
SENTENCING JUSTICE: A COMPARATIVE JURISPRUDENTIAL STUDY

Ritesh Raj V K, The Tamil Nadu Dr. Ambedkar Law University

ABSTRACT

In India's criminal justice system, sentencing is a complex and changing part of the law that tries to find a balance between punishment, deterrent, and rehabilitation. This article talks about how the courts in India have interpreted the law to make decisions about punishment. It focuses on important Supreme Court cases that stress the ideas of proportionality and individualization.

The "rarest of rare" doctrine, which controls the use of the death penalty, and the judicial clarifications on life imprisonment are the most important parts of this examination. Even though there are not any official sentencing guidelines, judges still have a lot of power, which often leads to different penalties for the same crime. This mismatch underscores the necessity for uniform sentencing regimes. This essay analyzes the comparative legal systems of the United States and the United Kingdom to elucidate the advantages and challenges of structured sentencing standards. The essay also talks about the problems that come with overcrowded prisons and the need for other ways to punish people. It stresses rehabilitation and calls for better programs to help offenders reintegrate, using successful examples from Scandinavian countries. The Malimath Committee suggested that India set up a Sentencing Council. This could be a fair way to make sure that sentences are consistent while yet allowing judges to use their own judgment. This essay emphasizes the necessity of adapting sentencing regulations to more closely reflect modern cultural norms and legal standards.

Keywords: Sentencing Policy, Judicial Interpretation, Criminal Justice System, Comparative Legal Systems, Rehabilitation etc.

1. INTRODUCTION

The most important part of any criminal justice system is sentencing justice. It is the point where the general ideas of law meet the facts of how people act and what is morally right in society. Sentencing is not just a mechanical way of punishing someone when they are found guilty. It is also the moral authority of the State to punish people who break the law. In short, sentencing justice makes sure that the punishment fits the crime and is fair, reasonable, and kind. It expresses the notion that justice must not conclude with conviction but must persist until the ultimate determination of the sentence is finalized, with appropriate consideration for law, equity, and human dignity.

The idea of sentencing justice is closely related to the larger idea of punishment, which has changed throughout the years through moral, philosophical, and legal discussions. Conventional jurisprudence delineates four fundamental ideas of punishment: retributive, deterrent, preventative, and reformative. The retributive doctrine is founded on the idea of moral revenge, which says that the one who did evil must pay for it. The deterrent hypothesis seeks to prevent the offender and others from committing crimes by instilling a fear of punishment. The preventive approach aims to incapacitate the offender to avert other crimes, whereas the reformatory theory strives to rehabilitate the offender and reintegrate them into society as a responsible citizen. So, sentencing is the point where these ideas come together. It shows how the society as a whole thinks about crime and punishment, whether it is punitive, corrective, or restorative.¹

But giving a sentence is a complicated and personal process. For instance, in India, sentencing is still mostly up to the judge because there is no standard sentencing policy. The Indian Penal Code (IPC) sets out the range of punishments for different crimes, and the Code of Criminal Procedure (CrPC) gives judges procedural protections, like the pre-sentence hearing under Section 235(2). However, there is still no clear rule telling judges how to decide how much punishment to give in each case. This has caused problems, since similar crimes often get quite varied penalties depending on the court, the jurisdiction, and even the offender's socioeconomic status. These kinds of differences go against the idea that everyone is equal before the law and make people question if the judicial system is fair. So, getting sentence justice is not just about

¹ K.D. Gaur, *Criminal Law: Cases and Materials* (LexisNexis, 2022)

punishing criminals; it is also about making sure that the process is fair, consistent, and reasonable.²

In this situation, a comparative jurisprudential approach is necessary. By looking at how other places have set up their sentencing systems, India can learn a lot about how to make changes. For example, the UK has set up a Sentencing Council that gives precise rules to make sure that sentences are fair and clear. The United States also developed the Federal Sentencing Guidelines in 1984 to make punishment more consistent while still giving judges some freedom. These approaches show that sentencing may be both organized and flexible, which makes sure that everyone is treated fairly while also allowing judges to make their own decisions.

