judiciary discussion and code promotions which frame the guideline for improving the sentencing.

⁶According to H.L.A. Hart:

Problem of justification has the following factors-

- Why should we punish of all, what is the justifying purpose of punishment?
- How and how much we justifiably punish?

The answers to these questions have been answered differently by different theories one theory focuses on strict punishment whereas other is tilted towards the human factor. This problem of justification should not be confused with that of prison reforms. The prison reforms are concerned with how a prisoner should be dealt with when he is punished whereas theories and problems of justification of sentence deal with why an accused is punished providing healthy and humane environment to the prisoners

⁶ .[www.// books google.co.in/books](http://www.google.co.in/books)

taking care of their health, counseling job training etc is the factors considered in prison... reforms.

"The administration of criminal justice aims at ridiculing crimes by making as many people as possible want to obey criminal law".

⁷The Stratified Committee:

The Stratified Committee in England in a preliminary discussion of the aims of sentencing pointed out that idea of sentencing requires a difficult choice between a sentence reflecting the gravity of the offence and one which would serve some other purpose. The committee appears to recognize fine principle aim as justification for sentencing.

1. To fit the punishment to the crime. (As society's retribution and denunciation).
2. To deter the particular offender (as a general determines).
3. To deter the particular offender from injuring again (as specific deterrence).

⁷ Report of the Streatfield committee on the business of criminal courts, comnd, 1289; journal ; sentencing process – review of jurial perspective

4. To prevent the particular offender from injuring society again (as prevention by disablement or incarceration).
5. To enable the offender to take his place as a responsible and law abiding useful member of society

The SC answers:

⁸ **"The administration of criminal justice aims at ridiculing crimes by making as many people as possible want to obey criminal law".**

The broad object of punishment of an accused found guilty in progressive civilized societies is to imperil on the guilty party that commission of crimes does not pay and that it is both against his individual interest and also against the larger interest of the society to which he belongs.

❖ **The modern system of criminal trial consists of two rigidly separated phases.**

⁸ Ram narayan vs state of up (1973) 2 SCC ,86

- The determination of criminal liability leading to an acquirable or connection.
- The determination of the way in which a person convicted should be dealt with.

❖ **Objective and subjective justification of punishment:**

These justifications are widely used in the discussion of Hegel's theory of punishment. In the discussion-

"Punishment's objective" justification relay to the notion that punishment in needed to manifest the nullity of the crime and hence uphold a system of right."

"Punishment's subjective justification relates justification in relation to the offender freedom as willed by him."

Hegel suggests that subjective justification takes priority punishment of the individual in justified by reference to the individual and not some extraneous source and it is from the point of view of the criminal that is necessary to annul the wrong.

HISTORICAL PROSPECTIVE OF SENTENCING POLICIES;

❖ **ANCEINT PERIOD:**

According to Manu:

Essential characteristic of law was punishment in the category of crimes Manu has recognized assault, theft robbery flare evidence cheating adultery and rape etc. The king protected his subjects and the subjects and the subjects in return owned him allegiance and paid him revenue.

⁹"The king administered justice himself and if busy, the matter was entrusted to a judge."

Manu justified his view by giving the reason that penalty preserves law and command and it guards body of a person and his belongings. He viewed above mentioned line as king was the administered of justice king identified the crimes and punishes them with the sentencing system which was recognizes in that period the Inflect of sentencing was;

"Deterrent effect on the accused and the society"

That impact of sentencing was to cause fear upon the accused to stop the further committing of crimes.

Sentencing polices govern the administration of legal sanctions for individuals convicted of a criminal offense. The sentencing policy reflects the measure of judgment and the rationale the society has for a certain crime.

⁹ Research journal; sentence, sentencing process and power in an awarding sentence.

❖ SHASTRAS :

The original conception of crime in Hindu law has begun with the violation of religious and social rules followed by elaborate enjoyment of *prayaschitta*. In *Shastras* **main offences i.e. violation of religious and social rules offences against the king wise identified as major offences** and these was a great sentencing policy to tackle the offence. The Basic of sentencing was distinction with respect to caste which from the offender belongs and senile punishment for violation of faith and trust of the king and lies for misdemeanors.

Sentencing policy in Ancient Hindu Period:

¹⁰[Manu Quoted

"Punishment governs all mankind punishment alone preserves them, punishment wakes while their guards are asleep and the wise consider the punishment as the perfection of justice"]

Sentencing policy was in Hindu law period deterrent and reformation. The king was the agent of the God and in his period of ruling if doer violates any recognized law or rules, deal his act as the sinful act. The Hindu law was approach of deterrent form of punishment. The **Asthasastra** mentioned: the crimes and its values punishment which must be imposed upon the offenders. Apart from the provision laid down in the unmodified Hindu law.

¹⁰ Which is not a commentary on any particular smriti but is a digest of several smriti'

Kautilya prescribes different types of sentences to be imposed on the offenders:

The sentencing policy was different in the Hindu period. We can take sentence renewal upon the caste system or Balham's found uses punishment in compassion to others.

<u>Sources</u>	<u>Essentials Sentencing Policy</u>
Rig-Veda	<ul style="list-style-type: none">• The king as Gopa Janasya protector of the people
Dharmashastras	<ul style="list-style-type: none">• Included civil and criminal law laid down the law or rules.
Smritis	<ul style="list-style-type: none">• Modern method of codification.
Gautama Sutra	<ul style="list-style-type: none">• Administration of justice to be regulated by the vedas.
Arthashastra	<ul style="list-style-type: none">• Kautilya mentioned Maintaining order of Govt. law of procedures law of evidence in civil as well as criminal cases, criminal

❖ **Dharma sutras:**

[The Dharmasutras are the first four texts of the Dharamashastras traditions and they focus on the idea of dharma. The Dharamsutras can be called the guidebook of

dharma as they contain the rules of the conduct]. The Dharmasutras dealing with crimes, punishment, duties of king, judicial matters and the personal practice of rules and regulations.

Provisions for dealing with various kinds of crimes as.

- Abuse and assaults of various kinds
- Crimes relating to property.
- Sex offences.

The Privy Council held that-

"The commentators while professing to interpret the law as laid down in the smriti introduced changes in order to bring it harmony with the usage followed by the people governed by the law.

➤ **Criminal justice system in Ancient period:**

In Gautama Sutra declared; "Administration of justice shall be regulated by the Vedas. The restitutes of the sacred law, the verandas and purans" In the various sources of dharma (law) i.e. Smritis, Dharmashastra, Arthashastra, Vedas recognized the various type of crimes and punishment through sentencing bodies. As regards the residuary matters.

"The power was vested with the king". It was provided that in cases where no principle of law was found in the Shruti, Smritis, or custom. The king should decide according to his conscience.

➤ **Various bodies to impose punishment:**

- King and courts
- Police
- Jails
- People's participation in crime prevention.
- Village system in village.

➤ **Punishment Policy (Dandaniti):**

Punishment policy was intimately connected with the administration of the State. **Manu** emphasized that-

"Punishment alone governs all created beings it protects them and it watches once they are asleep"

➤ **Punishment namely:**

- Admonition

- Censure
- Fine
- Corporal punishment

➤ **Corporal punishment included:**

- Death Penalty.
- Cutting off the limb with which the offence was committed.
- Branding on the head some mark indicating the offence committed.
- Shaving the head of the offender parading the offender in public streets.

➤ **¹¹Sentencing policy in Ancient Period:**

Sources	Offences	Punishment
Dharmashastras	Violation of Religious and Social rights rules offences against the king	Dot caste public Disgrace Fine Mutilation capital punishment
Arthshartra	Robbery/Theft defamation	Capital Punishment

¹¹ Research journal; punishment and sentencing policy- historical prospective;

	Assault/ Belting	Corporal punishment Fine
Manusmriti	Offences by lower caste against the upper caste murder of a Brahman	Death Mutilation Fines

❖ MEDIEVAL PERIOD

Sentencing policy in Medieval India:

The Muslim rules emphasized the importance of administration of criminal justice and introduced reforms to improve the judicial machinery. The civil administration during the Muslim was headed by the king who was known as Sultan or emperor. He was attested by his Minister as wazir. The kingdom was divided into provinces as subhas. Each province was composed of districts as sarkars. Each District was further divided in to parganah. A group of villages constituted a parganah.

Police regulations were drawn up for the first time in India. Muslim ladies prohibited the death penalty clause for criticizing Islam or Prophet Mohammad like Akbar or Jahangir during the medieval period of Indian History the criminal justice system of India was highly influenced by the Muslim rules and therefore the period of Muslim rules is generally known as the Muslim period.

The general doctrine of discretionary punishment was clearly set forth in the preamble of Regulation 53, 1803 as follows:

¹²"The Mohammedan law vests in the sovereign and his delegates the power of sentencing criminals to suffer discretionary punishment in three cases Firstly, in the cases of offences for which no specific penalty has been provided. Secondly when the proof of commission of such crimes may not be such as the law requires for a judgment of specific penalties. Thirdly for heinous crimes in a high degree, injurious to society which may require exemplary punishment beyond the prescribed penalty and with respect to crimes of this description an unlimited discretion extending to capital punishment is admitted to have been left by the Mohammedan law to sovereign authority."

❖ ¹³Punishment during Muslim Period;

The punishment for various offences was classified into four broad categories:

- (a) Kisa – (Retaliation)
- (b) Diya – (price of blood) (Blood Money)

¹² Preamble to regulation 53, 1803, journal; punishment and sentencing policies

¹³ Development of criminal law in India; amity university,(India)

- (c) Hadd – (Specific Penalties)
- (d) Tazeer – (Discretionary Punishment)

The punishment which fell in this category consisted of imprisonment, corporal punishment and exile or any other humiliating treatment.

"Type and quantum of penalty to be imposed was entirely within the discretion of the judge"

The judges took a variety of factors into account the awarding punishment punishments prescribed were very cruel. Mutilation of body was one of the types of punishment which resulted in great suffering and gradual death.

Muslim criminal law was that the death sentence was required to be executed by the heirs of the deceased.

Mohammedan Penal Law;

The Mohammedan jurisprudence had four broad principles of punishment. There are kisas or retaliation, Diyut, Hadd and Tazeer & Siyasa or discretionary and exemplary punishment.

➤ **Kisas:**

The Principle of Kisas was very simple-

"A life for a life

A limb for a limb"

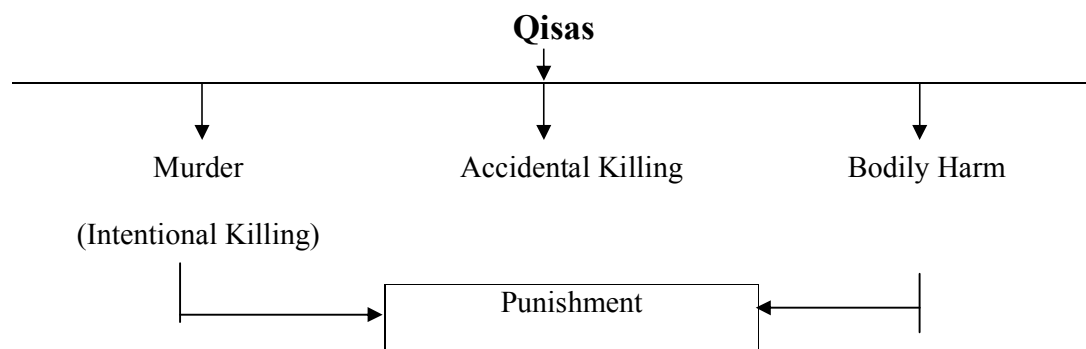
The legal meaning of "Jinayat" was offences against the person. It was restricted to willful homicide meaning and wounding. The punishment of retaliation is classified under two heads-

- **In case of death**
- **In case of short of death**

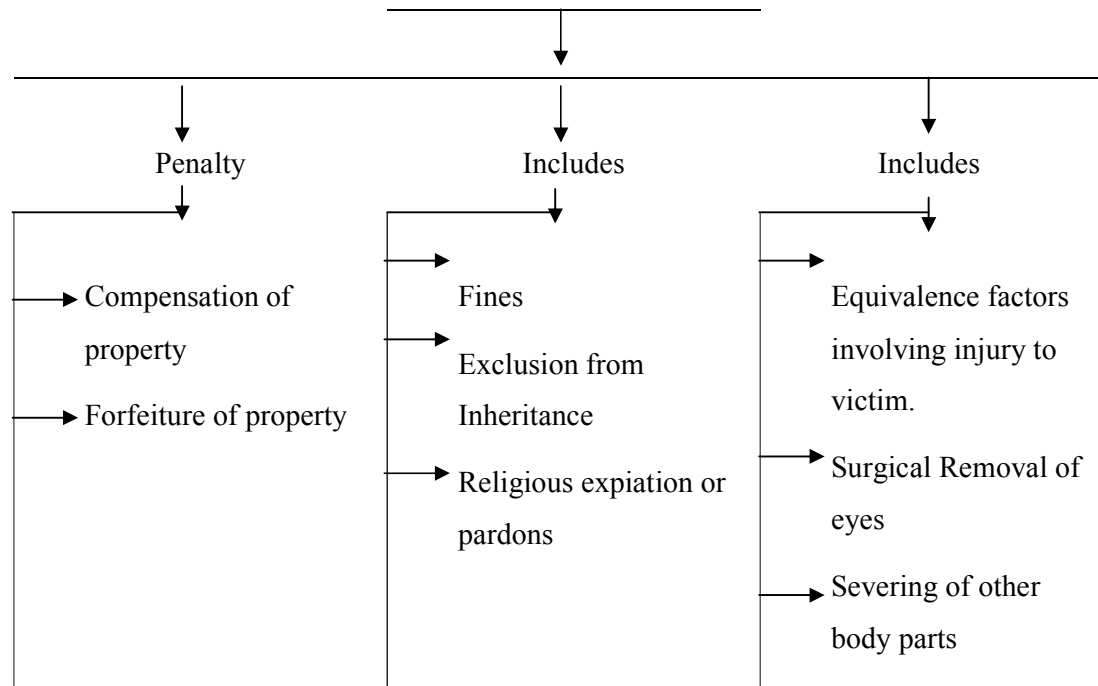
In case of death:

Retaliation was considered to be the right of man in contradistinction to the right of God specifically to be the private right of the person murder.

