
SENTENCING DISPARITIES IN RAPE CASES: A COMPARATIVE STUDY OF JUDICIAL DISCRETION AND LEGAL STANDARDS

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ABSTRACT

Cases involving sentencing disparities are a serious problem and ongoing issue in numerous legal frameworks globally. Judicial flexibility permits tailored judgments but can lead to disparate results that lose trust in the legal process. The study examines how various elements such as legal judges' decisions, societal norms, and court procedures lead to differences in punishment for sexual assault convictions. By examining selected regions, this research assesses how varying laws and governmental procedures affect judicial decisions in terms of punishment uniformity. The results underscore the conflict between requiring flexible courts and ensuring fair practices, highlighting the importance of formal review processes by higher courts and legal education programs aimed at reducing inequalities. Proposals suggest modifications to policies aimed at improving clarity of justice processes regarding sentences given for rapes.

Keywords: sentencing policy, rape, rape laws, sentencing disparities, judicial discretion.

1. Introduction:

Violence involving sexual acts, especially rapes, is an heinous violation upon humanity's natural worth and individual rights.¹ Rape is acknowledged globally beyond its status as merely a legal violation; it stands out significantly for being an acute societal problem affecting fundamental human rights. Although new laws have been enacted and more stringent procedures were put into place, substantial disparities continue to exist in how rapists receive punishment.² The differences in punishments called sentencing disparities undermine the ideals of justice and equal treatment under the law.³ The ability of judges to exercise judgment significantly influences how sentences are determined. Judges employ discretion when deciding punishments for individual cases; however, this flexibility leads to differences in sentencing results across different trials. Elements contributing to discrepancies involve assessments of aggravating versus mitigating factors, prevailing views on victimhood within society, adherence to evidence-based criteria, as well as variations among legal systems regarding procedural regulations.⁴ Across numerous legal systems, statutes typically offer courts considerable freedom in determining sentences; however, this flexibility frequently results in varying judicial decisions due to an absence of clear guidelines.⁵ Elements like how much people trust those who report crimes, past experiences involving sex offenses, or societal views on morality might influence judges' rulings in court cases.⁶ Studies shows that when legal systems use fixed rules for sentencing , the punishments are more consistent .The study investigates differences in punishments for sexual assault trials by comparing various factors affecting judges' decisions regarding sentences against established laws and organizational procedures. This study assesses how legal structures influence uniformity in outcomes, examines changes aimed at minimizing differences among cases.

2. Legal Framework in India :

a. Indian Penal Code (IPC) Provisions

The Indian Penal Code (IPC) has historically formed the backbone of India's legal framework

¹ World Health Organization ,World Report on Violence and Health (2002)

² Criminal Law (Amendment) Act, 2013

³ Constitution of India

⁴ State of Punjab v Gurmit Singh,(1996) SCC 384.

⁵ Andrew Ashworth, Sentencing and Criminal Justice (6th edn.,Cambridge University Press,2015)

⁶ Cassia Spohn, How Do Judges Decide? The Search for Fairness and Justice in Punishment (Sage Publications, 2009)134

addressing rape and sexual violence. Over the years, several amendments have been introduced to strengthen these provisions and make them more responsive to changing societal realities.⁷

Section 375 IPC: provides the legal definition of rape and serves as the central provision governing sexual offences. Prior to the Criminal Law (Amendment) Act, 2013, the definition was limited mainly to penile-vaginal penetration. However, in response to the widespread public outcry following the 2012 Delhi Gang Rape Case, the scope of the law was expanded to include various forms of sexual assault such as oral sex, insertion of objects, and other acts involving penetration without consent.⁸ Despite these progressive reforms, an important exception continues to exist—marital rape involving adult women is not fully criminalized. The ruling in *Independent Thought v. Union of India* (2017) recognized that sexual intercourse with a wife below 18 years of age constitutes rape; however, non-consensual sexual relations within marriage involving adult women remain excluded from the definition under Section 375, which has been widely criticized for reflecting patriarchal assumptions within the legal system.⁹

Section 376 IPC prescribes punishments for rape and establishes strict penalties for offenders. The minimum punishment was increased from seven years to ten years of imprisonment, which may extend to life imprisonment.¹⁰ In particularly brutal cases categorized under the “rarest of rare” doctrine, courts may also impose the death penalty. The provision also recognizes aggravated circumstances—such as rape of minors, pregnant women, or women with disabilities—where stricter punishment is warranted.¹¹ However, critics argue that the introduction of the death penalty may not necessarily act as a deterrent and could discourage victims from reporting offences due to fear of retaliation.

