
SENTENCING POLICY IN INDIA: CONCEPT AND UNDERSTANDING

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1. Sentencing Policy in India: An Overview

Sentencing is the stage in the criminal justice system where the judge decides the punishment for the convict, following the conviction. This stage is crucial because it reflects society's condemnation of the crime committed. The type of punishment chosen for a particular crime often reveals the underlying rationale of the criminal justice system.¹ However, in a complex system with multiple actors, it is unrealistic to expect everyone to respond to a crime in the same way. For example, the victim may feel a stronger emotional reaction than the judge, who is detached from the situation. Similarly, the accused may believe their actions were justified, considering surrounding factors. It is in this context that judges and legal professionals are appointed to reach a balanced consensus on how to address the crime.

Before imposing a sentence, judges may seek background information about the convicted defendant. While impartiality and objectivity are essential for judges, the sentencing decision is not just about determining whether a wrong was committed but, more importantly, deciding what action should follow. There are several options, with victim-centric systems often prioritizing the restoration of the victim to their original position, typically in cases of economic crimes or torts. However, restoration is not feasible in cases of physical, emotional, or psychological harm. In these instances, the primary approaches are retribution and rehabilitation. Retribution focuses on condemning the crime, while rehabilitation seeks to reintegrate the accused into society. Deterrence, aiming to prevent future offences, is also a significant justification for punishment.

One of the problems with the current system, as outlined in the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) is the inconsistency in sentencing outcomes for similar offences. Judges are allowed to decide on the sentence after hearing the parties involved, but there is no clear

¹ www.merg.ac.in/Spheres/Niruphama.doc

guidance on which factors should influence the decision and which should be avoided.² This gap allows judges to exercise personal discretion, which can lead to abuse in some cases, with irrelevant factors or personal biases affecting the sentence. This inconsistency is why many advocate for sentencing policies or guidelines to standardize the process and ensure fairness.³

2. Understanding Sentencing

Sentencing, although not explicitly defined in Indian law, can be described as “the judicial determination of a legal sanction to be imposed on a person found guilty of an offence.” It represents a critical stage within the broader framework of the criminal justice process, though some may argue that referring to it as a ‘system’ might be an overstatement due to the various disparate functions involved.

A sentence is essentially a legal decree of punishment, marking the final and explicit action in a judge-led process. It serves as the symbolic principal act tied to the judge’s role. The sentence typically involves a form of punishment such as imprisonment, a fine, or other legal penalties imposed on a defendant convicted of a crime. In simpler terms, sentencing is the stage following a conviction where the court determines the appropriate penalty for the offender, based on the nature of the offence.⁴

Sentencing is therefore a post-conviction phase, following the verdict, during which the defendant is brought before the court for the imposition of the penalty. The primary objectives of sentencing generally include punishment, deterrence, incapacitation, and rehabilitation. The court orders the sentence as a means of addressing the crime and its effects on society while considering the goals of justice.⁵

Sentencing thus plays a dual role: delivering justice for victims while aiming to prevent future offences. In India, the Constitution and statutory laws guide this process, but significant judicial discretion is allowed, which can lead to varied outcomes.

3. Types of Sentences in India

The Bharatiya Nyaya Sanhita (BNS) 2023 provides for the types of punishments and is outlined

² Punishment and the Prison”-India and International Perspectives: By Rani Dhavan Shankardass p.173

³ Criminal Justice Today- An Introductory Text For The 21st century by Frank Schmaller p. 375

⁴ Available at [https://en.m.wikipedia.org/wiki/sentence_\(law\)](https://en.m.wikipedia.org/wiki/sentence_(law)).

⁵ <http://legal-dictionary.thefreedictionary.com/sentencing>

in Chapter II, Section 4, and is further elaborated in related sections. Below are the punishments:

3.1 Death Penalty:

Section 4(1)(a) of BNS Specifies death as a punishment for the most heinous crimes, such as offences against the sovereignty of India and murder. It is governed by the “rarest of rare” doctrine, as established in *Bachan Singh v. State of Punjab* (1980), where the Supreme Court held that capital punishment should only be imposed when alternative penalties are inadequate.

The sentence of death is the extreme penalty of law and naturally stands in the forefront of the category of punishment. The question whether the state has the right to take away a man’s life which it is not within anybody’s power on earth to give, has never been settled between the jurist and the moralist. Reformist is always of the view that it is barbarous relic of the past when the primitive idea of vengeance underlying the expression “tooth for tooth” or “life for life” was prevalent.

State authorities argue that retaining the death sentence in the statute books serves as a deterrent to criminals, particularly in cases of heinous crimes, and helps maintain law and order in society. They contend that respect for human life is upheld by the legal system when it takes away the life of an individual who has willfully murdered another. The death sentence is the most severe punishment provided under the BNS. The framers of this law, however, emphasized that it should be imposed sparingly, and only in cases involving murder or the most serious offences against the state. Additionally, BNS provides the death sentence as an alternative punishment in certain cases.