¹⁴Crime and Punishment;



¹⁴ M.cheri bassioni the Islamic criminal justice system, Oceana new York [1982].p



Diyut :

Islam provided an alternative to the punishment of blood vengeance. Basically the punishment of Diyut was a corollary to the punishment of Qisas. The punishment of Qisas in all cases of willful homicide was exchangeable with the Diyut if the person having the right of retaliation so wished. Principles of alternation acceptance of blood money were how each clan or subdivision of the Community wile responsible for the collection of its members.

¹⁵Where as Mohammad's doctrines about bodily resurrection and life after death provided the spiritual basis for acceptance of blood money over blood vengeance.
i.e.

The fine for each kind of homicide causing death of a man stated in terms of money terms to have been fixed.

So, practically the punishment of Diyut was an alternative to the punishment of QISAS.

➤ **Hadd [Specific penalty]**

This principle of punishment under Muslim Law was hadd which was defined in the Heddaya to comprise of the specific penalties fixed with reference to identified offences. Under Hadd the quality and quantity of punishment was fixed for certain offences and this could not be altered or modified. The punishment of Hadd extended to the crime of adultery of illicit sexual intercourse between married or unmarried person, of false accusation of incontinence of drinking wine of theft and of high way robbery.

¹⁶Hadd etymologically meant boundary or limit. In criminal law it meant specific penalties for Specific offences. The underlying idea was to prescribe, define and fix the nature, quantity and quality of punishments for certain particular offences

¹⁵ Montgomery w.watt. Islamic political, thought, Edinburg university, Edinburg[1968]

¹⁶ “ the penalty of hand amputation for theft in Islamic “ journal; of criminal justice; 1994

which the society regarded as anti-social or anti-religion. These offences were characterized as being against God, or in other words, against "public justice"

❖ **Tazir:**

Tazir was discretionary punishments. These punishments were inflicted at the discretion of the judges as they were no fixed rules to prescribe such punishments. Usually, this punishment considers of imprisonment exile corporal punishments, boxing on the ear or any other humiliating treatment. **English observes describes the doctrine of tazeer as a punishment supplementary document which is well known and admitted in the practice of court in Bengal.**

The Qadi was authorized to exercise a just discretion according to the nature of the offence and the mark and situation of the offender in adjudging him to receive an admonition such as might render him ashamed of his conduct or a public reprimand on personal arrest and exposure at the door of the court. Tazir means amount of punishment is the discretion of the judge punishment can be of any kind from imprisonment to public exposure. Dissection is to be used in No specific penalty has been provided. Heinous crime to be punished beyond prescribed penalty.¹⁷

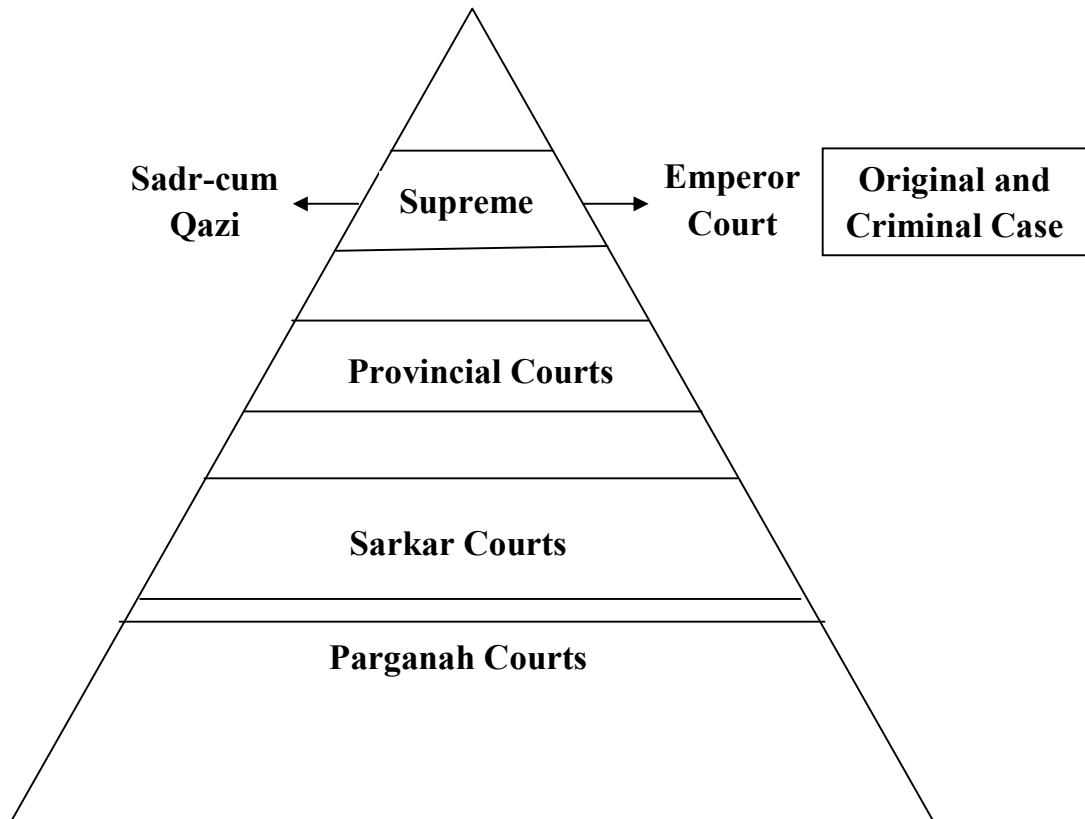
¹⁷ The penalty of hand amputation for the in Islamic justice' journal of criminal justice, 1904

<u>¹⁸ Offences</u>	<u>Sentencing policy</u>
Apostasy	<ul style="list-style-type: none"> • Death by Beheading for males • Imprisonment until repentances for females.
Adultery and fornication	<ul style="list-style-type: none"> • Married person-stoning to death. • Unmarried person-100 lasher
Defamation of use of alcohol	<ul style="list-style-type: none"> • Do lashes for a free person to lashes for a slave.
Theft	<ul style="list-style-type: none"> • Amputation of hand at wrist by an authorized doctor
Highway Robbery	<ul style="list-style-type: none"> • Homicide- • Death by beheading • No homicide – cross limb Amputations

¹⁸ Research journal; punishment and sentencing policy; historical prospective

Courts [Execution of punishment under bodies]:

Different courts were, established to deal with different kinds of cases Courts were constituted at central capital and at the headquarters of a province district and parganah.



During the Mughal amount, The Emperor was thought about the "Fountain of justice" The Emperor created a separate department of justice (Mahakam-e-Adalat) to control and see that the Justice was administered properly. The Magistrate was appointed by the Emperor he was thought about future influential person.

Courts	Functions
<ul style="list-style-type: none"> • Mahukma-Eadalat 	A separate department to regulate and watch the administration
<ul style="list-style-type: none"> • Emperor's court 	original and criminal jurisdiction Mohtasib-e-Mumalik [As Attorney General of India], attested the emperor.
<ul style="list-style-type: none"> • Court of the chief Justice (Qazi-quazat) 	original jurisdiction of civil and criminal Appellate Court
<ul style="list-style-type: none"> • Provincial chief Appellate court 	Judge- as Qazi-e-Subah
<ul style="list-style-type: none"> • District Chief Civil and • criminal court parganah court 	Judge – as –Qazi-e-sarkar Qazi-e-Parganah original jurisdiction

❖ **British Period:**

[The East India Company had administered a plurality of legal sources including regional regulations, Acts of parliament India and personal law, Islamic

criminal law and the widely interpreted Roman Principle of "Justice, equity and good conscience"]

The lord Macaulay set his hard to codify the Indian law. The codification of law in the colonies brings the impact on the legal change.

[Calcutta HC Judge CD field [Surmised]:

"The word that is thus being done in British India will hereafter from an importer page in the history of Great British and its effects will in all human probability react upon England herself."]

Lord Macaulay's words [He observed]¹⁹

"I believe that no country ever stood so much in need of a code of law as India and I believe also that there never was a country in which they want might be so easily supplied."²⁰

As the mentioned in the pernicious page that East India Company administered the legal sources of regulation or laws. There were made general changes in criminal laws in 1772.

¹⁹ Web reference ; law teacher.net

²⁰ Indian penal code 1860 {bare act]

Warren Hastings was the first who introduced his judicial plan for the administration of justice in provinces.

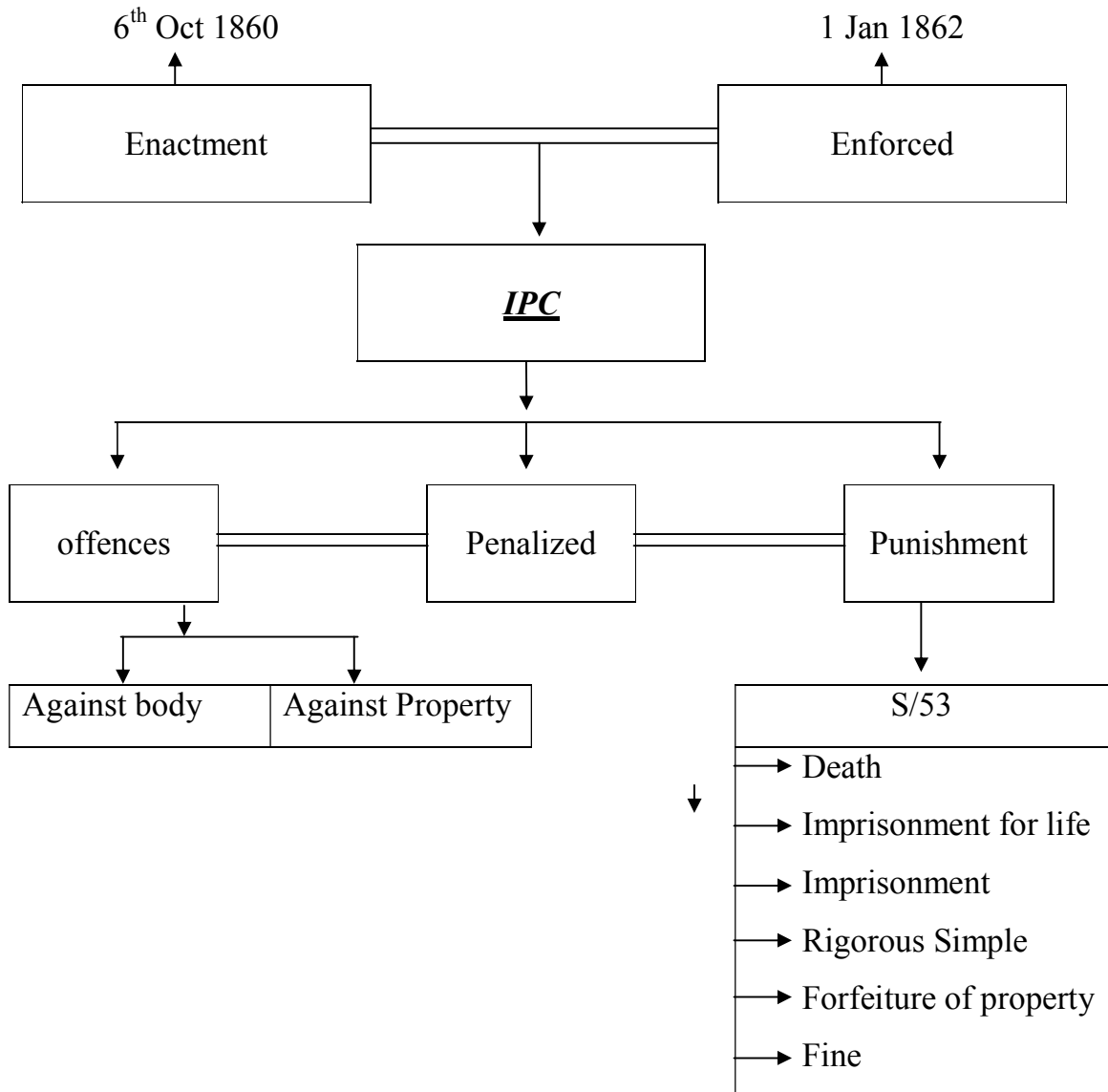
❖ **Modifying and Adapting of existing law:**

The Britishers modified the Muslim law i.e. punishment for perjury and forgery were enhanced through regulation of 1807. The process of modifying and adapting the law continued till the codification of laws.