To address specific forms of sexual violence, Sections 376A to 376D IPC were incorporated. Section 376A deals with situations where rape results in the victim’s death or leaves her in a persistent vegetative state, prescribing a minimum sentence to gang rape and mandates rigorous imprisonment for at least twenty years, which may extend to life imprisonment.¹² These provisions recognize the seriousness of custodial and institutional sexual violence, where abuse

⁷ K.D. Gaur, *Textbook on Indian Penal Code* (Universal Law Publishing, 6th edn.2016)1123

⁸ Justice J.S.Verma Committee, *Report of the Committee on Amendments to Criminal Law* (2013)

⁹ *Independent Thought v. Union of India* (2017)10 SCC 800.

¹⁰ Indian Penal, 1860 s. 376 (as amended by Criminal Law Amendment Act, 2013).

¹¹ Indian Penal Code, 1860 s.376

¹² Indian Penal Code, 1860 s.376A- 376 B

of authority often plays a crucial role.

Despite these legal provisions, effective implementation remains a challenge. Survivors frequently encounter obstacles such as unwillingness by police to register complaints, especially when influential individuals are involved, as well as prolonged judicial delays. Furthermore, the continued exclusion of marital rape involving adult women remains a significant gap in the law. While the IPC has evolved to recognize a broader range of sexual offences, further reforms are necessary to strengthen legal protections and ensure timely justice for survivors.¹³

b. Bharatiya Nyaya Sanhita (BNS), 2023 Provisions

The Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the IPC, retains many of the earlier provisions relating to rape while reorganizing them under new section numbers.¹⁴

Section 63 BNS : defines rape and largely reflects the expanded definition introduced after the 2013 amendments. It includes various forms of penetration such as penile penetration, oral acts, and insertion of objects without the consent of the woman.

Section 64 BNS: prescribes the punishment for rape, providing for a minimum sentence of ten years' rigorous imprisonment that may extend to life imprisonment along with a fine.

Section 65 BNS: deals with aggravated circumstances of rape, particularly where the victim is a minor or otherwise vulnerable, and prescribes enhanced punishment.

Section 66 BNS: addresses cases where rape results in the victim's death or leaves her in a persistent vegetative state, mandating severe penalties similar to those under the earlier IPC provisions.

Section 67 BNS : covers sexual intercourse by a husband with his wife during separation, while **Section 68 BNS** criminalizes sexual exploitation by persons in positions of authority, including public officials and custodial officers.

Section 69 BNS: introduces a provision addressing sexual intercourse obtained through

¹³ Flavia Agnes , *Law , Justice and Gender : Family Law and Constitutional Provisions in India* (Oxford University Press ,2011)

¹⁴ Bharatiya Nyaya Sanhita ,2023

deceitful means, such as false promises of marriage.

Section 70 BNS: deals with gang rape and prescribes rigorous imprisonment for a minimum of twenty years, which may extend to life imprisonment or, in certain aggravated cases, the death penalty.