Additionally, nations like Canada and Australia have adopted reformatory and restorative justice approaches that prioritize rehabilitation, victim-offender reconciliation, and community service over mere incarceration. Comparative jurisprudence elucidates that justice is not homogeneous among nations but must adapt to their moral, social, and constitutional frameworks.³

India's criminal justice system, which is based on colonial ideas, has been sluggish to come up with clear rules for punishment. The Law Commission of India has suggested a formal sentencing policy many times, most recently in its **262nd Report (2015)** and **268th Report (2017)**, however it has not yet been put into place. The courts have repeatedly said that sentence is unfair because it is random. In the case of **Bachan Singh v. State of Punjab (1980)**, the Supreme Court said that the death sentence should only be used in the "**rarest of rare**" circumstances. This set a moral and constitutional criteria of proportionality. Later, in **Sangeet v. State of Haryana (2013)**, the Court said again that not having a sentencing policy makes things ambiguous and unpredictable, which hurts the confidence of the criminal justice system. These insights underscore the critical necessity for the establishment of a systematic and logical framework for sentencing in India.⁴

Also, the study of sentencing in different places shows how the idea of justice has changed from retributive to reformatory in recent years. Numerous nations acknowledge that

² P.S.A. Pillai, Criminal Law (Eastern Book Company, 2020)

³ R.V. Kelkar, Criminal Procedure (Eastern Book Company, 2023)

⁴ Prof. N.V. Paranjape, Criminology, Penology and Victimology (Central Law Publications, 2022).

punishment should not solely seek to cause suffering but also to rehabilitate and reintegrate offenders into society. The reformatory paradigm is in line with constitutional ideals, like Article 21 of the Indian Constitution, which says that everyone has the right to life and personal freedom. The Supreme Court has often said that this right also applies to inmates, stressing that punishment must be in line with human dignity. Consequently, sentencing justice must function within the overarching context of constitutional morality and human rights.

The goal of this essay is to look at how sentencing justice works in different criminal justice systems and to see how reformatory methods can be used in the Indian system. It seeks to study the comparative jurisprudential advancements in nations like the **United Kingdom, the United States, and Canada**, and determine their relevance to India. The study aims to pinpoint deficiencies within the Indian system, including the absence of guidelines, sentencing disparities, and inadequate rehabilitation procedures, while proposing solutions that reconcile the goals of punishment with principles of fairness and humanity. This paper aims to further the existing dialogue regarding the establishment of a more coherent, equitable, and reform-driven sentencing system in India using a comparative perspective.

In the end, sentencing justice is not a fixed idea but a changing notion that shows how mature a judicial system is. It necessitates a nuanced equilibrium among legality and ethics, personal liberties and societal order, as well as retribution and empathy. The comparative analysis of sentencing systems indicates that no singular model can assert universal applicability; instead, each system must customize its sentencing philosophy to align with its constitutional principles and societal contexts. India's challenge is to change the way judges decide sentences from being a choice to an organized, principled procedure based on fairness, equity, and reform. Only then can the criminal justice system really live up to the idea of "justice not only done, but seen to be done."⁵

2. SENTENCING FRAMEWORK IN INDIA

The Indian system for sentencing comes mostly from two important legal documents: the **Indian Penal Code, 1860 (IPC)** and the **Code of Criminal Procedure, 1973 (CrPC)**. The IPC sets the range of punishments for certain crimes, while the CrPC sets the rules for how those punishments are decided, announced, and carried out. India does not have a clear or

⁵ R.V. Kelkar, Criminal Procedure (Eastern Book Company, 2023).

codified sentencing policy that tells judges how much punishment to give, unlike several other countries. As a result, judges in India mostly decide on sentences based on their own opinions, which are influenced by the type of crime, the offender's background, and the case's circumstances. The Indian Penal Code recognizes many types of punishment, such as the death sentence, life in prison, hard or ordinary imprisonment, the loss of property, and a fine. The Code says what kind of punishment can be given for each crime and how long it can last. But the trial judge still has the power to decide the actual amount within these broad limits. For example, **Section 379 of the IPC** says that theft can be punished with up to three years in prison, a fine, or both. The judge has complete discretion to pick the right combination. This freedom can lead to justice that is more tailored to each person, but it can also lead to unfairness if it is used randomly. Because there are no laws that tell judges how to punish people, they rely a lot on past cases and their own sense of justice. This can lead to very different sentences for the same crime.⁶

The **Code of Criminal Procedure (CrPC)** adds to this framework by laying out the steps to take before, during, and after sentencing. The pre-sentence hearing, which is part of **Section 235(2) of the CrPC**, is one of the most important protections that the CrPC has put in place. This law says that the accused must be given a chance to speak on the sentencing before the court decides what to do.⁷ This makes sure that the sentencing procedure follows the rules of natural justice and takes into account things like age, mental health, being a first-time offender, or socioeconomic conditions. **Section 248(2)** further says that there should be a pre-sentence hearing in warrant proceedings that were started in a different way than a police complaint. These rules were put in place to make the sentencing process more humane and to stop people from being punished without first hearing their side of the story. In **Santa Singh v. State of Punjab (1976)**, the Supreme Court stressed how important this provision is by saying that it makes sure that the accused has a fair chance to ask for leniency.⁸

