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**POWERS OF STATE GOVERNMENT QUA SENTENCING POLICY**- Sakshi Jain & Dhruvi Jain<sup>1</sup>**INTRODUCTION-**

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

-“*Soman v. State of Kerela*”<sup>2</sup>

We are not immune to the worldwide trend of a steadily rising crime rate. In light of this, there can be no doubt that a fair criminal justice system is necessary, and that the implementation of a just, fair and reasonable penalty is a crucial part of Criminal Law. “*The Indian Penal Code, enacted in 1860 (IPC), the Criminal procedure Code 1973 (Cr.P.C) and the Indian Evidence Act 1872 (IEA)*” are the primary piece of legislation in charge of criminal law and the penal system in India.

The procedure of imposing punishment on criminals by honorable judges is known as sentencing. Yet, sentencing guidelines examine the grounds upon which a judgement should be made. An appropriate punishment for a given offence can be thought of as an equation, and this is what the sentencing policy is. Punishment is seen as a means to deter criminal behaviour, not just punish the offender for their wrongdoing. In the context of the law, punishment is the infliction of harm or loss on an offender as retribution for wrongdoing.

Although they are two separate concepts, punishment and sentencing are frequently interchanged. The sentencing guidelines are how punishment is operationalized. The task of

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<sup>1</sup> Students at Nirma University, Ahmedabad

<sup>2</sup> “*Soman v. state of kerala*”,(2013) 11 SCC 382.

expressing and specifying the punishment specified in the law is accomplished by a sentence. Sentences are court orders that include consequences for crimes.

Judges in India are still at liberty to decide what should or shouldn't be done in a certain case or circumstance. In other words, there are no set rules for how criminals should be sentenced. There are no clear criteria for the sentencing policy in India, therefore judges have a lot of discretion in deciding what sentence to give the guilty, which causes ambiguity.

For instance, the penalty for stealing a pen or diamond ring stays the same, which is "*imprisonment extendable to 3 years, with fine or both*" according to section 379 of the IPC 1860.<sup>3</sup> Here, the judge is free to choose any punishment based on his personal preferences. Judges may, however, consider the severity of the offence committed and the mitigating circumstances when rendering a decision. Judgement should be rendered taking both aggravating and mitigating circumstances into account. The prosecutors present aggravating circumstances that would justify a severe punishment at trial. The following are some examples of aggravating factors: Repeat Offenses, Leadership Position and Victim Vulnerability. In contrast, the defence presents mitigating circumstances that might encourage mercy in sentencing. Criminal statutes give less weight to elements that could lessen a defendant's sentence. The following are some examples of mitigating factors: -

- a. No prior criminal history,
- b. Minimal involvement in the offence; and
- c. Circumstances present at the time of the offence, such as provocation or stress.<sup>4</sup>

## **PROVISIONS RELATED TO SENTENCING BY STATE GOVERNMENT-**

### **I. Constitutional Provisions-**

The Constitution has given both the President and the Governor the authority to grant pardons on their own. Importantly about the state level the power to grant pardons are vested in the Governor of the State.

- a. Article 161- "*Power of governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases*".<sup>5</sup>

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<sup>3</sup>The Indian Penal Code 1860, sec. 379.

<sup>4</sup> Yug Gambhir, "*sentencing policy in India: analyzing the need for establishing the guidelines*", ipleaders blog, (Feb. 19, 2023, 03:09 PM), <https://blog.ipleaders.in/sentencing-policy-india-analyzing-need-establishing-guidelines/>.

It states that a state's governor must have the power to pardon, reprieve, respite, or remit the punishment of, or suspend, remit, or commute the sentence of, any person convicted of breaching any law relating to an issue over which the state's executive jurisdiction extends. The Governor of the state has the authority to issue a pardon, reprieve, respite, or remission to a criminal who has committed an offence against state law.

b. Article 72- "*Power of President to grant pardons, etc., and to suspend, remit or commute sentences in certain cases*".<sup>6</sup>

The president is entitled to pardon, reprieve, respite, or remit a sentence, as well as to suspend, remit, or commute a sentence in appropriate circumstances. In contrast to the Governor's limited pardoning power under Article 161, the President has extensive pardoning power under Article 72. Moreover, the Governor cannot grant pardon to the punishment of court-martial. The State government, not the Governor, exercises the supreme power of a Governor under Article 161 to grant pardon to a prisoner.