Although the BNS largely preserves the substance of the earlier IPC provisions, debates continue regarding the absence of explicit criminalization of marital rape involving adult women and the need for stronger enforcement mechanisms to ensure justice for victims of sexual violence.

c. Criminal Procedure Code and BNSS

i. Compulsory Registration of FIR (Section 154 CrPC / 173 section BNSS)

Section 154 of the Code of Criminal Procedure (CrPC) mandates law enforcement agencies to document a First Information Report (FIR) upon receiving information pertaining to a cognizable offence, such as sexual assault. Specific protections have been instituted for individuals who have endured sexual crimes:

- The account of the victim must be gathered by a female police officer or a female official.
- In instances where the victim is mentally or physically impaired, the account should be documented at the victim's residence or in a location of her preference.
- The process of documentation should incorporate an interpreter or a specially trained educator, and it is imperative that it is videotaped.
- These stipulations are intended to alleviate psychological distress and uphold the dignity of the victim during the preliminary phase of the reporting process.¹⁵

ii. Revised recording of Statement before Magistrate (Section 164 Crpc/ 183 BNSS)

¹⁵ Code of Criminal Procedure 1973 ,S .154; Bhartiya Nagarik Suraksha Sanhita 2023, S 173

According to Section 164, a Judicial Magistrate may record the statement of the survivor. This testimony is vital for several reasons:

- It offers an initial judicial documentation of the victim's account.
- It minimizes the chances of coercion or influence during the investigative process.
- For survivors with disabilities, the law requires the provision of support and videography.
- Medical Examination of the Victim (Section 164A CrPC) Section 164A outlines the procedures for the medical examination of a rape survivor. The examination must be performed by a registered medical practitioner. It should be carried out without unnecessary delay to ensure the preservation of forensic evidence. The victim's consent, or that of her guardian if she is a minor, is required. This section highlights the importance of both gathering evidence and safeguarding the survivor's health and dignity.¹⁶

iii. Examination of the Accused (Section 53A CrPC/ 51 BNSS)

Section 53A permits the medical examination of an individual accused of rape. This examination is used to collect evidence such as bodily injuries, DNA samples, or other forensic materials that may assist in determining guilt or innocence.

iv. In-Camera Trial (Section 327 CrPC / 366 BNSS)

In order to safeguard the privacy and dignity of the survivor, Section 327 stipulates that trials for rape must be conducted in camera (i.e., closed court proceedings). The disclosure of the victim's identity is strictly prohibited unless authorized by the court.

v. Assistance of Legal Counsel (Section 24(8) and Victim Rights)

Individuals who have experienced rape are entitled to obtain legal representation throughout the prosecutorial process, and judicial authorities may permit such victims to retain a private

¹⁶ Code of Criminal Procedure 1973 ,S .164; Bhartiya Nagarik Suraksha Sanhita 2023, S 183

attorney to support the public prosecutor.

vi. Time-Bound Investigation and Trial

Recent amendments advocate for the prompt investigation and adjudication of sexual offense cases. This initiative aims to mitigate prolonged trauma for survivors while ensuring the provision of timely justice

d. Others laws which govern Rape laws

I. Protection of Children from Sexual Offences Act, 2012 (POCSO)

The POCSO Act is a comprehensive law addressing sexual crimes against children under 18 years of age.

Key aspects include:

- Gender-neutral clauses to protect all children
- Clear categorization of offenses such as penetrative sexual assault, sexual assault, and harassment
- Creation of Special Courts to ensure speedy trials
- Child-friendly procedures like private hearings and safeguarding the child's identity
- Mandatory reporting of offenses
- Measures to avoid re-traumatizing victims

This Act establishes a robust legal framework for protecting children and handling cases involving minors with sensitivity.¹⁷

II. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

This law aims to prevent atrocities and discrimination against Scheduled Castes and Scheduled

¹⁷ Protection of Children from Sexual Offences Act, 2012 (POCSO)

Tribes communities.

Key features include:

- Defining specific acts as atrocities when committed against SC/ST individuals
- Acknowledging caste-based discrimination and vulnerability
- Setting up special courts for swift justice
- Providing relief, protection, and rehabilitation for victims
- Covering offenses such as humiliation, violence, and dispossession.

The Act addresses systemic social injustice and inequality.¹⁸

III. Protection of Women from Domestic Violence Act, 2005

This Act offers protection against domestic abuse within family or household relationships.