Even with these procedural protections, the Indian criminal justice system still has a big problem: there are no clear rules for sentencing. This is something that the Supreme Court has often said it is worried about. In **Bachan Singh v. State of Punjab (1980)**, the Court upheld the validity of the death sentence but said that it should only be used in the "rarest of rare" instances. This set a criterion for capital punishment. But there is no such standard for other

⁶ Indian Penal Code, 1860 (Act 45 of 1860)

⁷ Bachan Singh v. State of Punjab, AIR 1980 SC 898.

⁸ Code of Criminal Procedure, 1973 (Act 2 of 1974).

types of punishment. The Court said in **State of Punjab v. Prem Sagar (2008)** that there was no clear policy for sentencing. It said, "courts in India have failed to evolve any uniform policy in awarding sentences." In **Sangeet v. State of Haryana (2013)**, the Court reiterated that sentencing in India remains predominantly judge-centric, resulting in a lack of predictability. These judicial remarks underscore the pressing necessity for India to establish a systematic and principled sentencing framework to guarantee consistency and proportionality.⁹

The notion of proportionality in sentencing is a vital component of justice, necessitating that the penalty correspond to both the crime and the offender. This notion, while implicit in Indian jurisprudence, is not clearly articulated in statute law. Proportionality makes ensuring that those who commit small crimes do not get too harsh of a punishment and people who commit significant crimes get the right amount of punishment. The Supreme Court has used this doctrine in a number of instances, connecting it to **Article 21 of the Constitution**, which protects the right to life and personal freedom. In **Mithu v. State of Punjab (1983)**, the Court struck down the mandatory death punishment for some crimes, saying that not letting the court examine mitigating circumstances is unfair. This shows that the courts are dedicated to making sure that sentencing is a rational and humane process, not a mechanical one.

Another essential part of sentencing in India is the ability to change, suspend, or end a sentence. This power is shared by the Executive and the Judiciary. According to **Articles 72 and 161 of the Constitution**, the President and Governors have the ability to give people pardons, reprieves, respites, or reductions in punishment. At the same time, **Sections 432 to 433A of the CrPC** say that the government can suspend, remit, or commute sentences under specific conditions. These abilities, which are commonly called acts of mercy or clemency, are meant to keep the legal process in check and make sure that the justice system is still flexible and kind. The Supreme Court stated in **Epuru Sudhakar v. Government of Andhra Pradesh (2006)** that clemency powers are open to judicial review if they are used in bad faith or without good reason.

India has also added reformatory elements to the punishment system in the last several decades. The **Probation of criminals Act of 1958** lets first-time or minor criminals be released on probation instead of going to jail. This shows that reformatory justice is becoming more accepted. **Sections 360 and 361 of the CrPC** also give courts the power to put some offenders

⁹ Constitution of India, 1950 — Articles 14, 21, 72, and 161.

on probation or let them go after a warning. These rules show that jail is not always the best approach to deal with crime, especially for people who can be rehabilitated. The courts have long supported the use of probation in circumstances when it is warranted to keep prisons from getting too full and to help people reintegrate into society. These kinds of actions show a transition from punitive to reformatory justice, which is in line with worldwide trends and constitutional requirements.

The **Criminal Law (Amendment) Act, 2005**, added **Sections 265A to 265L to the CrPC**, which made plea bargaining a big change in India's sentencing system. Plea bargaining lets the accused plead guilty in exchange for a shorter sentence. This helps clear up the backlog of cases and makes sure that justice is served quickly. People were sceptical about it at first, but it has become an important way to speed up criminal proceedings. However, detractors say that it could hurt the rights of poor and uneducated people who are charged and may plead guilty under pressure or without fully knowing what it means. Still, plea bargaining shows how India's view of practical justice and flexible punishment is changing.

Section 320 of the CrPC allows for the compounding of offences, which is another way that the Indian system is flexible when it comes to sentence. It lets the victim and the offender work out some crimes, usually small or private ones, without the court's authorization. This rule not only makes things easier for the courts, but it also promotes reconciliation and restorative justice. These systems, together with plea bargaining and probation, show that India is slowly but surely moving toward reformatory and community-based justice paradigms.

