CENTRALISING CRIMINAL SENTENCING IN INDIA: DISCRETION AND UNIFORMITY AT CROSSROADS

Amartya Sahastranshu Singh, LLM (International Law), RGSoIPL, IIT Kharagpur

Arisia, LLM (Criminal Law), RGSoIPL, IIT Kharagpur

ABSTRACT

In India, the sentencing policy remains largely uncodified, shaped instead by judicial discretion, constitutional principles, and evolving appellate guidance. This paper situates sentencing within its statutory framework under the criminal statutes, and traces how Indian courts have moved from a predominantly reformative outlook towards a more complex balance. Against this backdrop, the paper offers an analysis of the Supreme Court's recent decision in Kiran v. State of Karnataka, which restricts the power of Sessions Courts to impose life imprisonment without remission. While the judgment reinforces constitutional and statutory limits on sentencing, it also raises deeper questions about judicial hierarchy, decentralisation, and the logic underlying differential sentencing powers across courts. The paper critically evaluates whether sentencing authority has become increasingly centralised in higher courts and what this means for trial-level discretion. Ultimately, the paper argues for a calibrated sentencing model that preserves meaningful discretion at the trial stage while being guided by clear principles articulated by appellate courts.

Keywords: Sentencing discretion, Indian criminal justice, Life imprisonment, Judicial hierarchy, Proportionality

Introduction

Sentencing an offender is one of the most important responsibilities of a criminal court.[1] It is now accepted that courts' sentencing decisions are strongly shaped by the theories of punishment they adopt. Broadly, there are two competing approaches to the sentencing process. One approach supports giving judges wide discretion to decide both the nature and the length of punishment based on the facts of each individual case. This approach is known as *individualisation*.[2] The other approach argues that judicial discretion should operate within clearly defined standards and limits laid down by law, so that sentencing remains consistent and predictable. This is referred to as *standardisation*.[3] Indian courts have been engaging with this debate for decades, and their understanding of how much discretion a judge should have has shifted from time to time.

Against this background, the Supreme Court's recent decision in *Kiran v. State of Karnataka*[4] becomes especially significant. The judgment marks an important reaffirmation of Indian sentencing jurisprudence, particularly on the question of whether a Sessions Court can impose life imprisonment "till the end of natural life" and completely bar statutory remission and pardon.[5]

The Court made it clear that sentencing power cannot be exercised in isolation from constitutional principles or statutory limits.[6] Far from being a narrow or technical ruling, the decision highlights the need to maintain a careful balance between judicial discretion in sentencing, the constitutional framework, and the executive's statutory powers under the Code of Criminal Procedure[7] (now the Bharatiya Nagarik Suraksha Sanhita). In doing so, the judgment reinforces the idea that sentencing must be uniform, fair, and consistent, but never

[1] Puranjay Das, *Sentencing Policy in India: A Study of Criminal Justice System*, 4 INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND TECHNOLOGY (2023),
[2] Parth Singh, *'Determination of Sentences in India: Policy and Practice'*, 61 INTERNATIONAL ANNALS OF CRIMINOLOGY, 314–327 (2023)
[3] Id., Anubhav Goel, *Criminal Sentencing in India: Need for Reforms*? 3 INDIAN J.L. & LEGAL RSCH. 1 (December 2021 - January 2022)
[4] Kiran v. State of Karnataka, 2025 SCC OnLine SC 2863
[5] Gopal Vinayak Godse v. State of Maharashtra 1961 AIR 600: Defined 'Imprisonment for life' as imprisonment till remainder life of the convict, unless it is curtailed by any commutation, remission or reprieve according to (constitutional and/or statutory) law.
[6] Vanshika Premani, *The Exigency of Sentencing Policy in India: An Analytical Approach*, 25 SUPREMO AMICUS 608 (2021).
[7] Code of Criminal Procedure, No. 2 of 1974, India Code (1974).

unjustified or arbitrary.[8]

This paper examines how sentencing operates in Indian courts and how it has developed over time. It outlines the present sentencing framework and its evolution through legislation and judicial decisions. The paper then addresses a key question: where does sentencing power truly lie today? It considers whether higher courts now shape sentencing outcomes, or whether trial and Sessions Courts still exercise meaningful discretion based on case-specific facts. Drawing on important judgments and sentencing practices, the paper assesses the extent of this discretion. Finally, it argues for a more balanced approach, advocating greater but well-guided discretion for trial courts to ensure sentencing that is fair, humane, and rooted in real-world circumstances, while remaining within legal and constitutional limits.