Key points:

- Covers physical, emotional, verbal, economic, and sexual abuse
- Applies to marriages, live-in relationships, and family environments
- Provides civil remedies including protection orders, residence orders, monetary relief, and custody orders
- Appointment of Protection Officers
- Emphasizes immediate relief and safety for victims

The Act ensures dignity and security for women in domestic settings.¹⁹

¹⁸ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

¹⁹ Protection of Women from Domestic Violence Act, 2005 .

IV. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This law guarantees a safe work environment for women.

Key features:

- Broad definition of sexual harassment, including unwelcome behavior and comments
- Mandatory Internal Complaints Committees (ICC) in workplaces
- Employer's responsibility for prevention and awareness
- Timely resolution of complaints
- Applicable to both organized and unorganized sectors
- The Act promotes equality and protection for women at work.²⁰

V. Information Technology Act, 2000

This Act regulates offenses related to digital and electronic platforms. Important provisions include:

- **Section 67:** Obscene electronic content
- **Section 67A:** Sexually explicit material
- **Section 66E:** Privacy violations

It plays a crucial role in combating cybercrime and online exploitation.²¹

VI. Indecent Representation of Women (Prohibition) Act, 1986

This law prohibits indecent or derogatory portrayal of women in media.

²⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

²¹ Information Technology Act, 2000

Key points:

- Criminalizes sexualized or disrespectful representation of women
- Applies to advertisements, publications, and digital media
- Aims to prevent exploitation and objectification

It supports the dignity and respectful portrayal of women.²²

VII. Constitutional Provisions

(a) Article 14: Guarantees equality before the law and equal legal protection

(b) Article 21: Ensures the right to life and personal liberty, including dignity and privacy

(c) Article 15: Prohibits discrimination and permits special measures for women and disadvantaged groups

These articles form the foundation for legal rights and protections.²³

VIII. Probation of Offenders Act, 1958

This Act encourages a reformatory approach to justice.

Key features:

- Allows offenders, especially first-timers or those with minor offenses, to be released on probation instead of imprisonment
- Focuses on rehabilitation and social reintegration
- Helps avoid the stigma associated with incarceration

It emphasizes correction and reform over punishment.²⁴

²² Indecent Representation of Women (Prohibition) Act, 1986

²³ Constitution of India, arts .14,15,21 .

²⁴ Probation of Offenders Act, 1958

3. Sentencing Guidelines and Principles

Sentencing guidelines helps judges to provide fair punishment based on how serious the crime is. While laws set the legal limits of discipline, sentencing principles help judges in determining the applicable judgment within those limits. In rape cases, these principles are pivotal to balancing justice for the victim, the rights of the indicted and societal interests.²⁵

One of the crucial principles in sentencing is proportionality, which requires that the discipline reflect the soberness of the crime. Courts frequently estimate the nature of the act, the detriment caused to the victim, and the societal commination of the offence. For illustration, a very serious rape involving extreme violence or vulnerable victims get a harsher punishment, while less serious cases may get a lighter punishment.

Other important principles include deterrence, rehabilitation, Retaliation, retribution, and forestallment of recidivism. Deterrence seeks to discourage both the lawbreaker and the wider society from committing analogous crimes. Retaliation focuses on holding the lawbreaker responsible for the detriment caused. Rehabilitation emphasizes the possibility of reforming the indicted, particularly in cases involving first- time male factors or youthful grown-ups. Courts frequently weigh these principles alongside aggravating and mitigating factors to arrive at a balanced judgment.²⁶

Numerous authorities have introduced formal sentencing guidelines to reduce difference in discipline. These guidelines give judges with a structured approach by listing applicable factors and recommended ranges of discipline. Still, in countries like India, while the law prescribes minimal and maximum corrections under the Indian Penal Code for rape, there's no rigid frame governing how judges must weigh different factors. This discretion, while necessary to consider case-specific details, can affect in significant variation in rulings for analogous offences. Aggravating factors that generally impact sentencing in rape cases includes the use of violence, abuse of authority, previous persuasions, and the vulnerability of the victim. Mitigating factors may include the lawbreaker's age, lack of felonious record, cooperation with law enforcement, or substantiation of guilt. A well- guided approach to sentencing ensures that these factors are considered constantly, reducing arbitrary difference and enhancing public

²⁵ Andrew Ashworth, *Sentencing and Criminal Justice* (6th edn., Cambridge University Press, 2015)

²⁶ *Alister Anthony Pareira V. State Maharashtra* (2012)

confidence in the judicial system.²⁷

Eventually, sentencing guidelines and principles act as a ground between statutory vittles and judicial discretion. They give a reference point for fair and commensurate sentencing while allowing inflexibility to regard for the nuances of individual cases.