## II. Statutory Provision-

"*The Code of Criminal Procedure (CrPC)*" allows for the remission of prison terms, which means that the entire sentence or a portion of it may be commuted.

a. Section 432- "*Power to suspend or remit the sentences*".<sup>7</sup>

b. Section 433- "*Power to commute sentence*".<sup>8</sup>

In both the section referred above, the appropriate government (whether Union or State) may suspend or commute all or part of his sentence, with or without conditions.

According to Section 433, the "*appropriate government*" can commute the sentences of-

1. Death sentence to another form of punishment provided u/s 53 of IPC.
2. L.I. to imprisonment Min.-14years or to fine.
3. Rigorous Imprisonment to Simple Imprisonment or to fine
4. Simple imprisonment to fine.<sup>9</sup>

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<sup>5</sup>Indian Constitution, Art. 161.

<sup>6</sup>Indian Constitution, Art. 72.

<sup>7</sup>The Code of Criminal Procedure, Sec. 432.

<sup>8</sup>The Code of Criminal Procedure, Sec. 433.

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### III. NEED FOR SENTENCING POLICY-

1. *“Mali Math Committee”*- In its report from *“March 2003, the Committee on Reforms of the Criminal Justice System”* suggested creating a legal framework for sentencing policy. The committee reported that the offences have both minimum and maximum penalties under the IPC. Nonetheless, the disparity between the statutory maximum and minimum sentences leaves considerable room for the judges to exercise their own discretion, leading to sentencing ambiguity due to the fact that some judges take a moderate and others a tough stance. Hence, a legally binding standard is currently required.
2. *“Madhav Menon Committee”*-also reaffirmed the importance of a sentencing policy in India. The country of India plans to adopt a “universal sentencing policy” similar to those of the United States and the United Kingdom, according to the country’s former minister of law in 2010. Nonetheless, little effort has been made towards its development, despite widespread recommendations to do so.
3. *“Soman v. state of Kerala 2013<sup>10</sup>”*- Deterrence, proportionality, and rehabilitation were all stated as factors that should be considered by the court when sentence. mitigating or aggravating factors are both part of the proportionality principle.
4. *“State of M.P. v Bablu Natt 2008<sup>11</sup>”*-the court held that applying these principles of deterrence, rehabilitation and proportionality to a given set of facts and circumstances must be done on a case-by-case basis. But such principles are only the goal and purport for which the accused is sentenced, despite the fact that their very existence is denied.
5. *“State of M.P vs Mehtaab 2015<sup>12</sup>”*- The court found the principles of proportionality, deterrence and rehabilitation to be an impediment to delivering justice. The judicial system has formed certain concepts, but putting them into practice is still a long way off. The guidelines place a heavy burden on judge’s discretion, which is a big cause for concern when it comes to sentencing procedures.

These are some of the cases deals with the need of sentencing policy. However, as suggested by the Mali math Committee there are no guidelines for sentencing which is to followed

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<sup>9</sup>Supra7.

<sup>10</sup>Supra1.

<sup>11</sup>State of M.P. v.Bablu natt,2008 SC 12 84.

<sup>12</sup>State of M.P. v. Mehtaab, 2013, SLP (CRL.) No.5609.

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unlike U.K. and USA. At present after various decisions no specific guidelines have been enacted till date. The need for sentencing policy is an urgent need of hour.

#### IV. STATE AMENDMENTS AND INDIAN PENAL CODE: A COMPARATIVE ANALYSIS

##### 1. Maharashtra-

Name of the Act- “The Shakti Criminal Laws (Maharashtra Amendment) Act 2020”.<sup>13</sup> This Act of 2020 extends to the whole state of Maharashtra.