Even with these changes, the Indian sentencing system still has a lot of problems to deal with. It is hard to make a clear sentencing policy since there is no statutory sentencing commission, there is no consistency, and there is not enough empirical evidence on sentencing patterns. The Law Commission of India stressed the necessity for a Sentencing Guidelines Bill in its **268th Report (2017)**. This bill would assist make sentencing determinations more consistent and clear. It suggested that judges should write down the grounds for giving certain sentences so that they may be held accountable and so that appeals can be easier. But the recommendations have not yet been put into action, therefore India's sentencing system is still mostly broken and up to the judge.

3. COMPARATIVE JURISPRUDENCE

Comparative jurisprudence is essential for comprehending how various criminal justice systems perceive and implement sentence justice. Sentencing is not just a phase in the legal process once someone is found guilty; it is also a reflection of the country's moral and constitutional values. We can find different ways to sentence people by looking at systems in the **UK, US, and Canada**. These range from structured guidelines to restorative justice models. We can then think about how India can learn from these places to make its own system more fair, consistent, and open to change.

3.1 Importance of Comparative Sentencing Analysis

Sentencing reflects a society's philosophy of punishment and its balance between retribution, deterrence, and reform. Comparative analysis helps in:

- Understanding how different jurisdictions control judicial discretion through statutory guidelines or commissions.
- Identifying best practices in sentencing that harmonize fairness and flexibility.
- Recognizing the evolving shift from retributive to reformatory justice, particularly in modern democracies.
- Analysing how constitutional rights and human dignity influence sentencing patterns globally.

Comparative jurisprudence thus provides a mirror for India's criminal justice system to assess its own shortcomings — particularly the absence of a uniform sentencing policy — and to adopt reforms suited to its constitutional ethos.¹⁰

3.2 Sentencing Framework in the United Kingdom

3.2.1 Historical Background

The United Kingdom historically followed a highly discretionary sentencing system, where judges enjoyed wide latitude in imposing punishment.¹¹ This led to inconsistencies — similar

¹⁰ R v. Billam [1986] 1 WLR 349 (UK)

¹¹ R v. Gladue [1999] 1 S.C.R. 688 (Canada).

offences attracting different sentences in different courts. The movement for reform began in the latter half of the 20th century, emphasizing the need for uniformity, transparency, and accountability.

3.2.2 The Sentencing Council and Statutory Reforms

The turning point came with the **Criminal Justice Act, 1991**, which introduced the concept of proportionality and just deserts. Further, the **Criminal Justice Act, 2003** and later the **Coroners and Justice Act, 2009** established the Sentencing Council for England and Wales, replacing the earlier Sentencing Guidelines Council.

The Sentencing Council is a statutory body empowered to:

- Formulate binding sentencing guidelines for courts.
- Research and collect data on sentencing trends.
- Ensure consistency in sentencing decisions.
- Advise the government and judiciary on reforms.

These guidelines are not rigid but serve as a strong normative structure that ensures judges consider essential factors such as offence seriousness, aggravating and mitigating factors, harm caused, and culpability before passing a sentence.¹²

2.3 Principles and Objectives of Sentencing

Section 142 of the Criminal Justice Act, 2003 lays down the five statutory purposes of sentencing:

1. The punishment of offenders;
2. The reduction of crime (including deterrence);
3. The reform and rehabilitation of offenders;

¹² United States v. Booker, 543 U.S. 220 (2005)

4. The protection of the public; and
5. The making of reparation to victims.

This multi-dimensional approach ensures that sentencing achieves a balance between deterrence and rehabilitation. It moves beyond the narrow lens of retribution, embracing humanistic and restorative objectives.

3.2.4 The Role of Proportionality and the Case of R v. Billam

In R v. Billam (1986), the Court of Appeal set out clear rules for sentencing in sexual offense cases, which helped make sure that sentences were fair. The principle of proportionality, which says that the penalty should fit the crime, became the most important part of British sentencing law. The Sentencing Council keeps publishing "Definitive Guidelines" for different crimes. These are changed every so often depending on new research and changes in society. These make sure that people trust the criminal justice system by making it fair and predictable.¹³

3.2.5 Rehabilitation and Community Sentences

British law likewise strongly favors sentencing that are grounded in the community. The Criminal Justice Act of 2003 says that those who break the law can get Community Orders, which might include things like doing unpaid work, following curfews, going to drug treatment, or going to school. These options help keep prisons from getting too crowded and focus on getting the prisoner back into society. The UK model shows that judicial discretion and structured guidelines may work together to establish a sentencing system that is fair, consistent, and reformative.