4. Comparative Analysis of Rape Sentencing: India and Other Jurisdictions

Comparing sentencing practices across jurisdictions helps to understand how different legal systems balance judicial discretion, statutory mandates, and consistency in punishment. While India relies heavily on judicial discretion within statutory limits, other countries have adopted structured guidelines to reduce disparities.²⁸

United Kingdom

In the UK, the Sentencing Council provides detailed sentencing guidelines for sexual offences, including rape. Judges are required to consider both seriousness categories and aggravating or mitigating factors when determining sentences.

“Aggravating factors” include premeditation, abuse of trust, multiple offenders, or extreme violence.

“Mitigating factors” may include youth, mental health issues, or guilty pleas. The UK system sets starting points and ranges for each category, ensuring that sentences for comparable offences are more consistent. For instance, a rape involving serious violence and a vulnerable victim typically falls into a higher sentencing range, often exceeding 10 years. This structured approach reduces the chances of wide disparities between cases.²⁹

United States

The United States shows a mixed approach due to the federal system, where states maintain their own criminal codes. Many states use sentencing guidelines or mandatory minimums,

²⁷ State of Rajasthan v. Vinod Kumar, 2012 SCC 770.

²⁸ Julian V. Roberts, *Sentencing Guidelines: Exploring the English Model* (Oxford University Press, 2013)

²⁹ Sentencing Council (UK), *Rape Offences Definitive Guideline* (2014).

while federal courts follow the U.S. Sentencing Guidelines.³⁰

Some states, like California, have “three strikes” or mandatory minimum sentences for repeat offenders, which reduce discretion but sometimes lead to disproportionately harsh sentences. Federal courts emphasize factors like harm to the victim, use of a weapon, or prior criminal history, balancing between mandatory minimums and judicial discretion.

Studies show that structured guidelines reduce sentencing disparities, although discretion remains in applying enhancements or downward departures.

Canada

In Canada, sentencing for sexual offences is governed by the Criminal Code and informed by supreme court decisions emphasizing proportionality and the gravity of the offence.

- Courts in Canada must consider aggravating factors such as the use of violence, breach of trust, or targeting vulnerable victims.
- Canadian law also allows for victim impact statements and judicial consideration of rehabilitation, but judges operate within structured ranges to maintain consistency.
- Research indicates that Canada achieves more uniformity in sentencing compared to India, though some variation remains due to case-specific discretion.³¹

Comparative Observations

The comparative study highlights several important contrasts:

- a) **Structured Guidelines vs. Discretion** – Jurisdictions like the UK and Canada provide structured frameworks that guide judges, reducing wide disparities in sentences. India, while having statutory minimums, gives judges broader discretion, leading to variable outcomes.
- b) **Aggravating and Mitigating Factors** – All systems consider these factors, but

³⁰ United States Sentencing Commission, Guidelines Manual (latest edn.)

³¹ R v. Lacasse, 2015 SCC 64 (Supreme Court of Canada).

codified ranges in other countries make their impact on sentencing more predictable.

- c) **Consistency vs. Individualized Justice** – While structured guidelines promote consistency, India’s discretionary approach allows for highly individualized sentences that may be more sensitive to case details but are less predictable.
- d) **Public Confidence and Social Response**– High-profile cases in India reveal that inconsistent sentencing can undermine public trust in the judicial system, highlighting the need for clearer guidelines without eliminating judicial discretion.