Sentencing Policy in India: An Outline

Sentencing as the Moral Core of Criminal Justice

Sentencing is the stage at which criminal law becomes most tangible and consequential. Once guilt is established, sentencing determines how the State responds to wrongdoing and how society expresses condemnation, compassion, or a desire for reform. Indian courts have consistently recognised that sentencing is not a mechanical extension of conviction but a deeply human and judicial exercise.[9] It involves balancing the gravity of the offence, the circumstances of the offender, the interests of the victim, and the broader demands of society.[10]

The Supreme Court has often recognised how difficult sentencing really is. In *Prem Sagar*[11], it described sentencing as one of the most sensitive and challenging responsibilities of criminal courts, as judges must carefully weigh many competing factors. Indian courts have also drawn on philosophical thought to express this concern. In several judgements[12], the court echoed an idea commonly attributed to Hegel, which points that even a small error in punishment, whether giving a day too much or a day too little, can amount to injustice[13]. This reflects the constant

[8] Srijoni Sen & Sakshi, *Making the Punishment Fit the Crime: How Do Lawmakers Decide?*, 52 ECONOMIC AND POLITICAL WEEKLY 13 (2017), https://www.jstor.org/stable/44166943.
[9] G. Kameswari & V. Nageswara Rao, *The Sentencing Process — Problems and Perspectives*, 41 JOURNAL OF THE INDIAN LAW INSTITUTE 452 (1999), https://www.jstor.org/stable/43953342.
[10] P M Bakshi, *Sentencing And The Supreme Court*, 32 JOURNAL OF THE INDIAN LAW INSTITUTE 536 (1990), https://www.jstor.org/stable/43951284.
[11] State of Punjab v. Prem Sagar, (2008) 7 SCC 550
[12] Ramashraya Chakravarty v. State of M.P. (1976) 1 SCC 281
[13] Thom Brooks, *Hegel's Social and Political Philosophy*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY (2021), https://plato.stanford.edu/entries/hegel-social-political/ (Last visited 12.01.26)

struggle courts face in trying to arrive at a punishment that is truly fair.

Despite this recognition, India does not follow a codified sentencing policy. Instead, sentencing law has evolved through judicial decisions, constitutional interpretation, and periodic Law Commission reports, creating a system marked by broad discretion, evolving principles, and recurring tensions.[14]

The Statutory Framework: Discretion as a Structural Feature

The sentencing framework in India is largely shaped by the *Bhartiya Nyaya Samhita, 2023* (BNS) (formerly the *Indian Penal Code, 1860*) and the *Bhartiya Nagrik Surakhsha Samhita,* 2023 (BNSS) (formerly the *Code of Criminal Procedure, 1973*). A defining feature of the BNS is that, for most offences, it prescribes only the maximum punishment, leaving it to courts to determine the appropriate sentence within that limit. Minimum sentences are relatively rare and are generally confined to special statutes or later legislative amendments.

Section 4 of the BNS[15] lists the kinds of punishment that may be imposed, but the provision itself does not guide courts on how to choose between them. The BNSS similarly refrains from laying down sentencing guidelines, though it introduces some procedural safeguards. Provisions such as sections 258[16] and 271[17] of the BNSS mandate a separate hearing on

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[14] Dr. Harvinder Kaur, *Sentencing Process and Policies in India: Judicial Attitude*, INT'L J. RES. & ANAL. REV. (IJRAR), Jan. 2024, Vol. 11, Issue 1, at 261, ijrar.org/papers/IJRAR24A1303.pdf. See also Aditya Jain, *AI and Legal Frameworks*, INDIAN J. OF LEGAL REVIEW (IJLR), Vol. 4, Iss. 1, 2024, at 962, https://ijlr.iledu.in/wp-content/uploads/2024/06/V4I11172.pdf.

[15] Section 4 of the BNS reads as: "*The punishments to which offenders are liable under the provisions of this Sanhita are—*
(a) Death;
(b) Imprisonment for life;
(c) Imprisonment, which is of two descriptions, namely:—
(1) Rigorous, that is, with hard labour;
(2) Simple;
(d) Forfeiture of property;
(e) Fine;
(f) Community Service."