❖ **Formation of IPC:**

In 1833, Britain set up a law commission to codify the laws well known as 'Indian law commission'. That was the first law commission which drafted the Indian Penal Code. Led by T.B. Macaulay (Thomas Babington Macaulay) in 1834, the drafting was completed in 1850 and presented to the legislative council. The code was passed into law on 6th October 1860 and came into operation on 1st January 1862.

Comment: [The code came into force in Jammu and Kashmir on 31st Oct 2019, by virtue of Jammu & Kashmir Reorganization Act 2019 and replaced the state's Ranbir penal code.]



➤ **Reforms during British Period:(courts)**

<u>Period;</u>	<u>Courts;</u>	<u>Place;</u>	<u>Under ;</u>
-----------------------	-----------------------	----------------------	-----------------------

1726	Mayor's Courts	Madras, Bombay Calcutta	East India Company
1772 to 1785	District Diwani Adalat District Fauzdari Adalats	Provinces	warren Hastings
1773 AD	Supreme Court	Calcutta	Regularly Regulating Act.
1786 To 1793 AD	Circuit Court	Culcutta Mushidabd Patna	Under Cornwallis
	Sadar Diwani Adalat Sadar Nizamat	Allahabad	Under William Bentinck

	Adalat		
1937	Federal Court	Calcutta	Government of India Act 1935

Comment:

During the British Period., Process to reform the existing law contented till the end the 1947. By passing various British regulated the Mohammad and Hindu law by the regulating Act, 1773, Supreme Court in Calcutta is 1774 also setup to provide the justice and punish the offender now the question came aerie that how all the existing shall be punishable senders a frame so British decided to codified the law in 1833 by palling charter Act, 1833 so they set-up the first law commission headed by lord Macaulay and codified the law in 1860 named with Indian penal code. After this code,

Amendment also being made Crpc, and provided the wide discretionary power to judges and magistrates by dividing court (Courts) at tire level Now the trial court has the original jurisdiction to try the court which dileration the wide discussion power.

CHAPTER – 3

❖ SENTENCING POLICY AND DISCRETIONARY POWER

“Every saint has a past, every sinner has a future”

Justice; Krishna iyer

John Marshall – wrote-in 1804 (US Chief Justice):

1]"Judicial power, as contradistinguished from the power of the laws, has no existence, when courts are said to exercise a discretion, it is a mere legal discretion. 'A discretion to be exercised in discerning the course prescribed by law and when that is discerned it is the duty of the court to follow it Judicial power is never exercised for the purpose of giving effect to the will of the judge, always for the purpose of giving effect to the will of the legislature or in other words, to the will of the law.']"

Term of Discretion:

Discretion means choosing from amongst the various available alternatives but with reference to the rules of reason and justice and not according to personal whims. Such exercise is not to be arbitrary, vague and fanciful but legal and regular.

Though courts in India have developed a few effective parameters for the proper exercise of discretion. The conduct of judicial behavior still remains halting, variegated and residual and lacks the activism of the court.

²¹Judicial control mechanism of administration discretion is exercised

at two stages:

1. Control at the stage of delegation of discretion.
2. Control at the stage of the exercise of discretion.

1. Control at the stage of delegation of discretion:

The court exercises control over delegation of discretionary power to the administration by adjudicating upon the constitutionality of the law under which such powers are delegated which reference to the fundamental rights enunciated in Part-III of Indian constitution. Therefore, if the law confers vague and wide discretionary power on any administration authority it may be declared ultra vires A/14, A/19 and other provision of the constitution.

Delegated legislation being a power to make an order of general applicability presents less chance of administrative arbitrariness than administrative discretion which applies from case to case.

2. Control at the stage of the exercise of discretion:

²¹ Web reference; [legalserviceindia.com/abuse of administration](http://legalserviceindia.com/abuse%20of%20administration)

In India there is no administrative Procedure Act providing for judicial review on the exercise of administrative discretion. Therefore the power of judicial review flows from the constitutional configuration of courts.

Courts in India have always held the view that judge-proof discretion is a negation of the rule of law. A discretionary power must be.

("Discretion is the better part of valor" [An idiom] :)

Means –

The avoidance of problems or unnecessary risks by thinking carefully and exercising caution before taking action.

"The exercise of discretion by Judges is an inherent aspect of judicial independence of powers"

Judicial discretion is necessary to the proper discharge of our constitutional obligations as - a separate – and independent judiciary A Trial court must exercise discretion in deciding a question it must do so in a way that is not clearly against logic and the evidence. Most judicial determinations are made based on evidence introduced at legal proceedings. The relevancy of evidence is typically measured by its probative value. Evidence is generally deemed probative if it has a tendency to make the existence of any material fact more or less probable.

During many civil and criminal trials Judges rule on hundreds of evidentiary objections lodged by both parties. These ruling are normally snap judgments.

Discretion under Indian Laws:

In India, the sentencing power of the courts is derived from the code of criminal procedure code (1973). The offences are divided into two groups-²²

1. Offence under the IPC
2. Offences under the special laws.

The legislature defines the offence with sufficient clarity and prescribes the outer limit of punishment and a wide discretion in fixing the degree of punishment within that ceiling is allowed to the judge. This discretion, if not exercised properly in a given case is liable to be corrected by the superior courts.

Circumstances considered as aggravating factors calling for an increased severity of punishment are-

- The manner in which the offence is perpetrated.
- The motive with which the offender was actuated.

The consequences of the offence on the public and on the individual suffer.

²²22

The IPC leaves the quantum of punishment to the discretion of judges who would have the means in each case of forming an opinion as to the character of the offender and Circumstances.

The policy of law in giving a very wide discretion in the manner of punishment to the judges has its origin in the impossibility of laying down rigid and inflexible standards. On balancing the aggravating and mitigating circumstances as disclosed in each case.

[The Judge has to judicially decide what would be the appropriate sentence. To a certain extent, it is a subjective exercise. Which might depend inter-alia upon the penal philosophy of the judge?]

❖ In the IPC, minimum to maximum sentence has been prescribed but courts are empowered to decide whether the offender has to undergo rigorous to simple imprisonments.

❖ **Sentencing Dilemma;**

²³Hegel's Philosophy of Right:

Hegel's general aim to present a conception in which are reconciled the individual will and society. Hegel's view of crime and punishment may be gathered from the following extracts.

"Violence is a manifestation of will which cancels and supersedes the will visibly manifested."

"The criminal act is a negation and punishment is the negation of a negation."

"The conception of punishment implies of necessity the judgment that crime as the product of a negative will carries with it its own negation or punishment."

When Hegel says that the object of punishment is not to affect "this or that good" that must not take his thought that society does not look for a good result from punishment.

Punishment, then, is pain and to inflict pain on any person obviously needs a justification. There are four ways in which punishment is usually justified:

1. Punishment might be defended under all of them. (Vindictive theory).
2. Punishment may be defended is that it is deterrent. It is desirable to suppress all wrong doing.

²³ Wikipedia.org.com/ Marxists.org

3. Punishment may deprive the criminal under punishment of the chance of committing fresh crimes.
4. Reformation of the criminals.

Vindictive theory asserts that, if a man has done wrong it is right and just that he should suffer for it even if the pain does no good either to him or others. He is said to deserve it for the punishment is looked on as a satisfaction of abstract justice.

❖ **Discretionary power of courts under Indian Laws:**

In India, the courts have sought to spell out some limits on conferment of board discretionary powers by invoking the fundamental Rights guaranteed by the constitution. This may involve some substantive and procedural safe-guards in the exercise of powers. The court may imply some substantive limit on the power. They may imply some procedural safeguards i.e. an adjudicatory body being required to follow natural justice. In other case, the relevant law may lay down some procedural norms. The courts control the exercise of discretion by the administration and for this purpose has evolved several norms.

Sentence hearing under cr.p.c:

[Under the crpc 1973 session courts and magistrate trying warrant cases have to give hear to the accused on the question of sentencing after finding him guilty of the offence.]

²⁴["We are of the opinion that as long as the spirit and purpose of section 235 (2) is met, is as much as the accused is afforded a real and effective opportunity to plead his case with respect to sentencing whether simply by way of oral submissions or by also bringing pertinent material on record, there is no bar on the presentencing hearing taking place on the same day as the preconviction hearing".]

Under crpc Natural justice rule applies while pronouncing the sentence. When a judge pronounces the judgement he should apply his judicial mind and rule of natural justice. Under the laws judge has given wide discretionary power to impose sentence but the case brought before the court, judge should the bench as free, judicial mind. He should not be influenced by the victim or accused properties. In this context Indian Judiciary still is following the speaking order of courts and rules of natural justice to protect the accused and victim rights. When judge is pronouncing the judgement he should insure himself that accused has been given all opportunity of being heard or no doubt has left to sentence him. Then that is called as just and adequate judgement.

Circumstances which are to be considered in imposing sentence: [An Adequate Sentence]

²⁴5/235/248-crpc Accused 'X' v/s state of Maharashtra.

- The nature of the offence
- The circumstances of its commission
- The age and character of the offender
- The injury to the individuals /or/to the society
- Offender-whether, is a – Habitual, Casual or a professional
- Effect of punishment on the offender
- Mental agony suffered by the offender during prolonged trial.
- Influences of motives, Provocation

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❖ **Abuse of discretion:**

The exercise of discretion by judges is an inherent aspect of judicial independence under the doctrine of the separation of powers. The standard of review applied to appeals from decisions involving the exercise of judicial discretion is 8[Abuse of discretion] Abuse of disruption include not allowing an important witness to testify, making improper comments that might reference a politics party showing bias or making rulings on evidence that deny a person a chance to till his or her side of the matter. This does not mean that some on truly did not get a trial. Sometimes the appeals courts admit the judges was wrong but not wrong enough to have influenced the outcome of the trial often to the annoyance of the losing party-

²⁵ Court must make these decisions quickly to keep the proceedings moving on schedule for this reasons, Judges are given wide latitude in making evidentiary rulings and will not be over turned on appeal unless the appellate court finds that the trial judge abused his or her discretion.

²⁵ <https://blog.ipleaders.in>

Web reference - Wikipedia. org. The freedictionary.com

Courts should not be subject to improper influence from the other branches of government (political influence), judicial independency which ideally frees judges to decide cases and make rulings according to the rule of law and judicial discretion even if those decisions are politically unpopular or opposed by powerful interest.

❖ **Need for the introduction of a Sentencing Policy:**

➤ **"Mali math Committee"**

²⁶In March 2003, Mali math Committee in its report submitted that a statutory guideline is required for the sentencing policy. The committee stated that under IPC maximum or minimum punishment is prescribed for the offences. The committee submitted that "The National Judicial commission must have clear guidelines on precise qualification, experience, qualities and attributes that are needed in a good judge and also the prescription of objective criteria to apply to the overall background of the candidate. The Committee also favoured substituting death sentence with imprisonment for life without commutation or remission.

The India Penal Code has to be reviewed to enhance, reduce or apply alternatives modes of punishments keeping in mind new and emerging crimes. The committee pointed out a new code for classification of offences other than cognizable and non-cognizable. A Social Welfare Policy should be adopted.

²⁶

"The IPC prescribes only the minimum and maximum punishments for offences without laying down any guidance for infliction of punishment in proportion to the crime. Therefore each judge exercise it own discretion resulting in a sentencing system which lacks uniformity. This requires a thorough examination by an expert statutory body."

❖ **Madhava Menon Committee:**

The Madhava Menon Committee on draft National Policy or Criminal Justice reiterated the need for guidelines in statutory sentencing in the following words:

"Disparities in sentencing need to be reduced by evolving appropriate statutory guidelines in respect of each types of punishment which should be periodically revised at the instance of the proposed Board of criminal Justice"

Argument:

Mandatory sentences ensures that convicted people are definitely taken off the streets at least for the specified time period thereby minimizing their chance of committing additional crime rates. The provisions of mandatory minimum sentences reduce the scope of personal bias and sympathy from getting in the way of justice.

The fact that judges are also humans needs to be taken into consideration which tempts them to award lenient punishments if they know the defendants or if they feel favourably towards them. Thus, mandatory minimum sentences were provided to divest the judges of the discretion to impose little or no jail time for serious crimes and habitual criminals.

Criticism:

Mandatory minimum sentences can be an unfair one size fits all solution as judges would have no choice but to award the same minimum punishment to everyone who commits the same crime without considering their individual circumstances these are the product of good intentions but in order to convert these good intentions into a good policy good results are also necessary.