5. Factors Causing Sentencing Disparities in Rape Cases

Sentencing disparities in rape cases arise from a combination of legal, social, and procedural factors. Understanding these causes is crucial to identifying reforms that can promote fairness and consistency in judicial outcomes.³²

a) Judicial Discretion

As discussed earlier, judicial discretion allows judges to tailor sentences to individual cases. While this flexibility is essential for considering unique circumstances, it can also lead to variations. Different judges may weigh aggravating or mitigating factors differently, leading to significant differences in sentencing even for similar offences. Personal interpretations of what constitutes “seriousness” or “remorse” can further influence outcomes.³³

b) Social and Cultural Biases

Societal attitudes and implicit biases can affect sentencing decisions. In some cases, courts have been influenced consciously or unconsciously by stereotypes about victims, particularly regarding gender, social status, or perceived credibility. Similarly, the identity or social standing of the accused may affect the perceived severity of punishment, contributing to inconsistent outcomes.

c) Quality of Legal Representation

The competence and resources of defense and prosecution lawyers play a significant role in

³² Arghya Sengupta & Alok Prasanna Kumar, *Sentencing in India : From Vacuum to Framework* (2016)

³³ *State of Punjab v. Prem Sagar*, (2008) SCC 550.

sentencing. Defendants with skilled legal representation may negotiate plea bargains, highlight mitigating factors, or challenge evidence effectively, resulting in lighter sentences. Conversely, lack of access to quality legal counsel can contribute to harsher outcomes.

d) Variability in Evidence and Case Circumstances

The strength and type of evidence presented can influence sentencing. Cases with clear forensic evidence, eyewitness testimony, or documented harm to the victim may lead to harsher sentences, while cases relying heavily on conflicting testimonies may result in lighter punishments. Even subtle differences in case facts such as the relationship between the offender and the victim or the context of the crime can create disparity.³⁴

e) Absence of Uniform Sentencing Guidelines

In India, while statutory minimums exist, there are no comprehensive sentencing guidelines that standardize how judges should apply aggravating and mitigating factors. The absence of structured ranges or reference points allows for wide judicial discretion, which can lead to divergent outcomes for similar offences.³⁵

f) Appellate and Regional Variation

Different courts may interpret the law differently, and appellate courts sometimes overturn or modify sentences, adding another layer of variability. Regional disparities also emerge due to differences in local judicial practices, societal norms, and law enforcement standards.³⁶

g) Political and Media Influence

High-profile cases often attract media attention and public scrutiny, which can indirectly affect judicial behavior. Courts may impose harsher sentences in sensational cases to signal social condemnation, whereas less-publicized cases might receive comparatively lenient sentences, adding to the perception of inconsistency.³⁷

³⁴ State of Karnataka v. Krishnappa, (2000) SCC 75.

³⁵ Bharatiya Nyaya Sanhita, 2023

³⁶ Law Commission of India, Report No. 156 on IPC (1997).

³⁷ Mukesh v. State (NCT of Delhi), 2017 SCC

6. Critical Analysis

Sentencing disparities in rape cases present a complex challenge, as they reflect the tension between judicial discretion and the need for consistency in justice. While individualized sentencing allows judges to consider the unique circumstances of each case, excessive variation can undermine the principles of fairness and equality before the law.

A. The Necessity of Judicial Discretion

Judicial discretion is essential in rape cases because each offence can vary widely in severity, context, and impact on the victim. Factors such as the age of the victim, psychological trauma, use of violence, and the offender's background require careful consideration. Strictly codified sentences could risk imposing punishment that is either disproportionately harsh or insufficiently severe, potentially failing to achieve justice for victims.

B. The Problem of Inconsistency

However, unstructured discretion has led to widely divergent sentences for comparable offences. As the case law analysis shows, crimes of similar gravity have received punishments ranging from a few years to life imprisonment or even the death penalty. Such inconsistencies can create a perception of arbitrariness in the justice system, eroding public confidence and raising concerns about equality before the law.

C. Influence of Non-Legal Factors

Sentencing decisions are sometimes affected by factors beyond the law, including social biases, media coverage, and the social or political profile of the accused. While judges are expected to remain impartial, these influences can inadvertently impact decisions, leading to disparities that are difficult to justify on legal grounds.