[16] Section 258 of the BNSS reads as "*Judgment of acquittal or conviction.—(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case, as soon as possible, within a period of thirty days from the date of completion of arguments, which may be extended to a period of forty-five days for reasons to be recorded in writing.*
(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 401, hear the accused on the questions of sentence, and then pass sentence on him according to law."

[17] Section 271 of the BNSS reads as "*Acquittal or conviction.—(1) If, in any case under this Chapter in which a charge has been framed, the Magistrate finds the accused not guilty, he shall record an order of acquittal.*
(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 364 or section 401, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

sentence after conviction, recognising that sentencing requires consideration of factors beyond the determination of guilt.

The Supreme Court made it clear that the hearing on the question of sentence is not a mere formality to be completed after conviction.[18] Instead, it serves a substantive purpose: to give the accused a meaningful opportunity to present mitigating circumstances relating to their background, conduct, and the specific facts of the case. The Court stressed that only by hearing the accused on these aspects can the sentencing judge arrive at a punishment that is fair, proportionate, and tailored to the individual offender rather than imposed in a mechanical manner.[19]

This statutory silence is not accidental. It reflects a deliberate legislative choice to trust judicial discretion and to allow sentencing to be individualised. However, this very feature has also been the source of criticism, as it leaves room for inconsistency and disparity.

Theories of Punishment and Their Judicial Influence

Indian sentencing jurisprudence has developed at the intersection of multiple theories of punishment: retributive, deterrent, reformative, and proportional. Rather than adopting one theory consistently, Indian courts have moved between them depending on the nature of the offence, social context, and prevailing judicial philosophy[20].

In the decades following Independence, Indian courts largely embraced a reformative approach to punishment. Influential judges such as Justice V. R. Krishna Iyer consistently understood sentencing as a means of social reintegration rather than mere retribution.[21] This approach found clear expression in *Maru Ram v. Union of India* (1981), where the Supreme Court emphasised that correctional strategies and the possibility of reform are central to a

(3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub- section (7) of section 234 and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the said accused, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:
Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under sub-section (2)."

[18] Santa Singh v. State of Punjab (1976);Deo Narain Mandal v. State of U.P., (2004) 7 SCC 257

[19] *Ibid.*

[20] Tanu Mehta, *Sentencing Policy in India*, J. LEGAL RESEARCH & JURIDICAL SCI. (Vol. 2, Iss. 2, 2023), https://jlrjs.com/wp-content/uploads/2023/01/1.-Tanu-Mehta.pdf.

[21] Prof. (Dr.) Mrinal Satish, *Approaches to Sentencing*, JUSTICE V.R. KRISHNA IYER LECTURE SERIES REPORT, https://dme.ac.in/wp-content/uploads/2018/09/Dr.Mrinal-Satish_Lecture-Coverage.pdf.

constitutionally informed criminal justice system.[22]

A similar orientation was reflected in the Law Commission's approach. In its Forty-Seventh Report, *The Trial and Punishment of Social and Economic Offences* (1972), the Commission examined sentencing in the context of rising socio-economic and white-collar crime and identified individualisation of punishment as the governing principle[23]. By stressing the need to tailor sentences to the circumstances of both the offence and the offender, the Report implicitly endorsed the reformative theory, recognising that meaningful reformation is possible only when punishment is adapted to the individual rather than imposed through rigid or uniform rules.[24]

Over time, however, this emphasis began to shift. Rising crime rates, growing public concern for victims' rights, and sustained criticism of perceived judicial leniency gradually pushed courts to place greater emphasis on proportionality and deterrence in sentencing. In *M v. State*[25], the Supreme Court warned that misplaced sympathy towards offenders could erode public confidence in the criminal justice system and weaken its deterrent effect. This concern was reiterated in *Babulal*[26] (2013), where the Court held that punishment must be "adequate, just, and proportionate" to the gravity of the offence, reflecting both the seriousness of the crime and its impact on society.