❖ **Theories of Punishment:**

Theories of punishment can be divided into two general philosophies-

- Utilitarian
- Retributive

Utilitarian theory	Punishment seeks to punish offenders to discourage or deter.
Retribution theory	Punishment seeks to punish offenders because they deserve to be punished.

❖ **Utilitarian Philosophy**

Laws should be used to maximize the happiness of society because crime and punishment are inconsistent with happiness. It recognizes that punishment has consequences for both the offender and society.

The utilitarian theory is "Consequentiality" in nature. It holds that the total good produced by the punishment should not be unlimited. Under this philosophy laws that specify punishment for criminal conduct should be designed to deter future criminal conduct.

❖ **Retributive theory:**

Under this theory, offenders are punished for criminal behaviour because they deserve punishment:

According to the Retributists:

²⁷Human beings have free will and are capable of making rational decisions. An offender who is insane or otherwise incompetent should not be punished. Thus, a person who makes a conscious choice to upset the balance of society should be punished.

²⁷ web-reference- <https://law.jrank.org>

"Theories of punishment"

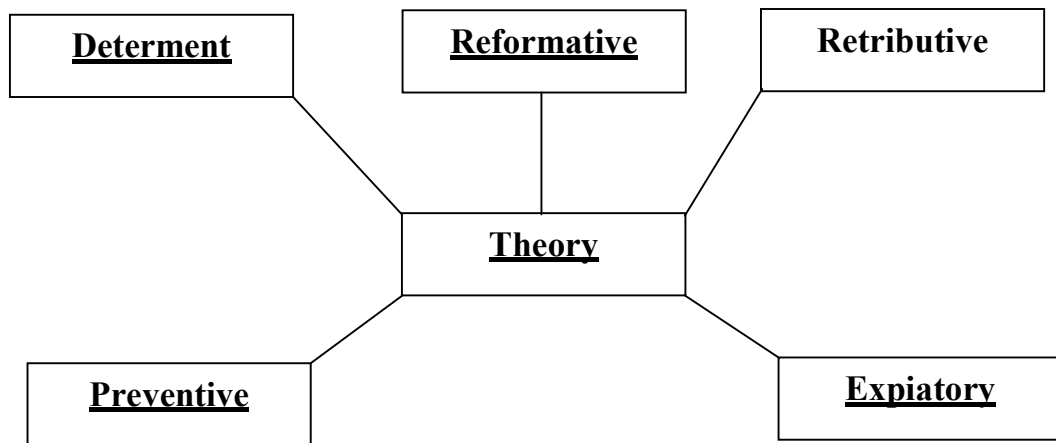
❖ **Deterrent Theory:**

Deter-Means = To Abstain from doing An Act

Purpose:

To deter the criminals from doing the crime or repeating the same crime in future. The determent theory has two aspects as in operates at two levels-

- Individual offender
- Other potential offender



²⁸Plato expanded this idea and Bentham strongly advocated it. In his 'Principles of penal laws' Bentham argued:

²⁸ **Jeremy Bentham, Principles of penal law**

"When we consider that an unpunished crime leaves the path of crime open, not only to the same delinquent but also to all those who have the same motives and opportunities for entering upon it we perceive that the punishment inflicted on the individual becomes a source of security to all."

The classical example of general deterrence sentence is that of a judge in England during 18th century who said-

"You are to be hanged not because you have stolen a sheep but in order that others may not steal sheep".

❖ **Preventive Theory:**

This theory applied i.e. by keeping an offender away from the society. That means-by keeping an offender in confinement the society may be secured.

²⁹"The fear of acts which disrupt social equilibrium has inspired the imposition of punishment by those who have the power to establish and enforce the desired standards of conduct." [Joel Meyer.]

Preventive philosophy states that the preventive theory of punishment serves as an effective deterrent and also as a useful preventive measure, now days this theory is

²⁹ **Joel Mixer – reflections on some theories of punishment.**

not pleaded as a general justification of sanctions but pleaded mainly with reference to incorrigible offenders and highly dangerous characters.

❖ **Retributive theory:**

Means: "Tooth for a tooth"

The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim historically; it appears that instinctive response of vengeance of a victim was first transformed into a moral right of the society to inflict similar pain on the offender. This theory aims at taking a revenge rather than social welfare and transformation. Thus this theory has not been supported by the criminologists, Penologist and sociologists.

Prof Sutherland Points out:

³⁰*"In Punishing Criminals Society express the same urges which are expressed among criminals in committing a crime."*

Reformative theory:

The object of punishment should be the reform of the criminal, through the method of individualization. It is based on the humanistic principle that even if an offender commits a crime he does not cease to be a human being.

³⁰ **Edwin Sutherland, Principles of criminology**

According to Salmond:

If criminals are to be sent to prison to be transformed into good citizens by physical intellectual and moral training prisons must be turned into comfortable dwelling place. This theory also known as **rehabilitative** sentencing purpose of punishment is to reform the offender as a person so that he may become a normal law-abiding member of the community once again. This theory is supported by criminology. Criminology regards every crime as a pathological phenomenon a mild form of insanity, an innate or acquired physiological defect.

❖ **Expiatory Theory:-**

Means – "The Act of Expiating reparation amends, compensation.

According to this theory- compensation is awarded to the victim from the wrong doer victimologists are propounding to give certain remedies to the aggrieved victim and their families. This separate science is called "victimology". This theory supports the expiration Theory

According to "Green hut":

Three components must be present-

³¹If punishment is to act as a reasonable means of checking crime"-

- Speedy and Inescapable detection and prosecution must convince the offender that crime does not pay.
- After punishment the offender must have "A fair chance of a fresh start"
- "The state which claims the right of punishment must uphold superior values which he i.e. offender can reasonably be expected to acknowledge.

Comment:

Above discussing about various theories of punishment which are introduced the modern criminal justice system formwork to punish the offender and compensate the victim through machinery. Their theories described the principle of sentencing and aims of punishment towards the individuals and society. These theories influenced the views of proponders and introduced the basic scale for imposing the sentence.

³¹ [https://www. Lowctopus.com](https://www.Lowctopus.com)

CHAPTER-4

❖ SENTENCING PRACTICE AND JUDICIAL TRENDS

“In its function, the power to punish is not essentially different from that of curing or educating;”

Michel Foucault, (French philosopher)

❖ **PUNISHMENT UNDER INDIAN PENAL CODE 1860**

➤ **Section-53 of Indian Penal Code:**

The offences under the IPC have been defined with sufficient clarity and the maximum punishment that could be imposed for an offence has been fixed in most cases. The punishments to which the offenders are liable under the provisions of the IPC mentioned under section-53.

9[Section-53 [Punishments]:

The punishments to which offenders are liable under the provisions of the code-are-

- First - Death
- Secondly - Imprisonment for life
- Thirdly - Abolished
- Fourthly - Imprisonment;rigorous/ simple
- Fifthly - Forfeiture of property
- Sixthly - Fine

32

³² INDIAN PENAL CODE 1860

➤ **Death Punishment on the following offences:**

• S/129	Imaging of attempting to wage war or abetting the waging of war against the Government of India.
• S/132	Abetment of mutiny actually committed.
• S/194	Giving or fabricating false evidence upon which an innocent person suffers death.
• S/302	Murder
• S/303	Punishment for murder by life Convict – (Struck down) in Mithu V/S Punjab State.
• S/307	Attempt to murder by a person under sentence of imprisonment for life if hurt is caused.
• S/396	Dacoity with murder.
• S/307	<u>Attempt to murder</u> [Which conforms nether to law nor to logic]
Punishment	If hurt was caused imprisonment for life imprisonment for 10 years.
Whether convicted	Death penalty

offender	
• S/302	Murder
Punishment	Death Penalty of Imprisonment for life.

Comment:³³

After Mithu case if a life connection is found guilty of murder he will be convicted U/5 302 and may be get life imprisonment or death penalty.

As for as imprisonment is considered for majority of the offences the code prescribes the maximum penalty and leaves the infliction of the appropriate term within the set limit to judicial discretion. Generally speaking.

The IPC gives much sentencing discretion to the judicial officer this approach helps the court to take an informed decision it is in accordance with the constitutional principle.

➤ **Imprisonment for life:**

The words "Imprisonment for life" were substituted for "transportation for life" by Act xxvi of 1955.

³³ IPC –india.com(lecture-in law- Siddhartha law .collegial

➤ **Rigorous Imprisonment:**

• S/194	Giving or fabricating false evidence with intent to procure conviction of capital offence
• S/449	House-trespass in order to commit offence punishable with death.

Comment:

Rigorous that is with hard labor above mentioned offences are punishable with rigorous imprisonment only without any alternative of simple imprisonment being imposed.

➤ **Imprisonment for life:**

The words "Imprisonment for life" was substituted for "transportation for life" by act XXVI of 1955.

Offences punishable with simple imprisonment

S/168	Public servant unlawfully engaging in trade.
S/169	Public servant unlawfully buying or bidding for property.

S/172	Absconding to avoid service of summons or other proceeding. ³⁴
S/173	Preventing service of summons or other proceeding or preventing publication thereof.
S/174	Non-attendance in obedience to an order from public servant.
S/175	Omission to produce document to public servant by person legally bound to produce it.
S/176	Omission to give notice or information to public servant by person legally bound to give it.
S/178	Refusing oath or affirmation when duly required by public servant to make it.
S/179	Refusing to answer public servant authorised to question.
S/180	Refusing to sign statement.
S/188	Threat of injury to public servant.
S/223	Escape (Escape) from confinement or custody negligently suffered by public Servant.
S/225-A	Omission to apprehend or sufferance of escape on part of public servant in cases not otherwise, provided for.

³⁴ [Www. the fact factor.com/](http://www.the fact factor.com/)

S/228	International insult or interruption to public servant sitting in judicial proceeding.
S/291	Continuance of nuisance after ----- to discontinue.
S/341	Punishment for wrongful restraint.
S/500	Punishment for defamation.

➤ **Forfeiture of property:**

- Absolute forfeiture of property under section – 61 and 62.
- Forfeiture of specific property for offences U/S-126, 127, 169, 263-A.

S/61	³⁵ Sentence of forfeiture of property (Omitted)
S/62	Forfeiture of property in respect of offenders punishable with death transportation or imprisonment (Omitted)
S/126	Committing depredation on territories of power at peace with the Government of India.

S/127	Receiving property taken by war or depredation mentioned in S/125, 126
S/169	Public servant unlawfully buying or bidding for property
S/263(A)	Prohibition of fictitious stamps.

³⁵ **IPC (Amendment) Act, 1921**

➤ **Fine:**

Punishment in the form of imprisonment or fine or both have been provided under many sections of the code and the court have been empowered to award whatever sentence they deem fit out of the above It is at the discretion of the court to decide as to whether either imprisonment or fine or both are to be awarded in a particular case.

Under following sections fine provided:

S/- 155, S/-156 ,S/- 171-G S/-154, S/194-A, S/ 137,S/ 171-H, S/278, S/263-A, S/ 283	
Maximum – Rs. 500/-	S/137, 171-H, 278
Maximum – Rs. 200/-	S/263A, 283, 290
Maximum – Rs. 1000/-	S/154, 294 (A)

Solitary confinement – S/73

S/73: empowers the courts to impose. Solitary confinement on certain categories of hardened criminals in cases of servant crimes:

S/73: Whenever any person is convicted of an offence for which this code the court has the authority to sentence him to rigorous imprisonment.

The court may, by the sentence order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole according to following scale-

Imprisonment Term	Not exceeding 6 months	1 Months
	Exceeding 6 months to 7 year	2 Months
	Exceeding 1 year	3 Months

Thus solitary confinement shall not exceed:

- I. 3 Months in the whole**
- II. 14 days at a time with intervals of not less than 14 days**
- III. 7 days in a month with intervals of less than 7 days if the imprisonment awarded is more than 3 months**

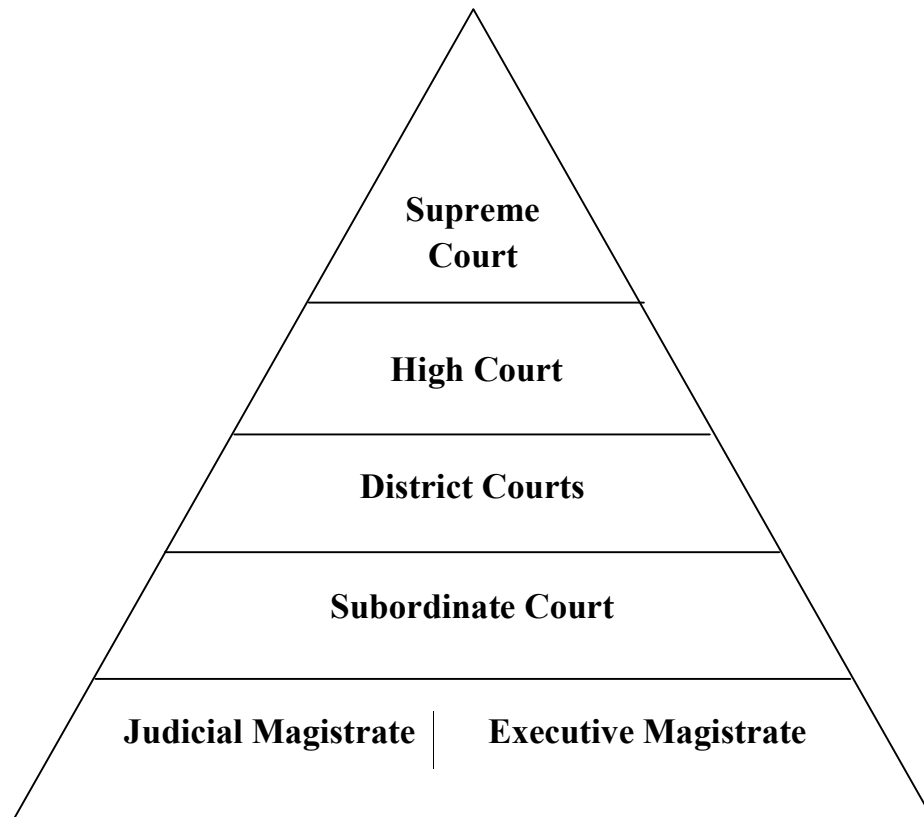
COMMENT:

Indian penal code describes the offence and makes them punishable. In the ipc nature of crimes are fix with the term of punishments and empowers judges to impose punishment upon the offender. Different offences contain different terms in punishment; this depends upon the discretion of judge to punish the doer with reasonable sentence.