3. Sentencing Framework in the United States

3.3.1 Evolution of Sentencing in the U.S.

The United States has one of the most complicated and changing sentencing systems in the world. This is because it is a federal government that values individual freedom. Before the 1970s, American sentencing was indeterminate, which meant that judges and parole boards had

¹³ Furman v. Georgia, 408 U.S. 238 (1972).

a lot of freedom to set penalties. But differences in sentence led to calls for reform and more consistency.

3.3.2 The Sentencing Reform Act, 1984 and the U.S. Sentencing Commission

The United States Sentencing Commission (USSC) was created by the Sentencing Reform Act of 1984. It is an independent institution that came up with the Federal Sentencing Guidelines. The goal was to make sentences more equal, make the process more open, and encourage fairness.¹⁴

The USSC's Guidelines Manual came up with a sentencing grid that decides punishment based on the crime's severity (offense level) and the criminal history of the person who did it (criminal history category). Judges were required to impose sentences within this range, unless justified otherwise by exceptional circumstances.

3.3.3 United States v. Booker (2005) and Judicial Discretion

The U.S. Supreme Court in *United States v. Booker* (2005) declared that making these guidelines mandatory violated the Sixth Amendment right to a jury trial because judges were determining facts that increased punishment without jury findings.

Consequently, the guidelines were rendered advisory rather than mandatory, restoring a degree of judicial discretion while maintaining the framework for consistency. This case marked a constitutional balance between uniformity and judicial independence.¹⁵

3.4 Plea Bargaining and Sentencing Practice

One defining feature of the U.S. criminal process is the dominance of plea bargaining. Nearly 90% of criminal convictions result from negotiated pleas rather than full trials. While plea bargaining promotes efficiency, it has been criticized for coercing defendants—especially poor or unrepresented individuals—into pleading guilty for fear of harsher sentences if convicted at trial. Despite these concerns, plea bargaining has become integral to sentencing justice in the United States, reflecting a pragmatic, efficiency-based approach.

¹⁴ *Gregg v. Georgia*, 428 U.S. 153 (1976).

¹⁵ *R v. Howe* [1987] AC 417 (UKHL).

3.3.5 The Debate on Deterrence vs. Rehabilitation

The American sentencing landscape historically emphasized deterrence and incapacitation, especially during the “tough-on-crime” era of the 1980s and 1990s. This led to mass incarceration and overcrowded prisons. Recent reforms, however, such as the First Step Act (2018), have shifted focus toward rehabilitation and re-entry, promoting educational, vocational, and drug treatment programs. These reforms aim to reduce recidivism and humanize punishment.

Thus, the U.S. model reflects an ongoing evolution — from rigid uniformity to a balanced, reform-oriented framework where proportionality, judicial discretion, and human rights coexist.

3.4 Sentencing Framework in Canada

3.4.1 Statutory Basis and Principles

The Criminal Code of Canada provides one of the most comprehensive sentencing frameworks in the common law world. Section 718 clearly articulates the objectives of sentencing, including:

- Denouncing unlawful conduct,
- Deterring offenders,
- Separating offenders from society when necessary,
- Assisting in rehabilitation,
- Providing reparation to victims, and
- Promoting offender accountability.

The principle of proportionality, enshrined in **Section 718.1**, requires that the sentence must be proportionate to both the gravity of the offence and the degree of responsibility of the offender. Additionally, **Section 718.2(e)** instructs courts to consider alternatives to imprisonment, especially for Indigenous offenders, acknowledging systemic discrimination and social

inequality.

3.4.2 Restorative Justice Philosophy

Canadian law has been a leader in restorative justice, which aims to fix the damage done by crime instead of just punishing the person who did it.

The important **R v. Gladue (1999)** judgment made it so that courts had to consider the background and social situation of Indigenous offenders and use restorative punishments when they were suitable. The **GLADUE PRINCIPLE** changed the way Canada sentences people by making the legal system more fair and aware of other cultures.

Victim-offender mediation, community sentencing circles, and restitution are all parts of restorative justice programs. These programs focus on healing, taking responsibility, and getting back into society.