Sr. No.	Inserted Section	Name of offences	Punishment under IPC	Punishment under the Act
1.	175A	Failure to share data for police investigation	Not an offence.	Simple Imprisonment for 1 month or fine may extend to 5 lakhs or both.
2.	182A	Punishment for false complaint or false information to Public servant of certain offences.	Not an offence.	S.I.Max.-1year or fine or both.
3.	326A (*already in IPC)	Voluntarily causing grievous hurt by use of acid, etc.	Imprisonment (E.D.) Min.- 20years & L.I. and Fine.	Imprisonment (E.D.)Min.- 10yearsMax.-“ <i>remainder of the natural life of such person and fine or when the offence is heinous in nature and adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with “death”.</i> ”  First proviso, the medical expenses include “ <i>expenses for plastic surgery</i> ”

<sup>13</sup> “The Shakti Criminal Laws (Maharashtra Amendment) Act 2020”, Act of Maharashtra state legislature, 2020 (India).

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			First proviso, “ <i>fine shall be just and reasonable to meet the medical expenses of treatment of the victim.</i> ” <sup>14</sup>	<i>and face reconstruction”</i>
4.	326B (*already in IPC)	Voluntarily throwing or attempting to throw acid.	Min.- 5 years & Max.- 7 years and fine.	Min.- 7 years & Max.- 10 years and fine.
5.	354E	Intimidating woman by any mode of communication, in addition to insulting modesty <sup>15</sup>	Not an offence.	Imprisonment (E.D.)Max.- 2years and fineMax.- 1 lakh rupees. <sup>16</sup>
6.	376 (f-1)  376D&376DA (*already in	Punishment for Rape  Gang rape& gang	  R.I. Min.- 20 years & Max.- L.I.	After the word “ <i>shall also be liable to fine</i> ” under sub-clause (1), (2), (3) includes or When “ <i>offence is heinous in nature and adequate conclusive evidence is there and the circumstances warrant exemplary punishment, with “death”.</i> ”  Inserted after the word ‘ <i>fine</i> ’, or “ <i>When offence is heinous in nature and adequate conclusive evidence is there</i>

<sup>14</sup>The Indian Penal Code, sec. 326A.

<sup>15</sup> The Shakti Criminal Laws (Maharashtra Amendment) Act 2020, Act of Maharashtra state legislature, 2020, sec. 354E.

<sup>16</sup>Ibid.

IPC)	rape on woman under 16 years of age. (respectively)	(Imprisonment for remainder of person's natural life) and fine& L.I. (imprisonment for remainder of person's natural life) and fine. (respectively)	<i>and the circumstances warrant exemplary punishment, with "death".</i>
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Fig.1 certain offences amended or inserted by the Shakti Criminal Laws (Maharashtra Amendment) Act 2020.

### 1. Rajasthan-

Name of the Bill- The Criminal Laws (Rajasthan Amendment) Bill, 2021.<sup>17</sup>

Sr. No.	Inserted sections	Name of Offences	Punishment under IPC	Punishment under Bill
1.	272 (*already in IPC)	Adulteration of food or drink intended for sale	Imprisonment (E.D.)max.- 6 months or fine Max.- 1000 rupees or both. <sup>18</sup>	Imprisonment (E.D.) Min.- 1 year & Max.- 7 years and fine not less than 10,000 rupees. <u>Such adulteration is dangerous to human life,</u> Imprisonment (E.D.)Min.- 3 years & Max.- L.I. and with fine not less than 50,000 rupees.
2.	273 (*already in IPC)	Sale of noxious food or drink	Imprisonment (E.D.) Max.- 6 months or fine	Imprisonment (E.D.) Min.- 1 year & Max.- 7 years

<sup>17</sup>The Criminal Laws (Rajasthan Amendment) Bill, 2021, Act of Rajasthan state legislature, 2021 (India)

<sup>18</sup> The Indian Penal Code, sec. 272.