At the same time, Indian courts have consciously refrained from adopting a purely retributive approach. In *Shatrughan Chauhan*[27], the Supreme Court categorically affirmed that retribution, as an end, has no constitutional value in a democratic society governed by the rule of law. The cumulative outcome is a sentencing philosophy that draws selectively from reformative, deterrent, and proportionality-based approaches, often coexisting in tension and without being fully harmonised into a single, coherent theoretical framework.[28]

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[22] Maru Ram v. Union of India, (1981) 1 SCC 107

[23] The Law Commission of India, in its 48th Report, highlighted a serious gap in the sentencing process: the absence of detailed and reliable information about an offender's personal background and characteristics. It noted that this shortcoming was a major obstacle to developing sentencing decisions that are consistent, reasoned, and fair. *See* Law Commission of India, *The Trial and Punishment of Social and Economic Offences* (1972)

[24] *Ibid*.

[25] (1987) SCC (Cri) 379

[26] *State of M.P. v. Babulal* (2014) 1 SCC(Cri) 628

[27] *Shatrughan Chauhan v. Union of India* (2014) 2 SCC (Cri) 1

[28] *Ibid.*

Standardisation versus Individualisation: A Persistent Tension

At the heart of Indian sentencing policy lies an unresolved debate between standardisation and individualisation. Advocates of standardisation argue that similar offences should attract similar punishments, failing which sentencing becomes arbitrary and violative of Article 14.[29] [30] The Supreme Court has itself acknowledged the systemic concern arising from this lack of coherence in sentencing. The Court[31] expressly noted that wide and unexplained disparities in sentencing for similar offences undermine the principle of equality before law and erode public confidence in the criminal justice system. [32]

The court highlighted that when punishments appear arbitrary or inconsistent, they create a perception of injustice not only for the accused but also for victims and society at large.[33] This recognition reflects the Court's awareness that unstructured judicial discretion, though necessary for individualisation, carries the risk of uneven outcomes unless guided by clear principles, thereby reinforcing the need for greater consistency and transparency in sentencing practices.[34]

On the other hand, proponents of individualisation argue that no two crimes are truly identical and that sentencing must account for the offender's background, motive, and potential for reform.[35] This philosophy is deeply embedded in Indian law through the requirement of a separate sentencing hearing and through judicial pronouncements emphasising human dignity. Justice Krishna Iyer[36] famously warned against reducing sentencing to a mechanistic process than a humanist one calling a ritualistic judge a misfit.

Indian courts have attempted to reconcile these competing approaches but with limited success. The result is a system where principles are articulated at a high level, but their application

[29] Anju Vali Tikoo, *Individualisation of Punishment, Just Desert and Indian Supreme Court Decisions: Some Reflections*, 2 I ILI LAW REVIEW (Winter Issue 2017), https://ili.ac.in/pdf/tikoo.pdf.
[30] Article 14 of the Indian Constitution reads as "*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*.".
[31] *Swamy Shraddananda v. State of Karnataka* (2009) 3 SCC(Cri) 113
[32] Damayanti Bhattacharjee, *Disparity in Sentencing Policy in India*, 3 INT'L J. L. MGMT. & HUMANITIES 1103 (2020), https://www.ijlmh.com/wp-content/uploads/Disparity-in-Sentencing-Policy-in-India.pdf.
[33] *Ibid.*
[34] Rajendra Prasad v. State of Uttar Pradesh AIR 1979 SC 916
[35] Akhilesh Ranaut & Vijay Kumar, *Punishment and Sentencing Policy in India: A Critical Analysis*, 4 RES. REV. INT'L J. MULTIDISCIPLINARY 581, https://old.rrjournals.com/wp-content/uploads/2019/04/581-589_RRIJM190404123.pdf.
[36] Satto v. State of U.P., 1979 SCC (Cri) 534

varies widely across cases and courts.

The Supreme Court's Role: Guidance, Correction, and Constraint

The Supreme Court has played a central role in shaping sentencing policy, often stepping in to provide guidance where legislative direction is absent. In *Bachan Singh*[37], a Constitution Bench observed that sentencing policy is primarily a matter for the legislature, and that courts should avoid creating rigid standards. At the same time, *Bachan Singh* itself laid down aggravating and mitigating factors for the death penalty, illustrating the Court's willingness to structure discretion when constitutional stakes are high.[38]

Subsequent decisions have expanded this role. In cases such as *Sangeet v. State of Haryana*[39] and *Shankar Khade v. State of Maharashtra*[40], the Court sought to bring greater consistency to capital sentencing by refining the "rarest of rare" doctrine. While these efforts aimed at standardisation, they also revealed the difficulty of achieving uniformity without formal guidelines.[41]

The Supreme Court has also exercised its extraordinary powers to impose sentences such as life imprisonment without remission, particularly in cases where it wished to avoid the death penalty.[42] Decisions like *Swamy Shraddananda* (*Supra*) and *Sandeep* (*Supra*) exemplify this trend. However, recent judgments, including *Kiran v. State of Karnataka*, have reaffirmed constitutional boundaries by holding that trial courts cannot deny statutory remission, which lies within the executive's domain under the BNSS.