The controversy surrounding the death penalty began after the Supreme Court’s judgment in *Jagmohan v. State of U.P.*⁶, where the Court ruled that capital punishment violated Articles 14, 19, and 21 of the Constitution, making it unconstitutional and invalid. However, in *Rajendra Prasad v. State of U.P.*⁷, the Court observed that the death penalty may be awarded when the survival of society is at risk. The Court expressed concerns that judicial discretion in sentencing could lead to tyranny, thus violating Article 14. To address this, the Court laid down specific

⁶ 1973 Cr.L.J 370.

⁷ 1979 Cr.L.J 792.

guidelines for awarding the death penalty.

The controversy surrounding capital punishment was ultimately settled in *Bachan Singh v. State of Punjab*⁸, where the Supreme Court upheld the constitutionality of the death penalty. The Court reasoned that a genuine and enduring concern for the dignity of human life necessitates a resistance to taking a life through the law's authority. The death penalty should, therefore, be reserved for the "rarest of rare" cases, when no other alternative is available.

3.2 Imprisonment for Life:

Section 4(1)(b): Defines life imprisonment, with clarification under Section 6 that it ordinarily means imprisonment for the remainder of the natural life unless otherwise commuted. *Below is a list of offences under the BNS that prescribe imprisonment for life as a punishment:*

1. "Offences Against the State:

- Section 110: Waging war against the Government of India.
- Section 111: Conspiracy to commit offences punishable by Section 110.
- Section 112: Collecting arms, etc., with the intention of waging war.
- Section 115: Waging war against any Asiatic Power in alliance with the Government of India."⁹

2. "Offences by or Relating to Public Servants:

- Section 132: Abetment of mutiny, if mutiny is committed.
- Section 133: Abetment of assault by soldier, sailor, or airman."¹⁰

3. "Offences Relating to the Army, Navy, and Air Force:

- Section 134: Abetment of such assault, if the offence be committed."¹¹

⁸ 1980 Cr. LJ 636(S.C).

⁹ Ss. 110 to 115, the Bharatiya Nyaya Samhita 2023.

¹⁰ Ss. 132, 133, the Bharatiya Nyaya Samhita 2023

¹¹ S. 134, The Bharatiya Nyaya Samhita 2023, NO. 45 OF 2023.

4. “Offences Against Public Justice:

- Section 195: Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or imprisonment.”¹²

5. “Offences Affecting the Human Body:

- Section 302: Punishment for murder.
- Section 304: Punishment for culpable homicide not amounting to murder.
- Section 305: Abetment of suicide of a child or insane person.
- Section 307: Attempt to murder.
- Section 376: Punishment for rape.
- Section 376A: Punishment for causing death or resulting in a persistent vegetative state of the victim.”¹³

6. “Offences Against Property:

- Section 396: Dacoity with murder.
- Section 400: Punishment for belonging to a gang of dacoits.”¹⁴

7. “Offences Relating to Documents and Property Marks:

- Section 467: Forgery of valuable security, will, etc.”¹⁵

8. “Attempts to Commit Offences:

- Section 511: Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonments.”¹⁶

¹² S. 195, The Bharatiya Nyaya Samhita 2023, NO. 45 OF 2023.

¹³ Ss. 302 to 376 A, The Bharatiya Nyaya Samhita 2023, NO. 45 OF 2023.

¹⁴ Ss. 396, 400, The Bharatiya Nyaya Samhita 2023, NO. 45 OF 2023.

¹⁵ S. 467, The Bharatiya Nyaya Samhita 2023, NO. 45 OF 2023.

¹⁶ S. 511, The Bharatiya Nyaya Samhita 2023, NO. 45 OF 2023.

3.3 Imprisonment:

Imprisonment is more widely used as a punishment mode. The courts have held that sentencing an accused person is sensitive exercise of discretion and not a routine or a mechanical prescription. The social background and the personal factors of the crime-doer are very relevant factors. Section 4(1)(c): Divided into two forms: *Rigorous imprisonment and simple imprisonment*.

a) **Rigorous Imprisonment:** Involves hard labor for serious crimes. For instance, the prisoner is subjected to hard labor such as the breaking of metal, curing of grain and pressing of oil, etc. Under the Bharatiya Nyaya Sanhita (BNS) 2023, several sections address offences that warrant rigorous imprisonment. Notably:

- Giving or Fabricating False Evidence with Intent to Procure Conviction for a Capital Offence, Section 230. This section stipulates that anyone who provides or fabricates false evidence intending to cause, or knowing it is likely to cause, someone to be convicted of a capital offence shall face imprisonment for life or rigorous imprisonment up to ten years, along with a fine up to fifty thousand rupees. If an innocent person is executed as a result, the individual responsible for the false evidence may be punished with death or the penalties.
- House-Trespass in Order to Commit an Offence Punishable with Death, Section 332. This section addresses house-trespass committed with the intent to perpetrate an offence punishable by death. The prescribed punishment is rigorous imprisonment, reflecting the gravity of the intended offence.
- Robbery and Related Offences, Sections 309 to 313. These sections cover various aspects of robbery and dacoity.
- Kidnapping or Abduction in Order to Commit Murder, Section 140. This section pertains to kidnapping or abducting someone with the intent to murder. The prescribed punishment is rigorous imprisonment, underscoring the serious nature of such offences.
- Rape, Section 63, defines the offence of rape and prescribes rigorous imprisonment as punishment, with the term varying based on the circumstances and severity of the offence.

These provisions in the BNS 2023 ensure that serious offences are met with stringent punishments, including rigorous imprisonment, to uphold justice and deter criminal activities.

- b) *Simple Imprisonment:*** Confinement without labor, generally for less severe offences. Several sections under the BNS provide for simple imprisonment as a punishment. These include Section 172, which addresses the unlawful engagement of a public servant in trade; Sections 186 and 187, which deal with absconding to avoid the service of summons or other proceedings; Section 188, concerning non-attendance in obedience to an order from a public servant; Section 189, which deals with the omission to produce documents or electronic records to a public servant; Section 190, relating to the failure to provide notice or information to a public servant; and Section 191, which addresses the furnishing of false information. Other sections prescribing simple imprisonment include Section 192 for refusing to take an oath or affirmation, Section 193 for refusing to answer a public servant's questions, and Section 194 for refusing to sign a statement. Additionally, Section 202 deals with disobedience to an order duly promulgated by a public servant; Section 247 relates to counterfeiting government stamps; and Section 239 concerns resistance or obstruction to lawful apprehension. Simple imprisonment is also prescribed for intentional insult or interruption to a public servant in judicial proceedings (Section 242), public nuisance (Section 306), wrongful restraint (Section 324), defamation (Sections 356, 357, and 358), and for word, gesture, or act intended to insult the modesty of a woman (Section 360).

3.4 Fine

A fine is the forfeiture of money as a penalty, and its use as a form of punishment has been justified by the Law Commission due to its universality. However, the Commission acknowledged that the severity of the fine should be proportionate to the offender's means, as the sentence not only affects the individual but also their dependents.

Under the Bharatiya Nyaya Sanhita (BNS), 2023, the imposition of a fine can be categorized into four distinct types: (i) offences where fine is the sole punishment, with a specified limit on the amount; (ii) offences where fine is an alternative punishment, again with a limited amount; (iii) offences where fine is an additional, imperative punishment, with a defined limit; and (iv) cases where fine is both an imperative penalty, but with no specified limit on the amount. This classification clearly reflects the legislature's intention in determining the appropriate

punishment for different offences.

3.5 Forfeiture of Property:

In the past, conviction for serious offences often resulted in the deprivation of both the personal freedom and property of the criminal. This punishment extended to the offender's family, including dependents such as the wife, children, and others who would inherit the property. Such a practice was seen as inconsistent with modern liberal principles of justice, as it unfairly punished those who were not directly involved in the crime. Consequently, the absolute forfeiture of an offender's property was abolished with the repeal of Sections 61 and 62 of the Indian Penal Code (IPC) by Act XIV of 1921.

3.6 Community Service (New provision under BNS):

Section 4(1)(f): Introduces community service as a corrective punishment, focusing on rehabilitation and societal benefit. The Bharatiya Nyaya Sanhita (BNS), 2023 introduces community service as a form of punishment for certain offences, marking a shift towards rehabilitative justice for minor infractions. While the BNS does not specify exact offences eligible for community service, it provides courts with the discretion to impose such sentences for less severe crimes. This approach aims to reduce incarceration rates and promote restorative justice. For instance, the BNS allows for community service in lieu of imprisonment or fines for petty offences like non-appearance in response to a summons.

Additionally, the BNS outlines provisions for imprisonment in default of community service, indicating that failure to perform assigned community service can result in imprisonment.

Sections 202, 209, 226, 355, and 356 of the Bharatiya Nyaya Sanhita (BNS), 2023 explicitly provide for community service as a form of punishment, reflecting a rehabilitative approach to justice. These sections pertain to offences of a relatively less severe nature, such as failing to appear in response to a summons (Section 202), making false claims in court (Section 209), obstructing public servants in the discharge of their duties (Section 226), and minor acts of assault or insult (Sections 355 and 356). The introduction of community service under these provisions aims to promote accountability and societal contribution by offenders while avoiding harsher penalties like imprisonment for minor infractions.