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in IPC)		Max.- 1000 rupees or both. <sup>19</sup>	and fine not less than 10,000 rupees. <u>Such article is rendered or dangerous to human life,</u> Imprisonment (E.D.) Min.- 3 years & Max.- L.I. and with fine not less than 50,000 rupees.
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Fig2. Certain offences amended or inserted by the Criminal Laws (Rajasthan Amendment) Bill, 2021

### 3. Haryana-

Name of the Act- The Criminal Law (Haryana Amendment) Act, 2018.<sup>20</sup>

Sr. No.	Inserted section	Name of offences	Punishment under IPC	Punishment under Act
1.	354 (*already in IPC)	Assault or criminal force to woman with intent to outrage her modesty	Imprisonment (E.D.) Min.- 1 year & Max.- 5 years and fine.	Imprisonment (E.D.) Min.- 2 year & Max.- 7 years and fine.
2.	354D (2) (*already in IPC)	Stalking	<u>Subsequent conviction-</u> Imprisonment (E.D.) extend to 5 years and fine. <sup>21</sup>	<u>Subsequent conviction-</u> Imprisonment (E.D.) extend to 7 years and fine. <sup>22</sup>
3.	376 AA	Rape on a woman up to 12 years.	<u>Section 376AB-</u> R.I. Min.- 12 years & Max.- L.I. (remainder of the person's natural life) <sup>23</sup> and fine or death.	Death or R.I. Min.- 14 years & Max.- L.I. (remainder of the person's natural life) and fine. <sup>24</sup>

<sup>19</sup> The Indian Penal Code, sec. 273.

<sup>20</sup> The Criminal Law (Haryana Amendment) Act, 2018, Act of Haryana state legislature, 2018 (India)

<sup>21</sup> The Indian Penal Code, 354D (2).

<sup>22</sup> The Criminal law (Haryana Amendment) Act 2018, Act of Haryana Legislature, 2018, sec. 354D (2).

<sup>23</sup> The Indian Penal Code, sec. 376AA.

<sup>24</sup> The Criminal Law (Haryana Amendment) Act, 2018, Act of Haryana state legislature, 2018, sec.366

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4.	376DA	Punishment for gang rape on a woman up to 12 years.	<u>Section 376DB-</u> L.I.(remainder of the person's natural life) and fine or death. <sup>25</sup>	Death or R.I. Min.- 20 years & Max.- L.I. (remainder of the person's natural life) and fine.
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Fig3. Certain offences amended or inserted by the Criminal Law (Haryana Amendment) Act, 2018.

Here the three states Maharashtra, Rajasthan and Haryana has been taken and their amendment Bill/Act has been referred and a comparison has been made between the amended provisions and IPC provision. It can be observed from the above fig. 1,2&3 that there are various offences which have different punishments provided by the state legislature through proposing Bill and enacting the Act for the state itself. Article 245 enumerated in Part 11 of the Constitution of India<sup>26</sup> which deals with Union and State relation specifically states that "*the state legislature can make laws for the whole or any part of the State.*"<sup>27</sup> Also, there are some offences which are not an offence particularly under the IPC but are punishable offence under the state laws. As Indian Penal Code is a concurrent list subject (Entry 1) therefore both center and state can make laws or can amend or insert or substitute any provision.

## V. CONCLUSION-

The sentencing process in India is heavily influenced by the judge's personal ideology and their own sense of justice. There are five potential outcomes for lawbreakers according to the IPC, 1860. Judgments are clouded with doubt because of the legal system's discretionary nature. Disparate factors, such as socioeconomic status and social status, influence the judge's decision. Before making a decision, both the aggravating and mitigating circumstances must be considered. The legislature or the courts should investigate and issue orders or laws on the numerous options that can be used in the absence of guidelines regarding the sentencing policy, and they should also center their attention on the necessity of developing the precise directions regarding the same.

<sup>25</sup>The India Penal Code, sec. 376DB.

<sup>26</sup> Indian Constitution, Art. 245.

<sup>27</sup>Indian Constitution, Art. 245 (1).

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The power of state government can be observed by the way of this study with respect to sentencing policy. The major (not so major) role of Governor has been observed by this study and certain provisions regarding serious offences have been compared.



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