Discretion of Lower Courts and Appellate Control

Trial courts and Sessions Courts ought to enjoy the widest discretion in sentencing, as they are closest to the facts and to the parties involved. They are best placed to assess the demeanour of

[37] Bachan Singh vs State of Punjab (1980) 2 SCC (Cri) 580
[38] Monika Priyadarshini & Sridevi S., *Judicial Discretion and the Death Penalty: Revisiting Bachan Singh in the Context of India and the U.S.*, 4 IND. J. MASS COMM. & JOURNALISM (IJMCJ), https://www.ijmcj.latticescipub.com/wp-content/uploads/papers/v4i4/D112704040625.pdf.
[39] (2013) 2 SCC (Cri) 611
[40] (2013) 3 SCC (Cri) 402
[41] Umendra Pratap Singh & Dr. Srijan Mishra, *The Doctrine of 'Rarest of Rare' in Capital Sentencing: A Critical Study of Its Suitability and Application in Indian Jurisprudence*, 8 INT'L J. L. MGMT. & HUMANITIES 3745 (2025)
[42] *Ibid.*

the accused, the impact on victims, and the social context of the offence.[43] However, presently their discretion is significantly shaped by appellate oversight.

High Courts routinely reassess sentences on appeal, enhancing or reducing them to ensure proportionality. The Supreme Court, in turn, has increasingly assumed the role of a final arbiter on sentencing principles.[44] While this has helped correct extreme disparities, it has also led to a gradual centralisation of sentencing norms. Trial courts, conscious of the risk of reversal, often adopt conservative sentencing approaches, relying heavily on precedents rather than independent evaluation.[45]

This dynamic reflects a paradox within Indian sentencing policy. While discretion is formally decentralised, substantive control increasingly rests with higher courts through precedent and appellate intervention.[46]

Therefore, the deliberations on the Indian sentencing policy reveal the following. First, it is best described not as a fixed code but as an evolving judicial practice. It is characterised by wide discretion at the trial level, tempered by appellate correction and [47]constitutional principles articulated by higher courts. The absence of formal sentencing guidelines has allowed flexibility and individualisation, but it has also produced inconsistency and uncertainty.

Second, over the years, Indian courts have moved from a predominantly reformative outlook to a more balanced emphasis on proportionality, deterrence, and victim interests, without fully abandoning the ideal of rehabilitation. The Supreme Court has played a dual role both cautioning against judicial overreach and actively shaping sentencing norms through landmark judgments.

Finally, the Indian approach reflects a continuing struggle to balance uniformity with humanity, consistency with compassion, and discretion with constitutional restraint. As the courts

[43] Chandi Prasad Khamari, *Sentencing in India's Criminal Justice System: Judicial Interpretations and Comparative Analogies*, 11 INT'L J. INNOVATIVE RESEARCH IN TECHNOLOGY (IJIRT) 899
[44] *Ibid.*
[45] Bhuller & Sigstad, *Feedback and Learning: The Causal Effects of Reversals on Judicial Decision-Making*, 92 REV. OF ECON. STUD. 2359 (2025).
[46] *Supra Note* at 45
[47] ABHINAV CHANDRACHUD, *Inconsistent Death Sentencing in India*, 46 ECONOMIC AND POLITICAL WEEKLY 20 (2011), https://www.jstor.org/stable/23018001.

themselves acknowledge, sentencing resists rigid formulas. It remains a human judgment, informed by law but shaped by conscience, context, and constitutional values.

Kiran vs State: Centralising or Decentralising justice?

A careful reading of *Kiran v. State of Karnataka*[48] shows that while the Supreme Court clearly sets aside the Sessions Court's order of life imprisonment "till the end of natural life" with a complete bar on remission, the judgment does not fully explain *why* such a power is unavailable to Sessions Courts but remains permissible for constitutional courts like the High Courts and the Supreme Court. The conclusion is firm, but the reasoning leading to this distinction is noticeably brief and largely assumed rather than clearly developed.