3.4.3 Sentencing Commission and Judicial Guidance

The Canadian Sentencing Commission (1987) suggested organized discretion by using guiding principles and data-driven sentencing methods. Canada does not have a mandatory sentencing grid like the U.S., but it has gotten uniformity through clear laws, good reasoning by judges, and scrutiny by appeals courts.¹⁶

Canadian courts must write out their reasoning for giving a certain punishment. This makes the process more open and makes it easier for appeals to happen. This makes sure that sentence judgments are based on reason and fairness, not just the judge's gut feeling.

3.4.4 Rehabilitation and Community-Based Sentences

Canada stresses the importance of not putting people in jail and using conditional sentences instead. In these sentences, criminals serve their time in the community under supervision and must follow rules like curfews or mandated programs.

¹⁶ R v. Nasir Khan, [2016] EWCA Crim 78 (UK)

People often suggest probation, parole, and community service as ways to help people get better. The Canadian model exemplifies a humane and socially responsible approach to sentencing justice.

4. REFORMATIVE AND ALTERNATIVE SENTENCING TRENDS

The contemporary concept of criminal justice has progressively transitioned from punitive retribution to reformatory and restorative frameworks that perceive crime as a social phenomenon rather than merely a legal infraction. Reformatory sentencing acknowledges that offenders are not beyond redemption and that justice should pursue both punishment and rehabilitation. This compassionate approach is consistent with the 14 and 21 of the Indian Constitution constitutional tenets of dignity and equality as enshrined in Articles. In modern legal theory, the efficiency of a criminal justice system is evaluated not by the harshness of its penalties but by its ability to rehabilitate individuals and restore societal harmony. The notion that "every saint has a past and every sinner has a future" encapsulates the moral foundation of reformatory justice, which aims to convert convicts into law-abiding people capable of significant reintegration into society.¹⁷

In India, the idea of reformatory sentencing goes back to the time after independence when judges thought about it, especially after the Supreme Court's broad reading of Article 21, which gave convicts the right to life and personal liberty and humane treatment. The cases of **Sunil Batra v. Delhi Administration (1978)** and **Charles Sobhraj v. Superintendent, Central Jail (1978)** helped solidify this change.¹⁸ In both cases, the Court said that prisoners still have basic human rights and that being in jail should never mean losing their dignity. The Court ruled that the goal of punishment should be to correct behaviour, not to punish it. It further said that prisons should be places of reform, not places of revenge. These statements laid the groundwork for India's shift from a punishment system that just served as a deterrent to one that also recognized the need for social and mental rehabilitation.

The laws are also changing, but not as quickly as they should be. The Probation of Offenders Act, 1958 was a major change that let judges let some criminals out on probation instead of sending them to jail. This law brought a more humane approach to justice, based on the idea

¹⁷ Law Commission of India, 48th Report (1972) — Some Questions Under the Code of Criminal Procedure Bill, 1970.

¹⁸ Law Commission of India, 156th Report (1997) — Sentencing and Other Aspects of Criminal Justice.

that not every criminal should go to jail, especially those who commit small or first-time crimes. **Sections 360 and 361 of the CrPC and now Section 401 of the BNSS** have the same idea: courts can let offenders go on probation or after a warning. These provisions are based on the premise that the goal of criminal law should be to change criminals through community supervision, counselling, and reintegration into society, not by putting them in jail, which is a place where crime happens. In **Rattan Lal v. State of Punjab (1965)**, the Supreme Court affirmed the idea that probation is not leniency but enlightened justice, acknowledging the offender's ability to change as a valid judicial factor.¹⁹

Plea bargaining is another important reformatory tool that was added to Indian criminal law by the **Criminal Law (Amendment) Act, 2005**. This statute added **Sections 265A to 265L to the CrPC**. It lets someone who is accused of a crime voluntarily plead guilty in exchange for a less sentence, which saves the court time and money. The same idea is still there in the **BNSS, in Sections 293 to 304**. Plea bargaining is a practical change in Indian criminal law that shows that justice and efficiency can go hand in hand. People did not like it at first since it did not fit with the conventional adversarial system, but with time it has been more accepted as a way to fix things and make them better. It promotes prompt settlement, alleviates the psychological distress of victims, and enables criminals to acknowledge their culpability, frequently with the possibility of rehabilitation. But plea bargaining is not used very often in India because people do not know about it, the law is strict, and people do not want to trade guilt.²⁰

Along with probation and plea bargaining, the idea of compounding offenses is another means to get reformatory justice. **Section 320 of the CrPC and now Section 299 of the BNSS** allow the victim and the offender to work out a deal for some crimes, most of which are small and personal. This can happen with or without the court's authorization. This clause exemplifies the concepts of restorative justice, prioritizing reconciliation above vengeance. The law encourages healing and community harmony by letting victims and offenders work out their differences together.