❖ **Competency of Court under Cr.PC:**

Court in the country is primary institutions of the justice system in a country. The persons accused of committing a crime are brought before the court in order to determine their criminal responsibilities and liabilities. Main objective of courts is to

determine the duty and liability of the accused against who the investigating agencies like state police and central investigating agencies.



The competence of a court is the legal ability of the court to exercise jurisdiction over cases involving the persons or things on which it possesses the legal competency.

The authority of the court or its jurisdiction is determined constitutionally. Appellate jurisdiction is the one in which the superior court has the power to correct and amend

the legal errors committed by the sub-ordinate courts while passing the judgements in the cases where a miscarriage of justice has taken place.

❖ **³⁶Categories of Criminal Courts in India:**

- Courts of session
- Courts of judicial Magistrates
- Chief judicial Magistrates /or/Additional chief judicial Magistrate
- Metropolitan Magistrates
- Executive Magistrates
- Special Executive Magistrates

➤ **³⁷Courts under which sentences may pass:**

[High court	Any Sentence authorised by law
Sessions judge/Additional	Any sentence authorised by law.

³⁶ Unit- IV- Judiciary-constitutional civil and criminal courts and process.

16. Section/28 and 29 cr.p.c

sessions judge.	Death sentence with confirmation by HC
Assistant Sessions Judge	Any sentence authorised by law except a death sentence or/ imprisonment for life. Terms exceeding ten years.
Chief judicial Magistrate/Chief Metropolitan Mag. Court of magistrate first class/Metropolitan first class	Only- term not exceeding seven years Fine Not exceeding three years Fine- 10,000/- rupees
Court of Magistrate of second class/Metropolitan Mag. of second class	Not exceeding 1 year Fine – Five thousand rupees Both

➤ **S/30-Sentence of imprisonment in default of fine:**

The court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law:

(b) Shall not, where imprisonment has been awarded as part of the substantive sentence exceed-one fourth of the term of imprisonment which the Magistrate is

competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

❖ **Sentence under Crpc:**

"The people's good law is the highest law": Cicero

There is no definition of "Judgement" present in the code, but it is understood as the final order of the court chapter –XXVII deals with judgement.

³⁸"A judgement is the act of judging. It was pointed out that judgement should clearly mention the reason for accepting an argument and rejecting the other".

❖ **Statutory Minimum Sentences:**

The principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with.

In India, the judges have wide discretion in awarding a sentence within the statutory limits which gives rise to well-documented sentencing disparities in factually similar cases. Malimath committee reported that Exercise of unguided

³⁸ In state of MP V/s Bablu Natt

web reference – criminal law studies -----, wordpress.com

discretion not good even if it is the judge that exercise the discretion. There is need for such law in our country to minimise cencertainty to the matter of awarding sentencing. There are several factors which are relevant in prescribing the alternative sentences.

³⁹"A judgement is the act of judging. It was pointed out that judgement should clearly mention the reason for accepting an argument and rejecting the other".

❖ **JUDGEMENT UNDER CRIMINAL PROCEDURE CODE:**

➤ **S/353: - Judgement:**

The judgement in every trial in any criminal court of original just-diction shall be pronounced in open court by presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties.

⁴⁰**Legal principles of judgement:-**

- Ratio Decidendi
- Obiter dicta.

➤ **Ratio-Decidendi:**

Means "the reason for deciding case"

ismail Amir sheikh vs. the state of Maharashtra

⁴⁰ Wikipedia.org.in

It is the necessary step that will be the reason to decide a case [Ratio decidendi is a legal rule derived from and consistent with those parts of legal reasoning within a judgement on which the outcome of the case depends.] Ratio Decidendi is as one of the natural justice rule which satisfied the all reasoning to provide justice in just manner. These principle applies all the rational heads to take a right decision by the judges.

➤ **Obiter dicta:**

Obiter dicta are the Latin phrase meaning "**by the way**" that is a remark in a judgment that "**said in passing**". It is a remarks or observations made by a judge that, although included in the body of the court's opinion, do not form a necessary part of the court's decision.

⁴¹"In reaching decisions, courts sometimes quote passage of obiter dicta found in the texts of the opinions from prior cases, with or without acknowledging the quoted passage's Status as obiter dicta. A quoted passage of obiter dicta may become part of the holding or ruling in a subsequent case, depending on what the latter court actually decided and now that court treated the principle embodied in the quoted passage"

⁴²The main part of the judicial discretion is present under section-360 of the crpc which gives the power to the judges to release the convicts on probation. The code

⁴¹ Teresa Reidrambo and Leanne Pflaum:- Scholars University of Florida

web-reference

blog.iplayers.in

⁴²

through Section -361 necessary wherever possible and in cases in which there is an exception to state clear reasons.

The probation of offenders Act, 1958 is similar to section-360 of crpc. It is more elaborate in the sense that it explicitly provides for conditions of release order, a supervision order, and payment of compensation to the affected party, powers and predicaments of the probation officer and other particular that might fall in the ambit of the field.

➤ **Requirement under Section-354 (3) and 354 (4) the code of criminal procedure:**

5/354:- Language and contents of judgement:

⁴³**Sub clause (3):** "When the conviction is for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, the judgement shall state the reasons for the sentence awarded and in the case of sentence of death, the special reasons for such sentence."

Under this section Ratio-decidenti principle applied before pronouncing the judgement judge shall mention the reason behind the judgement in written on the paper. This section limits the discretionary power of judges or Magistrates as they are bond to mention the reason under this section.

⁴³ Crpc. section- 354 (Bare Act) CENTRAL LAW AGENCY

Sub clause (4): When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence unless the sentence is one of imprisonment till the rising of the court or unless the case was tried summarily under the provisions of this code.

The crpc, incorporated some provisions which can be put to use in order to personalise the sentence from various angles⁴⁴ [These provisions reflect the contemporary thinking that sentencing is an important stage in the administration of criminal justice and it should be given its due place in the system.]

➤ **Sentence hearing under crpc:**

⁴⁵[Under the crpc 1973 session courts and magistrate trying warrant cases have to give hear to the accused on the question of sentencing after finding him guilty of the offence.]

⁴⁶["We are of the opinion that as long as the spirit and purpose of section 235 (2) is met, is as much as the accused is afforded a real and effective opportunity to plead his case with respect to sentencing whether simply by way of oral submissions or by

⁴⁴ **Santa Singh v/s Punjab State (1976) 4 SCC/90**

⁴⁵ Section /235 and 248 crpc

⁴⁶ Accused'x' vs. state of Maharashtra

also bringing pertinent material on record, there is no bar on the presentencing hearing taking place on the same day as the preconviction hearing".]

Under CrPc Natural justice rule applies while pronouncing the sentence. When a judge pronounces the judgement he should apply his judicial mind and rule of natural justice. Under the laws judge has given wide discretionary power to impose sentence but the case brought before the court, judge should be free, judicial mind. He should not be influenced by the victim or accused properties. In this context Indian Judiciary still is following the speaking order of courts and rules of natural justice to protect the accused and victim rights. When judge is pronouncing the judgement he should insure himself that accused has been given all opportunity of being heard or no doubt has left to sentence him. Then that is called as just and adequate judgement.

➤ **Meaningful hearing:**

U/S-235(2) in the usual course is not conditional upon time or number of days granted for the same. It is to be measured qualitatively and not quantitatively, if such an opportunity is not provided by the trial court, the appellate court needs to balance various considerations and either afford an opportunity before itself or remand back to trial court, in appropriate case for fresh consideration.

Comment

❖ **SENTENCING POLICY AND NATURAL JUSTICE:**

Sentence deters the person sentenced from offending through fear of repetition of the offended act. The legislature determines the general range of imprisonment for a given crime. The sentencing must fix a determinate sentence within the range once this sentence is fixed it cannot be increased or reduced by the any parole board or authority.

Our constitutional makers are provided us a constitution which secures citizens rights either the victim or accused. There are many articles which secured the accused's rights. Constitution plays important role to protect the accused against inhumanity. When a person being convicted judge must be insured himself that all the rules of natural justice has been applied during the trial. And convict has given all opportunity of being heard. Therefore when the all the rules are being applied and judge has satisfied by reason behind the judgment that called the just and appropriate judgment .even if the right to live of accused surrendered because this decision come over the fundamental rights of victim and society.

⁴⁷ "In the determination of his civil rights and obligations or

⁴⁷ Article/6 of the European convention

Of and any criminal charges against him, everyone is entitled to
A fair and public hearing within a reasonable time by an
Independent and impartial tribunal established by law”.

In India with a democratic system and the rule of law criminal procedure puts the burden of proof on the prosecution that is it is up to the prosecution to prove the accused is guilty beyond any doubt is resolved in favour of the defendant. In all such jurisdictions allow the defendant the right to legal counsel and provide any defendant who cannot afford their own lawyer with a lawyer paid for at the public expense under our constitution there are several rights provided to the accused i.e. The rights of a fair trial, due process, the right of redress or a legal remedy and right to such as freedom of association, the right to assemble, the right to petition, the right to self defence and the right to vote.

“The right of the people to secure in their persons, house, papers, and effects, against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the person’s the persons or things to be seized”⁴⁸,

➤ **RIGHTS OF ACCUSED UNDER CONSTITUTION:**

“Let hundreds go unpunished, but never punish an innocent person”

The law concept of free and fair trial is a constitution commitment for which the cardinal principle of criminal law revolves around the natural justice even the accused or guilty person is

“No accused shall be deprived of his life or personal liberty except in accordance with procedure established law which is just, fair, and reasonable, this article also provides that the accused has the right to free and speedy trial.”⁴⁹

“No person shall be prosecuted and punished for the same offence more than once”⁵⁰

⁴⁸ Fourth Amendment of United States Constitution

⁴⁹ Article/ 21 [Constitution]

⁵¹“No person shall be detained in custody without being informed, as soon as may be of the grounds for such arrest to consult and to be defended by, legal practitioner of his choice...every person who is arrested and detained in custody shall be produced to the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for such journey from the place of arrest to the court of magistrate and no person shall be detained in custody beyond the said period without the authority of the magistrate.

❖ **There are certain rights recognized under Indian constitution:**

- Right to free trial
- Right to legal aid
- Right to know about the accusations and charges
- Right against wrongful arrest
- Right to against self- incrimination
- Right against double jeopardy
- Bail as the rights of accused
- Right to free and expeditious
- Right to present during a trial
- Right to get copies of documents
- Right to be considered innocent till proven guilty
- Right to cross examination

❖ **RIGHT OF ACCUSED UNDER CRIMINAL LAW:**

Under section /54 of Cr.P.C enumerates this right to be examined by medical practitioner, if requested by the arrested person so to do direct the examination of the body of such person by a registered medical practitioner unless the magistrates considers that the request is made for the purpose of vexation or delay for defeating ends of justice.”

⁵⁰ Article/20(2) [constitution]

⁵¹ Article/22

⁵²The supreme court in this case issued some guidelines which were required to be mandatorily followed in all cases of arrest or detention which include the arresting authority should bear accurate, visible, and clear identification along with their name tags with their designation, the memo be signed by the arrestee and family member, the family or there must be told about the arrest of the accused. The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation and many other.