The Court places its main reliance on the statutory scheme of the Code of Criminal Procedure (now the Bharatiya Nagarik Suraksha Sanhita), particularly the provisions on remission under Sections 432[49] and 433[50]. It reiterates that the power to grant or deny remission is primarily an executive function, and that courts below the level of the High Court cannot interfere with or restrict this statutory power. In doing so, the Court draws support from earlier decisions such as *Sriharan*[51], where a Constitution Bench held that only constitutional courts, exercising powers under Articles 136, 142, or 226, may impose a special category of sentence that effectively excludes remission.[52] However, *Kiran* largely treats this distinction as settled law, without explaining the underlying principle that justifies it.

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[48] *Supra Note* at 4

[49] Section 432 of the CrPC read as "*Power to suspend or remit sentences.—(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced…*
…(7) In this section and in section 433, the expression "appropriate Government" means,—
(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;
(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

[50] Section 433 of the CrPC read as "*Power to commute sentence.—The appropriate Government may, without the consent of the person sentenced, commute—*
(a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);
(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;
(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;
(d) a sentence of simple imprisonment, for fine."

[51] (2016) 7 SCC 1

[52] Articles 136, 142, and 226 of the Constitution of India grant significant judicial powers. Article 136 empowers the Supreme Court to grant special leave to appeal from any judgment, decree, or order of any court or tribunal. Article 142 allows the Supreme Court to pass any decree or order necessary to do complete justice. Article 226 empowers High Courts to issue writs for the enforcement of fundamental rights and for other purposes under the law.

The judgment repeatedly states that Sessions Courts are "creatures of statute" and must operate strictly within the limits of the CrPC. While this is undoubtedly correct, the Court does not engage with the more difficult question of sentencing logic. Life imprisonment is itself a statutory punishment, and the Supreme Court has consistently held that it may, in law, extend to the remainder of a person's natural life. If that is so, the judgment does not clearly explain why a Sessions Court cannot expressly reflect this legal position in its sentence, while a constitutional court can do so through judicial innovation.

Further, although the Court relies on decisions such as *Swamy Shraddananda (2)*[53] and *Sriharan*[54], it does not sufficiently unpack why the "extraordinary jurisdiction" of constitutional courts justifies creating sentencing outcomes that are otherwise unavailable at the trial level. The concern of preventing premature or inappropriate remission in exceptionally heinous cases applies equally at the trial stage, where the facts are most clearly assessed. Yet, the judgment does not address why this concern can be acted upon only by higher courts.

As a result, *Kiran* ultimately draws a sharp line based on judicial hierarchy rather than a clearly articulated sentencing principle. While the outcome preserves executive powers and prevents overreach by Sessions Courts, it leaves open a deeper question: whether this difference in sentencing authority is grounded in constitutional logic, or whether it continues largely because precedent has accepted it without demanding a fuller explanation.

Should sentencing power be more decentralised?

At the very foundation of the criminal justice system lies the trial court. It is the trial court that records evidence, observes witnesses, and engage directly with the lived realities of the offence, the offender, and the victim. This proximity to facts is not incidental; it is the reason why sentencing has historically been understood as a continuation of the trial itself.[55] Sentencing is not an abstract legal exercise divorced from factual appreciation. It is the final stage of the trial where facts, circumstances, and human conduct converge.[56] To suggest that a Sessions Court is competent to determine guilt but not competent to determine the most appropriate sentence

[53] *Supra Note* at 31
[54] *Supra Note* at 51
[55] G. Kameswari & V. Nageswara Rao, *The Sentencing Process — Problems and Perspectives*, 41 JOURNAL OF THE INDIAN LAW INSTITUTE 452 (1999), https://www.jstor.org/stable/43953342.
[56] Rabindra Bhattarai, *Principles of Sentencing in Criminal Justice System*, 1 KATHMANDU L. REV. 193 (2008)

flowing from that guilt is conceptually inconsistent and institutionally unsound.