In **Gian Singh v. State of Punjab (2012)**, the Supreme Court said that combining minor crimes can help keep the peace and social balance, as long as it is not exploited to protect bigger

¹⁹ Law Commission of India, 262nd Report (2015) — Death Penalty.

²⁰ Law Commission of India, 268th Report (2017) — The Draft Sentencing (Guidelines) Bill, 2017.

crimes. This idea is similar to restorative techniques utilized in other places, where victimoffender talks and mediated settlements are important parts of the criminal process.

Section 4(f) of the Bharatiya Nyaya Sanhita (BNS), 2023, formally recognizes community service as a penalty. This is a very significant step. This is a big move toward restorative and reformatory sentencing, which is in line with what is happening in other countries. Instead of being locked up in prison, community service lets criminals make up for their crimes by doing good things for other people. It shows that people know that reform can frequently be more effective when people work together than when they are locked up. Community service helps victims and communities by encouraging social rehabilitation and shared responsibility. Countries like the UK and Canada have been using community service and probation-based sentencing for decades, showing that these kinds of penalties may lower the rate of repeat offenders without hurting justice.

India's shift towards reformatory sentencing is similar to what is happening in other common law countries. The **Criminal Justice Act of 2003** in the UK includes reformatory justice as one of the legal reasons for punishment. The UK system focuses on community-based punishments like probation and community service, which might involve things like counselling, curfews, and educational programs. These steps are meant to change the way people act while still keeping the criminal connected to society. The Criminal Code of Canada and court cases like **R v. Gladue (1999)**, which set up culturally sensitive sentencing for Indigenous offenders, have made the idea of restorative justice a part of Canadian law. Canada sees crime as a breakdown in relationships and imprisonment as a chance to mend. The implementation of sentencing circles and victim-offender mediation illustrates the compatibility of reformatory justice with accountability, compassion, and community engagement.

In contrast, the United States has historically favoured deterrence and retribution, especially during the late 20th century's "war on drugs" and "tough-on-crime" periods. But recent changes, like the First Step Act of 2018, show that rehabilitation is becoming more important. This law makes early release programs bigger, puts more emphasis on education and skillbuilding for offenders, and rewards good behaviour in prisons.

The growth of drug treatment courts and mental health courts in the U.S. also shows that more people are realizing that some crimes are caused by addiction, poverty, or mental illness, which

need treatment instead of jail time. So, even in the United States, reformatory sentencing is becoming more important as a way to stop mass incarceration.²¹

Upon returning to India, the judiciary has frequently employed reformatory principles to render punishment more humane. The Supreme Court in **Mohd. Giasuddin v. State of Andhra Pradesh (1977)** characterized the reformatory theory as “the right and realistic approach to punishment,” underscoring that reformation is superior in enhancing societal defence compared to retribution. In the same way, the Court said in **State of Gujarat v. Hon’ble High Court of Gujarat (1998)** that the goal of punishment should be to change the person, not to break their spirit. These cases reaffirm that the Indian judiciary perceives sentencing not solely as a deterrent mechanism but as a method to restore moral order through reformation.

The Law Commission of India, in its **268th Report (2017)**, emphasized that the lack of a clear sentencing strategy obstructs the uniform implementation of reformatory principles. It suggested setting up a National Sentencing Commission to gather information, look at how sentences are given out, and write detailed rules that take into account fairness, rehabilitation, and restorative justice. This kind of institutional structure would let courts weigh the need for punishment against the chance for reform, making sure that everyone is treated fairly and consistently. The Commission also said that social reintegration initiatives including community correctional centres, parole reforms, and counselling services should be made stronger so that rehabilitation is more than just a symbol.²²

We also need to think about prison reform when we talk about reformatory sentencing. India's prisons, which were originally meant to punish people, are slowly changing into places where people can learn and change. But overpopulation, bad infrastructure, and a lack of mental health care still make it hard to alter. The Ministry of Home Affairs wrote the Model Prison Manual in 2016. It says that vocational training, literacy programs, and family counselling can all help people get better. In 2016, the Supreme Court ruled in *Re-Inhuman circumstances in 1382 Prisons* that the government had to improve prison circumstances.²³ This was because **Article 21** says that the right to reformation is part of the right to life. The Court's acknowledgment of inmates' rights signifies a critical transition from punishment to restoration, positioning human

²¹ Andrew Ashworth, *Sentencing and Criminal Justice* (Cambridge University Press, 6th ed., 2019).