- Right to be taken before a magistrate without delay [sec/ 56 and 57]
- Right to be examined by a medical practitioner[sec/ 54]
- Right to present during trial [sec/ 273]
- No unnecessary restraint [sec/ 49]
- Right to know grounds of the arrest [se/ 50(1)]
- Person arrested not to be detained more than 24 hours {sec/57}

Thus above mentioned all rights to accused assured that every individual has the right to protect him or herself against discrimination. Under the constitution principles laid down the basic framework of the natural justice. Article /14 ensure that every person is equal before the law. No one is above the law. Principle of equality lay down under this article. When offender comes before the court offender shall be treated as common man. The is no matter how wealthy or on which he/she is titled with office. That means no any such factors shall be influenced the judicial decision. Judge shall be act accordance with the procedure prescribed by law.

❖ **NATURAL JUSTICE PRINCIPLES:**

Natural justice means to make a sensible and reasonable decision making procedure on a particular issue. Main purpose of the principle to provide equal opportunity of being heard and to fulfilment of the gaps and laws .This principles of natural justice should be free from bias and parties should be given fair opportunity to be heard and all the reasonable and decision taken by the court should be informed by the court to the respective parties.

⁵² D.K BASU VS STATE OF WEST BENGAL[1997] 1 SCC

❖ **RULES OF NATURAL JUSTICE:**

- Nemo judex in causa sua
- Audi alteram partem
- Reasoned decision

➤ **Nemo judex in causa sua:**

Means; “no one should be a judge in his own case”

That is judge ought not to be predisposed to either one of the adversarial parties and should not form a view on the merits of the matter before until all the parties are heard.

➤ **Audi alteram partem :**

Means; listen to the other parties.

This principle is meant to right to free trial which may even be extended to non citizens facing criminal charges within the jurisdiction of the states concerned. Procedural inequities or inconsistencies would always be arbitrary. An arbitrary act is implicitly violative of the right to equality guaranteed by article/14 of the constitution of the India.

Supreme court of India observed that “⁵³ article /14 did not create the principles of natural justice but rather that article 14 is only their constitutional guardian “

Justice Bhagwati noted that⁵⁴

“A great Humanizing principles” and went to hold that procedural fairness is implied even in situation where the statute does not provide for it

⁵³ Tulsiram case [1985/3 scc 398]

⁵⁴ Menika Gandhi case [1978/1 scc 248]

❖ **components of the Audi alteram partem rules:**

- Issuance of notice
- Right to present the case and evidence
- Right to cross examination

This is the important rule of natural justice and its pure form is not to penalize anyone without any valid and reasonable ground. Prior notice should be given to a person so he can prepare to know what all charges are framed against him. It is also known as rule of fair hearing. The components of fair hearing are not fixed or rigid in nature.

The court held that⁵⁵ “notice must directly and clearly specify on the matter of bias, facts, and circumstances against which needs to be taken. It is one of the rights of the individual to defend himself so he should be familiar with the relevant matter so he may contradict the statement and safeguard”

Therefore, this rule follows the just adequate judgment’s framework. If all the rules mentioned above lay down under the judgment and judge has mentioned the reason of passing judgment then it would be a proportionate judgment. Therefore judge always keeps these rules in his mind before passing the judgment.

❖ **Reasoned decision:**

This is the satisfactory part of the party against whom the decision is made. This is as a responsibility to record reasons works as obstacles against arbitrary action by the judicial power vested in the executive authority. Thus, principles of natural justice is not confined to restrict walls the applicability of the principle but depends upon the characteristics of jurisdiction, grant to the administrative authority and upon the nature of right affected to the individual.

⁵⁵ Kenda vs Government of Malay

❖ **TYPES OF BIAS**

56

➤ Personal Bias	It is arises from a relation between the party and deciding authority. Which lead the deciding authority in a doubtful situation to make an unfair activity and give judgment in favour of his person?
➤ Pecuniary Bias	Any financial interest may be is bound to vitiate the administrative action. The judicial opinion is unanimous as to it.
➤ Subject matter Bias	Directly or indirectly the deciding authority is involved in the subject matter of a particular case.
➤ Departmental Bias	⁵⁷ The problem of departmental bias is something which is inherent in the administrative process and if it is not effectively checked. It may negate the very concept of fairness in the administrative proceeding.
➤ Policy notion Bias	Issues arising out of preconceived policy notion are a very dedicated issue. The audience sitting over there does not expect judges to sit with a blank sheet of paper and give a fair trial and decision over the matter.

⁵⁶ Web reference ; <https://blog.ipleaders.i>

⁵⁷ Web reference [www,legal services india.com](http://www.legal services india.com)

<p>➤ Bias on the account of obstinacy</p>	<p>The new category emerged from a case where a judge of Calcutta high court upheld his own judgment in appeal. A direct violation of the rules of bias is done because no judges can sit in appeal against in his own case.</p>
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❖ Principles of punishments:

⁵⁸ ***“Trying a case is as easy as failing off a log. The difficulty comes in knowing what to do with an accused once they have been found guilty”***

Crime and punishment are related to protect the person against wrongdoing. When judge imposes punishment upon the offender this only reason runs behind the judgement is, deter others to repetition of same nature of act. As cited by justice in the case as. “Judges never be blood thirsty” this citation represent the all the they only ensure and protect the rights of victim and to maintain the peace in the society.

Sentencing discretion vests in the judiciary and that this discretion is not uniformly exercised but individually applied in disregard to the theory of just deserts and individualization of punishment.

- ***Individualisation of punishment***
- ***Principle of just desert***
- ***Proportionality principle***
- ***Principle of equality***

⁵⁸ Mcardle j, cited in justice Christine sentencing decision[Irish judicial studies journal vol3

➤ **INDIVIDUALISATION OF PUNISHMENT:**

The notion of individualisation of punishment is based on utilitarianism, is forward looking and considers deterrence, incapacitation and reformation as the goals of punishment. As sentencing discretion vesting in the judges gives them the space to individualise punishment depending upon specific facts and circumstances of a particular case.

⁵⁹*In the words, “ the minute splitting up of offences into degrees and the distinguishing attempts from completed criminals acts with the meticulous setting down of supposedly appropriate dosages of punishment belong to an era when punishment based upon degrees of vicious will was thought to be the only or best means of coping with anti-social behaviour”*

⁶⁰*According, in sentencing the individual the judge must have the capacity. the resources and the time to weigh the circumstances of the individual standing for sentence. There cannot be the same punishment imposed upon all the offenders regardless of their background, their circumstances, and their intelligence, its effect on their means of livelihood or family situation. That would be treating unequal, equally. The whole concept of making an individual's, an example to others is fallacious. Therefore, the law does not punish sinners as transgressors' of the moral law; it punishes those who have been convicted of breaching the code or lawfully enacted statutes.*

➤ **Principle of just desert:**

Just desert: means; “a redress of grievances by mutual degradation.”

⁵⁹ Sheldon Glueck writes on report [Kirpal Singh, Quantum of Punishment in Criminal Law in India, Publication Bureau Punjab University, Chandigarh (1970)] Research Journal; Determination of Sentence; Shodhganga,

⁶⁰ Journals; Determination of Sentences; Principles Policy and Practices

Just desert principle deals with appropriate and just punishment. If offender is steal something which is no highly valuable in nature and punishes with life imprisonment for stealing such thing then that judgment would be unjust and inadequate in nature.

In India we have Indian penal code which describes the different term of punishment in different offences. And criminal procedure code empowers judges for trial in his level. Now the question comes before the researcher that how the judge would pronounce the judgment with just and adequately. Then principle of natural justice takes place which covers the all the rules of fair trial and just justice. This principle comes this amid of the natural justice because no one can be punished more then he deserves. Therefore. just and fair judgment inflicts the natural justice has been provide to victim and no rights of offender being deprived by the judgment. When one commits crime he must be punished by penal law with just punishment he deserves.

➤ **Proportionality principle;**

This principle of punishment says that punishment must fit with the gravity of the crime. In Indian law IPC contains the different nature of crime but also runs with exceptional cases. i.e. if doer does an act in private defence or his acts lays under cases of expectation of section 302of IPC .then there punishment must defer from the case which done intentionally.therefore.thing reflects as not be same in real..This duty lies upon the judge to identify the gravity of the offence by going through resources, legislative or judicial judgements and pronounces the judgment which fit with the nature of the crime.

⁶¹In DELHI RAPE CASE that was act said to be only rape with murder case but nature of the was very heinous in nature. That was too cruel case which was ever being happened in the past. This case changed the nature or section 376 partly. And made legislature bound to make amendment under the criminal laws. Because present term of imprisonment was not just in nature in comparison to act of the offender.

⁶¹ Delhi rape case 2012[Nirbhaya rape case]

⁶²In the case of **Bachan Singh supreme court** introduced the rarest of rare formula to identify the nature and gravity of the case and punish the offender with fit amount of punishment which he deserves for his act.

Therefore this principle lay down the rule of just and fair punishment, fix with the gravity of offence, and provides the justice to survivor and their families.

➤ **Principle of equality:**

Our constitution ensures rights of the persons, as the fundamental rights either victim or accused. Part iii of the constitution deals with the fundamental rights .articles- 14 to 18 with right to equality .in the criminal laws equality means; accused is equal before the court. There is no matter how much offender and victim are wealthy in nature. Everyone shall be tried equally before the court. Therefore this principle deals with accused shall be given all the opportunity of being heard and defend himself against the charge. If trial conduct according to procedure established by law and opportunity of being heard has been provided to offender and reasoned decision pronounced by the court. Then this rule shall be applied under the natural justice and punishment would be just and fair to society.

❖ **Sentencing and Indian judiciary**

“⁶³Sentence has to be proportional to gravity of offence so that it must afford sufficient deterrence and protect public form crime.”

A judges award sentences that may be called exemplary punishment for a same crimes simply because such crimes have become prevalent. There may be confrontations with the police or trade union activities like bandhs which in the opinion of the judges need to be cured in the interest of law and order.

⁶² AIR1980ssc

⁶³ State vs. sanjeev nanda [sc]

⁶⁴ *“Judges have always felt, themselves, entitled to deal with a persistent offender by increasing the sentence which they would have passed if he were not. This is not to punish the offender again for his past crimes. Nor is it always primarily for the protection of the public. It may be because in the judges’ view the sentences passed for previous offences have proved to be an insufficient deterrent and that the effect of a longer sentence must be tried perhaps in the offender’s own interest; or it may be that repetition has itself increased the gravity of the offence”*

Thus magistrates and judges place a particular value upon their experience in sentencing now if this experience is to be of value then all cases cannot be unique they must be comparable in some respects. Whatever they focus on geography, race, gender, or class, whether disparity is proved to actually happen or whether there is only a perception that it does. Their policy concern is the same whether the legitimacy of the sentencing process is being undermined in the eyes of the public.

Above all discussing about the judge's act or his representation towards his act or duty to pronounce the judgment that should always be for the welfare of the society. And judgment always seeks for the restitution of fundamental rights.

➤ **Sentencing and death penalty:**

Supreme court of India has delivered the perusal judgments in cases pertaining to heinous offences reflects an odd and fluctuating attitude with reference to award of death penalty or life imprisonment. ⁶⁵Supreme Court has not been consistent in advising which theories of punishments should be applied in criminal sentencing. Different sets of judges serving the apex court at the same point of time have reflected their preferred but

⁶⁴ Lord Donovan 's words

Journal research paper determination of sentences; principles, policy, and practice

⁶⁵ Mrinal satish discretion , discretion and the rule of law ; reforming rape sentencing in India

different theories while critiquing their fellow judges for adhering to other theories than their preferred one.

Section; 354(3) of cr.p.c deals with the evolution of sentencing discretion guidelines being laid by the supreme court in landmarks cases.

➤ **66 BACHAN SINGH VS STATE OF PUNJAB AIR 1980:**

FACTS:

Bachan Singh appellant in criminal appeal was tried and convicted and sentenced to death penalty under section / 302, IPC 1860 for the murders of Desa Singh, Durga Singh, and Veeran Bai by session judges, the high court confirmed his death sentence and dismissed his appeal . Appellant moved to SC by special leave which came up for hearing before a Bench of the Hon'ble supreme court; consisting of sakaria and Kailasam j

Judgment;

Supreme Court dismissed the challenges pertaining to the constitutionality of section 302of IPC and section 354(3) of Cr.PC. It was made very clear by the court that;

Article ;19 clauses (2) to (6) have been expressly made subject to the power of the state to impose reasonable restrictions on the exercise of the rights of citizens . For the people murder, life imprisonment was made a rule and death sentence an exception. Bench while giving the decision said that

“Judges are never bloodthirsty. whether or not death penalty in actual practices acts as a deterrent , cannot be statistically proved , either way, because statistics as to how many potential murders were deterred from committing murders but for the existence of capital punishment for murder are difficult , if not altogether impossible , to collect . Such statistics of deterred potential murderers are difficult to unravel, as they remain hidden in the innermost recesses of their mind. Retribution and deterrence are not two divergent ends of capital punishment. They are convergent

⁶⁶ Bachan singh vs. state of Punjab AIR 1980 SCR(1)645;(1980)2 SCC 684

goals which ultimately merge into one. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex, and intractable, issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provisions as to death penalty in section; 302 IPC on the ground of the reasonableness in the light of article; 19 and 21 of the constitution. It is not necessary to express any categorical opinion.....therefore it could be concluded that the impugned provision in section; 302 violates neither the letter nor the ethos of the article; 19”

In drawing up the guidelines, the Supreme Court hinged its opinion on the sentiments or feelings of the community. Therefore, the court ruled ⁶⁷that death penalty shall be imposed for murder, if any of the following circumstances are decipherable:

- Manner of commission of murder
- Motive for commission of murder
- Anti- social or socially abhorrent nature of the crime
- Magnitude of crime
- Personality of victim of murder

➤ ⁶⁸**Circumstances:**

<ul style="list-style-type: none">• <u>Manner of commission of murder</u>	When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.
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⁶⁷ Macchi Singh case

⁶⁸ Macchi Singh vs. state of Punjab ; justice M.P. thakur illustrated.