D. Comparative Insights

The comparative analysis of other jurisdictions demonstrates that structured sentencing frameworks can reduce disparities while still allowing for individualized justice. For example, the UK's category-based sentencing guidelines and Canada's proportional sentencing model provide consistency without eliminating judicial discretion entirely. India's current system,

lacking detailed sentencing guidelines, leaves more room for variation, especially in high-profile or sensitive cases.

E. Balancing Flexibility and Uniformity

The critical question is how to balance the flexibility needed for individualized justice with the predictability and fairness achieved through structured guidelines. Excessive rigidity risks ignoring the nuances of each case, whereas too much discretion can lead to injustice and social disapproval. A carefully designed framework of sentencing principles, ranges, and reference factors can provide judges with guidance while preserving the ability to account for case-specific realities.

7. Suggestions and conclusion

- **Suggestions:**

To address sentencing disparities in rape cases, a combination of legal, procedural, and social reforms is necessary. The goal should be to reduce inconsistency while preserving judicial discretion to account for the unique circumstances of each case.

a. Establish Comprehensive Sentencing Guidelines

Develop structured sentencing guidelines for rape and sexual offences, similar to models in the UK and Canada. Include starting points and ranges for different categories of offences, with clear aggravating and mitigating factors. Ensure that judges have reference points to promote consistency while retaining flexibility for exceptional cases.

b. Judicial Training and Sensitization

Conduct regular workshops for judges on handling sexual offences, particularly regarding victim impact, trauma-informed approaches, and gender sensitivity. Sensitize judges to implicit biases that may affect sentencing, ensuring decisions are guided by law rather than societal stereotypes.

c. Strengthen Statutory Frameworks

Amend laws to clarify minimum and maximum punishments and define aggravating and

mitigating factors more explicitly. Incorporate provisions for mandatory review or appellate oversight in cases where sentences appear disproportionately low or high.

d. Improve Access to Legal Representation

Ensure victims and accused individuals have access to competent legal counsel to minimize disparities arising from unequal representation. Encourage public defenders and legal aid systems to handle sexual offence cases effectively.

e. Encourage the Use of Victim Impact Statements

Standardize procedures for including victim impact statements in sentencing decisions. Ensure that judges consider these statements while maintaining proportionality in sentencing.

f. Data Collection and Research

Maintain a national database of sexual offence cases, including sentencing outcomes, aggravating factors, and appeals. Use this data to identify patterns, inform policy, and monitor whether reforms reduce disparities over time.

g. Promote Public Awareness and Confidence

Communicate the rationale for sentencing decisions clearly in court judgments to foster public trust.

Highlight how the legal system balances individual circumstances with societal interests.

• Conclusion

Sentencing disparities in rape cases highlight the complex interplay between judicial discretion, statutory provisions, and societal expectations. While discretion allows judges to consider the unique circumstances of each case such as the nature of the offence, the impact on the victim, and the offender's background it can also lead to inconsistent outcomes, eroding public confidence in the justice system.

The analysis of landmark cases, both in India and abroad, reveals significant variation in sentences, even for offences of comparable severity. Comparative study shows that

jurisdictions with structured sentencing guidelines, like the UK and Canada, are better able to achieve consistency while still allowing judges to tailor sentences to individual circumstances. India's current system, with statutory minimums but limited guidance on aggravating and mitigating factors, leaves room for significant disparities.

Addressing these disparities requires a balanced approach. Comprehensive sentencing guidelines, judicial training, enhanced legal representation, and systematic data collection can reduce inconsistency while preserving the flexibility needed for individualized justice. Incorporating victim impact statements and maintaining transparency in sentencing decisions further strengthen fairness and public trust.

In conclusion, the challenge lies not in eliminating discretion, but in guiding it responsibly. By combining clear legal frameworks with judicial flexibility, the justice system can ensure that punishment in rape cases is both proportionate and consistent, upholding the principles of fairness, equality, and social justice.

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