Sentencing, by its very nature, is primarily a question of fact rather than a pure question of law.[57] It involves an assessment of aggravating and mitigating circumstances, the manner of commission of the offence, the conduct of the accused during trial, the impact on the victim, and the broader social context in which the crime occurred.[58] These are factual determinations, best made by the judge who has presided over the entire trial. The Supreme Court itself has recognised in *Santa Singh*[59] that sentencing requires a separate hearing precisely because it involves considerations distinct from legal culpability. If sentencing is so deeply fact-dependent, there is a strong constitutional and procedural case for treating it as the exclusive domain of the Sessions Court, subject of course to appellate review, but not displacement.

Moreover, Sessions Judges are not merely trial judges in a generic sense; they are specialists in criminal adjudication. Their daily judicial work involves evaluating evidence, assessing credibility, applying penal statutes, and imposing sentences. Over years of service, they develop a practical and nuanced understanding of criminal behaviour, patterns of violence, socio-economic drivers of crime, and the rehabilitative or deterrent impact of different forms of punishment.

In contrast, High Court judges deal with a wide and diverse docket: constitutional matters, commercial disputes, tax appeals, service law, writ petitions, and criminal appeals.[60] Criminal sentencing, though important, forms only one part of this expansive judicial workload. To vest exclusive or superior sentencing authority in courts that do not engage with criminal trials daily risks detaching sentencing from the experiential knowledge that comes from continuous trial-level adjudication.

It is often argued in response that High Courts mitigate this concern through internal roster allocation, assigning criminal matters to judges with relevant experience or interest. However, this argument is institutionally fragile. The allocation of rosters is not governed by any uniform

[57] Dayamati Bhattacharjee, *Disparity in Sentencing Policy in India*. 4 INT'L JL MGMT. & HUMAN., *3*, p.1103. 2020

[58] A. Jakhmola, D. Mehra, S. Keswani, K. Yadav and A. Shirgire, *Sentencing policy in India.* 11(5S) RUSSIAN LAW JOURNAL,106-111. (2023)

[59] Santa Singh vs State of Punjab 1976 SCC (Cri) 546

[60]M. Singh, *Indian judicial system overview and a approach for automatic roster preparation and case scheduling for faster case solving (need of: e-courts)* INTERNATIONAL CONFERENCE ON ADVANCES IN COMPUTING, COMMUNICATION CONTROL AND NETWORKING (ICACCCN) 128-131 IEEE. (2018)

statutory rule or transparent criteria.[61] It remains the exclusive administrative prerogative of the Chief Justice of the High Court, exercised from time to time based on internal considerations. There is no guarantee of continuity, as rosters can and do change.[62] Sentencing authority, especially of the most irreversible kind, cannot reasonably rest on such contingent and discretionary administrative arrangements.

Further, insulating sentencing power at the Sessions Court level promotes accountability and coherence within the criminal process. The same judge who hears the evidence, evaluates the witnesses, and observes the accused over the course of trial is best placed to impose a sentence that is proportionate, reasoned, and context sensitive.[63] Appellate courts exist to correct error, not to replace the primary sentencing judgment with their own unless necessary. When higher courts routinely assume the role of principal sentencing authorities, sentencing risks becoming an abstract, appellate-driven exercise, disconnected from the factual depth of the trial.[64]

Finally, from a systemic perspective, recognising the Sessions Court as the primary forum for sentencing strengthens decentralisation in criminal justice. It respects institutional competence, preserves the integrity of the trial process, and avoids excessive concentration of sentencing power in constitutional courts.[65] Appellate and constitutional courts should guide, supervise, and correct but not eclipse the sentencing function of trial courts. To do otherwise is to undermine the very logic of criminal procedure, where fact-finding and fact-sensitive judgment are meant to reside at the trial stage.

Counter-dynamics of judicial decentralisation.

While the argument for vesting primary sentencing authority in Sessions Courts is institutionally appealing, it must be met with equally strong countervailing concerns. These issues go to the heart of equality before law and the legitimacy of punishment itself.

First, sentencing disparity. It is not a hypothetical fear; it is a documented reality of systems that rely heavily on decentralised discretion.[66] When similarly placed offenders, convicted of

[61] *Ibid.*
[62] *Supra Note* at 59.
[63] K.A Thomas, *Sentencing: Where case theory and the client meet*. 15 *CLINICAL L. REV* 187. (2008)
[64]A.S Kowshikaa, *Sentencing Disparity in The Indian Criminal Justice System.* JOURNAL OF LAW AND LEGAL RESEARCH DEVELOPMENT 18-22 (2024)
[65] *Supra Note* at 55.
[66] V. Premani, *The Exigency of Sentencing Policy in India: An Analytical Approach*. 25 SUPREMO AMICUS 608 (2021)

similar offences under the same statutory framework, receive widely different sentences solely because their cases were tried before different Sessions Courts, the promise of Article 14 is directly implicated.[67] The Supreme Court has repeatedly acknowledged this danger. In *State of Punjab v. Prem Sagar*[68], the Court warned that unguided sentencing discretion can lead to arbitrariness and undermine public confidence in the justice system. Without strong appellate oversight or centralised normative control, decentralisation risks converting sentencing into a matter of judicial personality rather than legal principle.