<ul style="list-style-type: none">• <u>Motive for commission of murder</u>	<p>When the murder is committed for a motive which evince total depravity and meanness</p>
<ul style="list-style-type: none">• <u>Anti social or Socially abhorrent nature of the crime</u>	<p>When murder of a schedule caste or minority community etc; is committed not for personal reasons but in circumstances which arouse social wrath.</p>
<ul style="list-style-type: none">• <u>Magnitude of crime</u>	<p>When the crime is enormous in proportion</p>
<ul style="list-style-type: none">• <u>Personality of victim of murder</u>	<p>When the victim of murder is</p> <ol style="list-style-type: none">1) An innocent child2) Helpless women3) Victim is a person vies-a vies whom the murder is in a position of domination or trust4) When the victim is a public figure generally loved and respected

	<p>By the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons.</p>

COMMENT:

Above discussing about this case , this is making the clear that for imposing the death sentence judges must be insured that offender must has done under the amid of the section 302 .his act must not cover under the expectations of section 302. Because depriving someone from his right to life is a very challenging task. Judges never trusty of blood of offender they only protect the right of the victim. For deciding the degree of the case .judge must go through all the measuring scale of sentencing practice. That judgment must follow appropriate, just, and adequate judgment. In this case justice introduced the “rarest of the rare” testing scale.

This “rarest of the rare” scale lays that which cases come under this nature of crime .then offender must be punished .because that type of case is morally against the society and by punishing the offender that shall deter the person to repeat the same offence. Therefore this type of the crime only could be preventing by the punishment with death sentence.

In the words,

“⁶⁹The death penalty rather than deterring murder actually deters the proper administration of criminal justice ... human justice and never be infallible. The most conscientious judge is no proof against sad mistakes. Death penalty is the

⁶⁹ Chinnappa ruddy, justice’s words

brooding giant in the path of reform and treatment of crime and criminals inevitably sabotaging any social or institutional programme to reformation. It is the 'fifth column' in the administration of justice. The burden of capital punishment therefore falls more frequently upon the ignorant the impoverished and the underprivileged"

❖ **Nature of crimes punishable of death penalty:**

<ul style="list-style-type: none">• <u>Aggravated murder</u>	<p>⁷⁰SC held that death penalty can only be said to be constitutional penalty in the “rarest of the rare” case</p> <p>Case law:</p> <ul style="list-style-type: none">✓ Bachan Singh vs. state of Punjab✓ Machhi Singh case
<ul style="list-style-type: none">• <u>Terrorism – related to offenses</u>	<p>Under section ; 3 (b) of the ⁷¹ES(amendment) act , 2001; the usage of any explosive of a special category which is likely To endanger the lives of people</p>

⁷⁰ Bachan Singh case

⁷¹ Explosive substantives(amendment) act 2001

Or cause serious damage to property is an offence by death

Case law:

- ✓ Afzal guru case(attack on Indian parliament)
- ✓ Ajmal kasab case (attack on Taj hotel)
- ✓ Yakub Memon case
- ✓ Balwant singh rajona case(involvement in the assassination of CM minister of Punjab)

<ul style="list-style-type: none">• <u>Aggravated rape</u>	<p>Under the criminal law (amendment) act 2013; a rapist who during the course of the crime causes the death of the victim or causes the victim to be left in a “ persistent Vegetative state” shall be punished by death</p> <p>Case laws;</p> <ul style="list-style-type: none">✓ Dhananjoy chatterjee vs. state of west Bengal case✓ Delhi rape case 2012 (Nirbhaya case)
<ul style="list-style-type: none">• <u>treason</u>	<p>⁷²The act waging or attempting to wage war against the Government and assisting officer’s soldiers, or members of the navy, army, or air force, in committing munity are punishable by the death.</p>

⁷² Section 121 and 136 IPC 1860

<ul style="list-style-type: none">• <u>kidnapping</u>	⁷³ The unlawful detaining or kidnapping of a person is an act punishable by death even if the kidnapper only threatens to harm the victim or actually does so.

Comment:

In words;

⁷⁴“ a legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning retributive ruthlessness amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life”

Above reading this statement of the justice iyer, rarest of rare formula should be applied very intelligently because imposing death penalty could put out right to life of offender if judgment comes under amid of arbitrary of discretionary power of the judges

⁷³ Section 364 A IPC

⁷⁴ Justice Krishna iyer

➤ **Machhi Singh vs. state of Punjab (1983)3 SCC:**

Facts:

In this case, violent dispute between two families resulted in loss of 17 lives in five separate incidents. The appellant and his associates were tried by the session court. This appellant was among the four who were sentenced to death. His death penalty was confirmed by the high court of Punjab necessitating an appeal to the Supreme Court. While nearing the appeal, the apex court considered and laid down what would amount to normal guidelines to be followed as to clarify the “rarest of rare” cases formula for imposing death sentences as spelled out in Bachan Singh’s case.

Judgment:

Supreme court held that “a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weight and a just balance has to be struck between the aggravating and the mitigating circumstance before the option is exercised,

⁷⁵Important case laws;⁷⁶

- Jagmohan Singh vs. state of up.
- Ediga anamma vs. state of Andhra Pradesh AIR 1973 SC 774
- Rajendra Prasad vs. state of Uttar Pradesh 1979 AIR 916
- Bachan Singh vs. state of Punjab

⁷⁵ [1980 (1 SCC 20)]

⁷⁶ Web reference; www.lawctopus.com/academike/death-penalty-an/ of Indian cases

- ⁷⁷Mithu vs. state of Punjab
- ⁷⁸T.v vatheeswaram vs. state of Tamil nadu
- Macchi Singh v state of Punjab AIR 1983[3 SCC 470]
- Alluddin vs. state of Bihar, AIR 1989
- Kehar Singh v. union of India AIR 1962 SC 955
- State of Maharashtra vs. sukhdeo Singh 1992 AIR 2100, 1992 SCR(3) 480
- Laxman naik vs. state of Orissa AIR 1995 SC 1387
- Panchhi and ors, vs. state of up (1998) 7 SCC 177
- Santosh Kumar bariyar vs. state of Maharashtra , JT 2009

❖ **Explanation:**

Jagmohan Singh vs. state of up	Sc observed “judge can put capital punishment or imprisonment a life on the basis of the evidence and circumstances of the case. Judge has discretionary power to make choice
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⁷⁷ [1980]2 SCC 684

⁷⁸ [1983 AIR 361, 1983 SCR(2) 348

	between provided punishments.
Alluding vs. state of Bihar	Court observed; if judge is unable to express an appropriate reason between two forms of sentence then he shall go with the lower one punishment.
Rajendra Prasad vs. state of UP	.Krishna Iyer, observed to impose death penalty the two things must be required <ul style="list-style-type: none"> ➤ Special reason must be recorded ➤ Death penalty in extraordinary circumstances.
Kehar Singh vs. Union of India	Kehar Singh, the conspirator in the case of assassination of PM Indira Gandhi. He was sentenced to death penalty. The court held that he was not a present or active participant. Even in this case, which comes under the rarest of rare cases, this is a strongly controversial decision.
Mithu vs. state of Punjab	Death sentence under section 303 declared unconstitutional and invalid and held that section 303 violated articles 14 and 21 of the constitution.

<p>Santosh Kumar bariyar vs. State of Maharashtra</p>	<p>In this court observed accused's previous character and held they did act only for the sole of money they were not a professional criminal and had chance to rehabilitate and imposed lesser punishment of life imprisonment</p>
<p>Laxmn naik vs. State of odisa</p>	<p>Court held that murdering seven years old girl for sexual fantasy and sexually assaulted she in result to brutally murder was a rarest of rare case.</p>
<p>Ediga anamma vs. state of AP</p>	<p>Court observed the background and mental condition of accused and converted the death sentence into life imprisonment.</p>

➤ **SENTENCING ANF LIEF IMPRISONAMENT:**

Sentencing is as a weapon against the wrong doer. In ancient period if ones commits the crime then king punishes him for his wrong act that time there were no such codified code as we have today instead of they had a strong sentencing policy in criminal justice system. King or sultan punished the wrong doer with brutal form. That time there were no recognised human rights. That time punishment was not divided into form of terms. They equally punished the wrong doer with death penalty. Now we have the codified laws and identified fundamental rights under the constitution. Indian legislature has enacted the several acts to apply the laws effectively. In the period legislature amended the codified laws many time since seventy one years from the independent.

Under the IPC punishment is defined u/s 53 as the form of punishment ... imprisonment for life is the one of them punishment which deals many section of the

code .as researcher have been already discussed about the life imprisonment, on the page...no..56 and 57. Therefore.

Term of imprisonment;

Judiciary has delivered the perusal judgment to clarify the nature of the offence which comes under the rarest of rare case. In India trial procedure is a long period which takes many of the years of the life to come into conclusion. That period sometimes takes innocent person's right to live free with dignity. Because Indian judiciary only secure the accused or victims' rights. ⁷⁹Sc held that.

⁸⁰“A sentence of transportation for the life or imprisonment for life must prima facie be the whole of the remaining period of the convicted person's natural life.

Therefore, there is a misconception about the life imprisonment term that is, it's an only term for 14 years. But this is strongly denied by the courts .life imprisonment means rest of natural life of convicted person.

❖ **NAGPUR RAPE CASE: [DOUBLE – DEATH AND DOUBLE LIFE SENTENCE CASE]**

This was the first case in which double death and life imprisonment imposed on the convict after the amendment made in case of NIRBHAYA RAPE CASE.

Section /432 and 433 of the crpc;

“Power to suspend or remit sentences- s/432

“Power to commute sentence –s/433

⁷⁹ Gopal vinayak godse vs. the state of Maharashtra

⁸⁰ Web .blog,ipleaders.in

Comment:

⁸¹Constitution of India mentioned rules and regulations regarding life imprisonment;

- Life imprisonment for term of 14 years and 20 years
- Life imprisonment for whole of rest life
- Art/72 and Art/161 secured the accused right
- Prison right...convict person as a prisoner rest of natural life

❖ **Sentencing and imprisonment ;**

Under laws judges are empowered to impose sentences from maximum to minimum period under IPC, sections are deal with minimum to maximum period. Under section/510, sentence for one day is provided for drunken person. And maximum for taking someone's life away. This is the discretionary power of the court to impose sentence on observing the nature of the case and other factors i.e. age, character, previous conduct, circumstances to impose the sentence, under the crpc courts are being competent in imposing the sentences. Competency of court researcher has already discussed under heading competency of the courts.

Imprisonment in default of payment of compensation;

R.mohan vs., a.k. vijaya kumar (2012) SCC 721

“Undoubtedly, there is no specific provision in the code which enables the court to sentence a person who commits breach of the order of payment of compensation.”

⁸¹ Blog. pleader

Comment:

Above discussing about the types of punishment and sentencing process. that making it clear sentencing disparity reflects in the decision of the different courts. Amount of imposing the sentence is totally depends of the judicial mind set of the judge which must be run for the just, air and adequate judgment.

❖ **Committee for sentencing reform:**

➤ **"Mali math Committee"**

In March 2003, Mali math Committee in its report submitted that a statutory guideline is required for the sentencing policy. The committee stated that under IPC maximum or minimum punishment is prescribed for the offences. The committee submitted that "The National Judicial commission must have clear guidelines on precise qualification, experience, qualities and attributes that are needed in a good judge and also the prescription of objective criteria to apply to the overall background of the candidate. The Committee also favoured substituting death sentence with imprisonment for life without commutation or remission. The India Penal Code has to be reviewed to enhance, reduce or apply alternatives modes of punishments keeping in mind new and emerging crimes. The committee pointed out a new code for classification of offences other than cognizable and non-cognizable. A Social Welfare Policy should be adopted.

"The IPC prescribes only the minimum and maximum punishments for offences without laying down any guidance for infliction of punishment in proportion to the crime. Therefore each judge exercise it own discretion resulting in a sentencing system

which lacks uniformity. This requires a thorough examination by an expert statutory body."