4. Sentencing Policies in India

India lacks a unified sentencing policy, resulting in significant judicial discretion in determining penalties. While this discretion allows flexibility to account for case-specific nuances, it also creates inconsistencies and disparities in sentencing outcomes.

BNS 2023 and other statutes provide maximum and minimum punishments for various offences, leaving the precise quantum of punishment to the judge's discretion. Factors influencing sentencing include:

- a) Nature and Gravity of the Offence: Serious crimes warrant harsher penalties.
- b) Aggravating Circumstances: Premeditation, use of weapons, or harm to vulnerable individuals.
- c) Mitigating Circumstances: Remorse, lack of prior criminal record, or provocation.
- d) Socio-Economic Background: The offender's age, education, and financial condition.
- e) Impact on the Victim and Society: The harm caused by the offence, including psychological and societal repercussions.

In sentencing offenders, judges are granted broad discretion, as the possible penalties primarily fall into three categories: (a) death, (b) imprisonment, and (c) fines, which may also include the forfeiture of property. In the modern sentencing system, determining the appropriate sentence is just as critical as determining the guilt of the accused. The focus of modern sentencing is on individualizing punishment, which plays a key role in rehabilitating offenders. This is why the BNS and other penal laws typically specify the maximum punishment for an offence but leave it to the court's discretion to impose a suitable sentence within that maximum limit.

The policy of allowing judges considerable discretion in determining punishment stems from the difficulty of establishing strict standards for all cases. For example, in cases of criminal breach of trust, the maximum punishment prescribed is imprisonment for life, while the minimum could be as little as a day's imprisonment or a fine. It is clear that setting standards for the varying degrees of trust breaches would be an unmanageable task. Therefore, the

legislature provides judges with the framework to judicially balance the aggravating and mitigating factors in each case, allowing them to decide the most appropriate sentence within the prescribed range.

The core issue in criminal law as administered in India is the difficulty of establishing clear standards, which results in granting judges' wide discretion in determining the severity of punishment. However, there is a lack of clear guidance for judges when selecting the most appropriate sentence based on the circumstances of a case. Consequently, each judge exercises discretion according to their own judgment, leading to inconsistency in sentencing—some judges may be lenient, while others may impose harsher penalties. The absence of structured guidance for sentencing, even when exercised by a judge, is problematic. In contrast, several countries provide sentencing guidelines within their penal codes to reduce uncertainty and promote fairness. India would benefit from similar laws to minimize this uncertainty and bring uniformity to sentencing practices. Various factors need to be considered when determining appropriate alternative sentences, and this requires in-depth examination by an expert statutory body. After carefully considering the facts and circumstances of each case, the court must balance aggravating and mitigating factors, along with the context in which the crime was committed, to arrive at a just and appropriate sentence. This balancing act is challenging, requiring a dispassionate and thorough evaluation by the court.

While the Bharatiya Nyaya Suraksha Sanhita, 2023 (BNSS) outlines the sentencing process, its true effectiveness can only be judged by its application in practice. The discretion granted under the current procedure is often guided by vague terms like “circumstances of the crime” and “mental state and age.” If a court imposes an inadequate sentence for a serious offence, it risks eroding public confidence in the justice system. When the courts fail to protect victims, there is a real danger that individuals may resort to private vengeance, as we are increasingly witnessing. Therefore, it is crucial for courts to impose appropriate sentences based on the nature and execution of the offence. While the factors affecting sentencing can be determined, the specific point at which they should influence the sentence remains unclear in the current legislative framework.

Conclusion

Sentencing policy in India reflects a complex interplay of statutory provisions, judicial discretion, and societal expectations. While the existing framework allows flexibility, the

absence of structured guidelines often leads to inconsistencies and arbitrariness. A comprehensive Model Sentencing Code is essential to address these challenges, ensuring fairness, proportionality, and transparency in sentencing decisions.

Ultimately, sentencing should uphold the principles of justice, balancing retribution, deterrence, rehabilitation, and restoration. By fostering trust in the criminal justice system, a robust sentencing policy can contribute to societal harmony and the rule of law.

The lack of structured sentencing guidelines has long been recognized as a significant gap in India's criminal justice system. Committees like the Malimath Committee (2003) and the Madhava Menon Committee (2008) have recommended the introduction of a Model Sentencing Code. Key objectives of such a code include:

- **Consistency:** Reducing judicial subjectivity and ensuring uniformity in sentencing.
- **Proportionality:** Aligning punishments with the severity of the offence and its societal impact.
- **Transparency:** Providing clear criteria for determining sentences.
- **Rehabilitation:** Promoting alternatives to incarceration where appropriate.

A Model Sentencing Code would provide judges with standardized frameworks, ensuring fairness while allowing flexibility for case-specific considerations.