²² Prof. N.V. Paranjape, *Criminology, Penology and Victimology* (Central Law Publications, 2022).

²³ Nigel Walker, *Sentencing: Theory, Law and Practice* (Butterworths, 1985).

dignity at the core of the sentencing process.

Restorative justice is becoming the moral and procedural peak of reformatory ideology. It changes the definition of crime from breaking the law to hurting relationships and sees justice as a way to fix that harm. Restorative justice approaches have been included into juvenile justice frameworks, community mediation programs, and specific victim-compensation initiatives in India, albeit being in their early stages. The **Juvenile Justice (Care and Protection of Children) Act, 2015**, exemplifies restorative principles by prioritizing counselling, rehabilitation, and reintegration instead of punishment. The incorporation of community service in the Bharatiya Nyaya Sanhita, 2023, signifies the growing application of analogous ideas to adult criminals as well. In the long run, restorative justice can change India's criminal justice system by putting more emphasis on accountability, empathy, and reconciliation instead of punishment.²⁴

Conclusion and Suggestions

Sentencing justice is at the crossroads of law, ethics, and public policy. It is not just the end of a criminal trial; it shows how the law sees people and their chances of salvation. In India, sentencing is still mostly up to the court, and there are not any clear rules or laws that are the same across the board. The Bharatiya Nyaya Sanhita (BNS), 2023, and the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, are both steps forward in making the criminal justice system more up-to-date. However, the lack of a clear sentencing strategy is still a big problem. Differences in penalty for the same crimes still go against the ideas of Article 14 of the Constitution, which says that everyone should be treated equally under the law, and Article 21 of the Constitution, which says that everyone should be treated fairly.

Comparative examination indicates that nations such as the United Kingdom, United States, and Canada have developed systematic sentencing systems from which India can derive insights. The UK has the Sentencing Council for England and Wales, which makes sure that sentences are fair by following the Federal Sentencing Guidelines. Canada, on the other hand, focuses on restorative justice, which allows for rehabilitation and reconciliation. India requires these methods to find a balance between judicial discretion and structural consistency. The Supreme Court of India has often pointed out this disparity, especially in *Bachan Singh v. State*

²⁴ United Nations Human Rights Committee, General Comment No. 36 on the Right to Life, CCPR/C/GC/36 (2018).

of Punjab (1980) and *Sangeet v. State of Haryana* (2013). However, judicial action alone cannot bring about systemic change without help from the legislature and other institutions.

But India's approach to sentencing has changed for the better. The addition of plea bargaining, probation, compounding of offenses, and most recently, community service under Section 4(f) of the BNS shows that more and more people are aware of reformatory and restorative justice. The judiciary has upheld the idea that inmates retain their dignity and the right to reformation in cases like *Sunil Batra v. Delhi Administration* (1978) and *Mohd. Giasuddin v. State of Andhra Pradesh* (1977). These changes make sentencing more in line with the constitutional principle of fair justice. But even if this is a step forward, the fact that there is no consistent framework across the country means that sentencing is still subjective, inconsistent, and often unfair.

India needs to make big changes that include organization, fairness, and compassion to deal with these problems. To begin with, there should be a National Sentencing Commission that is a permanent legal entity in charge of formulating sentencing guidelines, doing empirical research, and keeping an eye on trends. Second, Parliament should pass a Sentencing Guidelines Act to make sure that judges follow basic rules like proportionality, parity, and mitigating and aggravating considerations. This would make sure that judges have some wiggle room but not too much. Third, the State should broaden restorative justice procedures, such as victim-offender mediation and compensation orders, to foster healing and reconciliation instead of simply punishment. Fourth, community-based penalties like probation and community service should be made standard across the country, with the help of trained probation officials and cooperation with local groups. Fifth, social workers or probation officers should write pre-sentence investigative reports before sentencing. These reports should help courts make judgments that are fair, customized, and consistent.

The Probation of Offenders Act, 1958, should also be updated to incorporate counselling, job training, and help with reintegration after release. Prisons need to be changed into places for correction and education, following the Model Prison Manual, 2016, in both text and spirit. To make sure that judges always use the same logic when sentencing, they should have regular training in criminology and psychology. Most significantly, the right to reformation should be clearly stated in the law, which would reaffirm the constitutional guarantee of human dignity for everyone, even those who have broken the law.