Second, local bias presents an equally serious concern. Sessions Courts function within specific social, political, and cultural environments. Judges, however conscientious, are not insulated from local pressures, prevailing moral sentiments, or community outrage surrounding particular crimes.[69] This is especially pronounced in cases involving caste violence, sexual offences, communal tensions, or crimes against children. A trial judge, embedded within the local ecosystem, may consciously or unconsciously allow dominant social narratives to influence sentencing severity. Constitutional courts, by contrast, operate at a greater institutional and geographical distance, enabling a more detached and principled evaluation. This structural distance is not a weakness but a safeguard against parochialism.

Predictability and consistency are also essential components of a fair sentencing system. Criminal law must not only punish but also guide behaviour.[70] When sentencing outcomes become unpredictable, offenders, victims, and society at large lose the ability to anticipate legal consequences. As the Supreme Court observed in *Swamy Shraddananda (2)*[71], sentencing must reflect "reasonable uniformity" to avoid perceptions of randomness. Excessive decentralisation, without binding guidelines, erodes this predictability and weakens the normative force of criminal law.

Finally, sentencing is not purely a question of fact; it involves value judgments about proportionality, penological objectives, and constitutional limits.[72] These are questions of legal policy that benefit from the broader perspective and normative authority of higher courts. For this reason, retaining strong sentencing control with High Courts and the Supreme Court serves

[67] *Ibid.*
[68] AIR 2008 SC (SUPP) 261
[69] *Supra Note* at 64
[70] *Supra Note* at 2.
[71] *Supra Note* at 31.
[72] M.Z Siddiqi, *The Problem of Disparity In Sentencing*. 9 INDIAN J. CRIMINOLOGY, 120 (1981).

as a necessary corrective ensuring uniformity, neutrality, and coherence in a system otherwise vulnerable to fragmentation.

Conclusion

Sentencing occupies a unique and sensitive position in the criminal justice system. It is the point where individual culpability meets collective conscience, where the fate of the accused intersects with society's demand for justice, and where abstract legal norms translate into concrete human consequences. For this reason, sentencing can never be treated as a matter of personal judicial conscience alone. It is an act of public importance, carrying constitutional, social, and institutional implications far beyond the individual case. A sentence speaks not only to the offender and the victim, but also to society at large, signalling what conduct the law condemns, what values it protects, and how power is exercised in the name of justice.

The debate between decentralising sentencing authority to trial courts and retaining strong control with higher courts reveals that both approaches rest on legitimate concerns. On one hand, Sessions Courts are closest to the facts, the evidence, and the human realities of crime. Their experiential engagement with the trial process equips them to deliver nuanced, context-sensitive sentences. On the other hand, unstructured decentralisation carries the real risks of sentencing disparity, local bias, and unpredictability—outcomes that threaten equality before law and erode public confidence in the justice system. Neither extreme (absolute trial-level autonomy) nor excessive appellate centralisation—offers a satisfactory solution.

What is therefore required is not a choice between centralisation and decentralisation, but a carefully calibrated balance between the two. Trial courts must remain the primary sentencing fora, entrusted with meaningful discretion to individualise punishment. At the same time, higher courts must continue to articulate clear sentencing principles, correct excesses, and ensure reasonable uniformity across jurisdictions. This supervisory role should be normative rather than substitutive guiding discretion rather than displacing it.

Sentencing policy, in this sense, must evolve as a shared institutional responsibility. It should combine the factual intimacy of trial courts with the constitutional perspective of appellate courts. Only such a balanced model can preserve sentencing as both a humane judicial function and a coherent public act. Ultimately, the legitimacy of criminal punishment depends not on where sentencing power formally resides, but on whether it is exercised with fairness, consistency, and constitutional restraint.