Mali math Committee (2003)"

Known as- committee on reformed of the criminal justice system

Constituted by - Home Ministry

Headed by - V.S. Mali math (Former Chief Justice of Karnataka and Kerala High Court)

Recommendation - Total – 158 (but were never implemented) till

NOTE:

⁸²The committee felt that the existing system "weighed in favour of the accused and did not adequately focus on justice to the victims of crime". Committee reclassified the offences- recommended as –

- Social Welfare Code
- Correctional Code
- Criminal Code

⁸² Web. The hindu,com

➤ Economic and other offences code

➤ **Mali math Committee's Report:**

In March 2003, The Mali math Committee issued a report that emphasized the need to introduce sentencing guidelines in order to minimise uncertainty in awarding sentence:

⁸³"The IPC prescribed offences and punishment for the many offences only the maximum punishment is prescribed and for some offences the minimum may be prescribed. The judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the judge in regard to sentencing the most appropriate sentence given the circumstances of the case. Therefore each judge exercising discretion accordingly to his own judgement, there is therefore No uniformity."

➤ **Madhava Menon Committee:**

The Madhava Menon Committee on draft National Policy or Criminal Justice reiterated the need for guidelines in statutory sentencing in the following words:

⁸³ www.loc.gov/law/hepp/sentencing-guidelines/India.

"Disparities in sentencing need to be reduced by evolving appropriate statutory guidelines in respect of each types of punishment which should be periodically revised at the instance of the proposed Board of criminal Justice"

Argument:

Mandatory sentences ensure that convicted people are definitely taken off the streets at least for the specified time period thereby minimizing their chance of committing additional crime rates. The provisions of mandatory minimum sentences reduce the scope of personal bias and sympathy from getting in the way of justice.

The fact that judges are also humans needs to be taken into consideration which tempts them to award lenient punishments if they know the defendants or if they feel favourably towards them. Thus, mandatory minimum sentences were provided to divest the judges of the discretion to impose little or no jail time for serious crimes and habitual criminals.

➤ **Criticism:**

Mandatory minimum sentences can be an unfair one size fits all solution as judges would have no choice but to award the same minimum punishment to everyone who commits the same crime without considering their individual circumstances these it is the product of good intentions but in order to convert these good intentions into a good policy good results are also necessary.

❖ **Soman V/S State of Kerala:**

SC observed the absence of structured guidelines:

⁸⁴"Giving punishment to the wrongdoer is at the heart of the criminal justice delivery but in our country it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges."

❖ **Judicial Approach in Determination of quantum of sentence:**

⁸⁵Discretion of judicial officers is not arbitrary as the law provides for revision by superior courts of orders passed by the subordinate courts.

Under Article-14 gives a wide discretionary power in the hand of judiciary it does not mean that they can exercise this power in totally discriminatory manner. The judiciary cannot impose two different views in two similar cases without showing reasonable cause for such judgement and if done, so than it will be violation of Article-14 of Indian Constitution. The differences between minimum and maximum is very

⁸⁴ **Soman V/S State of Kerala (2013) 11 s.c.c. 382**

⁸⁵ **Justice- B. Rajendran- on "National conference of judges of the District judiciary"**

wide, so judges applied judicial mind and interpret in light with the principle of natural justice.

Prime determinant of sentencing should be to ensure that the punishment imposed is that which is deserved for the offence and the degree of offender's culpability sentence should emphasise the moral requirement of maintaining a proper proportion between offence and punishment.

⁸⁶[Following considerations must be follow while imposing the merit of sentence:-]

- Proportionality (A sentence should be fit the crime)
- Individualism
- Disparity
- Predictability and Simplicity
- Excessiveness
- Truthfulness
- Purpose

⁸⁶ Mathew Lippman, Contemporary criminal Law sage publication, New Delhi (2007)

<p style="text-align: center;">Proportionality</p>	
<p>Individualism</p>	<p>A sentence should reflect the offender's criminal history and the threat posed to society</p>
<p>Disparity</p>	<p>The sentences for a particular offense should uniform "like cases should be treated alike."</p>
<p>Predictability Simplicity</p>	<p>The Sentence to be imposed for a particular offence should be clear and definite and should not dependent on the personality or biases of the judge.</p>
<p>Excessiveness</p>	<p>A sentence should not inflict unnecessary and needless pain and suffering.</p>
<p>Truthfulness</p>	<p>An offender's sentence should reflect the actual time served in prison</p>
<p>Purpose</p>	<p>A sentence should be intended to achieve one or more of the purposes of punishment.</p>

CHAPTER-5



SENTENCING DISPARITY

"Disparities in sentencing need to be reduced by evolving appropriate statutory guidelines in respect of each types of punishment which should be periodically revised at the instance of the proposed Board of criminal Justice"

Argument:

MADHAV MENON COMMITTEE

❖ **SENTENCING DISPARITY:**

⁸⁷“A judge is yet to be born who has not committed a mistake.”

Justice. P.B. Ganjendragadkar, CJI

This is true; there is uncertainty in the decision of the courts. Because in India, there is no guideline for sentence. This all on the judges to decide the case on its nature, now the question comes before the judiciary how this disparity would be deduct? Example,

A judge trial the case which is punishable with death or life imprisonment both, it is on the judge discretion to observe the gravity of case. Is nature of rarest of rare case?

So he uses his judicial mind to observe seriousness of case. And pronounce the sentence accordingly.

❖ **Jeeta Singh 's case:**

Jeeta Singh is the best example of the sentencing disparity. Court observed that

“The fate of jeeta Singh has a posthumous moral to tell, he cannot profit by the discretion while we propose, to give because he is now beyond of human tribunals.”

Reasons:

⁸⁷ Journal; determination of sentence. Wwww. Shodhganga.

❖ **Abuse of discretionary power of courts:**

The exercise of discretion by judges is an inherent aspect of judicial independence under the doctrine of the separation of powers. The standard of review applied to appeals from decisions involving the exercise of judicial discretion is 8[Abuse of discretion] Abuse of disruption include not allowing an important witness to testify, making improper comments that might reference a politics party showing bias or making rulings on evidence that deny a person a chance to till his or her side of the matter. This does not mean that some on truly did not get a trial. Sometimes the appeals courts admit the judges was wrong but not wrong enough to have influenced the outcome of the trial often to the annoyance of the losing party-

⁸⁸ Court must make these decisions quickly to keep the proceedings moving on schedule for this reasons, Judges are given wide latitude in making evidentiary rulings and will not be over turned on appeal unless the appellate court finds that the trial judge abused his or her discretion.

Courts should not be subject to improper influence from the other branches of government (political influence), judicial independency which ideally frees judges to decide cases and make rulings according to the rule of law and judicial discretion even if those decisions are politically unpopular or opposed by powerful interest.

⁸⁸ <https://blog.ipleaders.in>

Web reference - Wikipedia. org. The freedictionary.com

➤ **Rameshwar Dayal vs. State of up (1971)**

This case was under the prevention of food adulteration act. Accused found guilty under adulteration, and sentenced. trial court ,high court and supreme court imposed the sentence disparitly.that shows that in the one case how can three type of judgment be pronounced by three different courts,.

➤ **Ved parkas vs. State of Haryana (1981)**

“it is the duty of the sentencing court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitation slant and even if the bar does not help, the bench must fulfil the humanizing mission of sentencing”

❖ **Absence of sentencing guidelines:**

During this research, this is making is clear that, in there is no specific guidelines for the sentencing .the judiciary follows the judicial pronouncements and guidelines prescribed by the higher court. Judiciary has draw the guideline to identified the nature of the crime and punish accordingly.

⁸⁹ *“The principles of sentencing evolved by the courts over the years on aggravating and mitigating circumstances though largely in the context of death penalty will also apply to all sentences”*

In the case Soman **vs. state of Kerala**. Sc held that

⁸⁹ in Sunil dutt Sharma vs. state of NCT of Delhi(2014)scc375

“Giving punishment to the wrongdoer is at the heart of criminal justice system, but our country it is the weakest part of administration of criminal justice”

Comment”

The discretionary power must be measured by Applying following method”

- Rules of natural justice
- Rule against bias
- Ratio decidendi.

CHAPTER- 6

❖ CONCLUSION & SUGGESTION

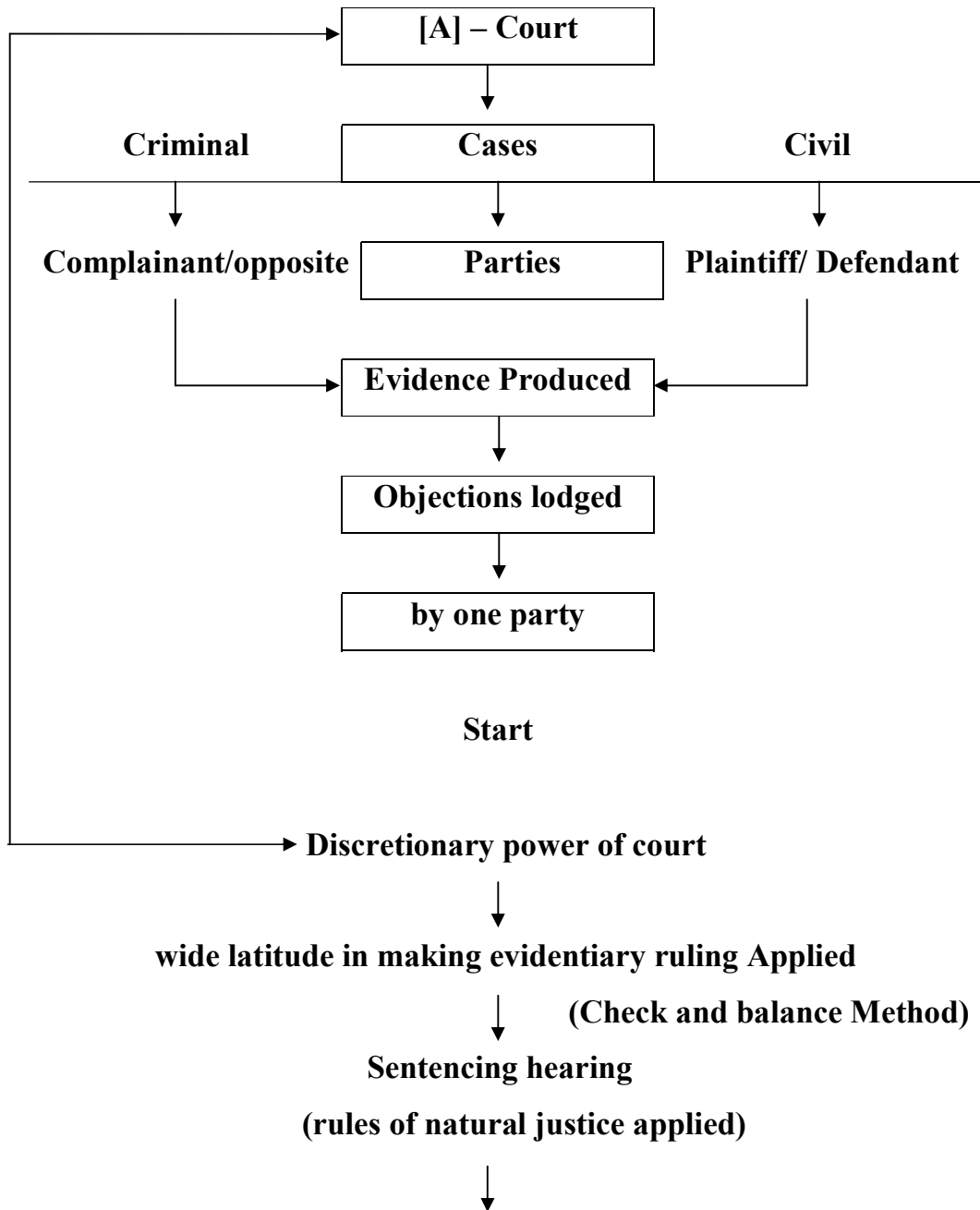
“Power is of two kinds; one is obtained by the fear of punishment and other by acts of love; power based on love is a thousand times more effective and permanent than the one derived from fear of punishment”

“Mahatma Gandhi”

➤ **CONCLUSION;**

Above discussing on the topic sentencing policies from ancient to modern India, making clear answer that Indian judiciary playing a great role in framing guidelines for sentencing. The case of Bachan Singh and Machhi Singh is distinguished the nature of crime and introduced the framework for the just and fair sentence. Under the CrPc courts are empowered for imposing punishment. This discretionary power must be covered in the midst of natural justice. Sometimes sentencing disparity reflects in the judgment of the courts due to abuse of discretion power. SC pointed out that discretionary cannot be absolute; it must be used by judicial mind with fair and just decision. Therefore punishment must be for the prevention and protection of the rights of individuals. And judge must follow the rule of natural justice while imposing the punishment.

➤ **Suggestion:**



Judgment

Appropriate / Adequate / Just / proportionate

Comment:

Above drawn chart representing the process as must be followed during the trial by the judge. Sentencing aims to provide justice to the person either accused or victim. Under the research, researcher came to know new points regarding the sentencing; which are following below;

- ✓ Sentencing aim should be deter and prevent the crimes by imposing just and fair sentence.
- ✓ Just and fair sentence comes with natural justice
- ✓ Judge must follow the rules of natural justice and rule against bias while imposing the sentence
- ✓ That sentence must be, adequate, and proportionate in nature.

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THANK YOU