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SENTENCING PRINCIPLES IN CRIMINAL JUSTICE: A COMPARATIVE ANALYSIS OF PROPORTIONALITY, INDIVIDUALISED PUNISHMENT AND THE JUST DESERTS THEORY IN INDIA

- Darsha Jayakumar & Ave Marea Babu[1]

ABSTRACT

Sentencing is a fundamental component of the criminal justice system, as it determines the nature and extent of punishment imposed on a person convicted of a criminal offence. A fair sentencing system must balance the seriousness of the offence, the culpability of the offender, the rights and interests of victims, and the need to protect society. This assignment examines the three central principles of sentencing, namely proportionality, individualised punishment and the Just Deserts Theory, through a comparative analysis of India, the United Kingdom and the United States of America. The principle of proportionality requires punishment to correspond to the gravity of the offence and the offender's degree of responsibility. Individualised punishment emphasises the consideration of the offender's personal circumstances, the nature of the offence, aggravating and mitigating factors, and the prospects of rehabilitation. The Just Deserts Theory focuses on the principle that offenders should receive punishment appropriate to the seriousness of their wrongdoing and their culpability. The assignment analyses the statutory frameworks, judicial decisions and sentencing practices of the three jurisdictions, highlighting their similarities and differences in balancing judicial discretion with consistency and fairness. It also examines the role of the judiciary, victims' rights, the interests of society, relevant international standards and the recommendations of criminal justice reform committees in India, including the Malimath Committee and the Madhava Menon Committee. Further, it identifies challenges such as sentencing disparities, excessive judicial discretion and the absence of comprehensive sentencing guidelines in India. The study concludes that an effective sentencing system requires a balanced approach that promotes proportionality, accountability, rehabilitation, consistency and respect for human rights. The development of clear sentencing guidelines

[1] LL.M. Students at Bharata Mata School of Legal Studies, Aluva, Choondy

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and transparent judicial reasoning can contribute to a fairer, more consistent and humane criminal justice system.

Keywords: Sentencing Principles, Proportionality, Individualised Punishment, Just Deserts Theory, Comparative Criminal Justice, Judicial Discretion, Victims' Rights, Sentencing Reforms.

INTRODUCTION

Sentencing is one of the most important stages of the criminal justice system because it determines the legal consequences that follow a conviction. After establishing the guilt of an accused person, the court must decide the appropriate punishment in accordance with the law. This decision is not merely a mechanical exercise of selecting a punishment prescribed by statute. It requires the court to consider the seriousness of the offence, the degree of culpability of the offender, the harm suffered by the victim and the broader interests of society. A fair sentencing system must ensure that punishment is lawful, reasonable and proportionate to the wrongdoing.

The importance of sentencing lies in its ability to balance several objectives of criminal justice. Punishment may be intended to hold offenders accountable, deter future crimes, protect society, provide justice to victims and encourage the rehabilitation of offenders. However, these objectives may sometimes conflict with one another. A sentence intended to deter others may be unnecessarily severe for an offender who has a genuine possibility of rehabilitation. Similarly, excessive leniency may undermine public confidence in the justice system when the offence has caused serious harm. Therefore, sentencing requires a careful and reasoned balance between the competing interests involved.

Three important principles help guide this process: proportionality, individualised punishment and the Just Deserts Theory. Proportionality requires the punishment to correspond to the seriousness of the offence and the offender's culpability. Individualised punishment requires the court to consider the particular circumstances of the offence and the person convicted. The Just Deserts Theory maintains that offenders should receive punishment that reflects the seriousness of their wrongdoing and their responsibility for it. Although these principles are closely related, each emphasises a different aspect of sentencing justice.

MEANING AND OBJECTIVES OF SENTENCING

Sentencing refers to the process through which a competent court determines the punishment to be imposed on a person convicted of a criminal offence. The punishment may take different forms, including

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imprisonment, fines, community-based sanctions, probation and other measures authorised by law. The nature and extent of the sentence depend on the applicable statute, the seriousness of the offence and the circumstances of the case.

One of the primary objectives of sentencing is retribution, which means holding an offender accountable for the wrongdoing committed. Retribution does not necessarily mean revenge. Rather, it requires punishment to be justified by the offence and the offender's responsibility. Deterrence is another objective and seeks to discourage the offender and others from committing similar crimes. Incapacitation aims to protect society by restricting an offender's ability to commit further offences, while rehabilitation seeks to address the factors contributing to criminal behaviour and support the offender's return to society.

Restorative considerations are also important in modern criminal justice. These include recognising the harm suffered by victims, providing compensation where legally available and encouraging the offender to accept responsibility. Nevertheless, sentencing must remain within the limits of the law and respect the constitutional and human rights of the offender. No objective of punishment can justify a sentence that is arbitrary, discriminatory or otherwise unlawful.[2]

IMPORTANCE OF SENTENCING IN CRIMINAL JUSTICE

Sentencing is an important stage of the criminal justice system because it determines the nature and extent of punishment to be imposed on a person who has been found guilty of a crime. It ensures that offenders are held accountable for their actions while protecting society and upholding the rule of law. Proper sentencing helps maintain a balance between the seriousness of the offence, the culpability and personal circumstances of the offender, the rights and interests of victims, and the need for rehabilitation. It also promotes fairness, consistency, and public confidence in the administration of justice by ensuring that similar offences are treated fairly and that punishments are neither excessively harsh nor unduly lenient. Therefore, sentencing is not merely the imposition of punishment; it is a judicial process that seeks to achieve justice, deter crime, rehabilitate offenders, and protect society while respecting the principles of proportionality and individualised punishment.

- **Ensures Proportionate Punishment**

[2]Andrew Ashworth and Rory Kelly, *Sentencing and Criminal Justice*, 7th ed., Hart Publishing, 2021.

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Sentencing is important because it ensures that the punishment imposed on an offender is proportionate to the seriousness of the crime committed. The punishment should reflect the nature of the offence, the harm caused to the victim and society, and the degree of the offender's culpability. A minor offence should not ordinarily attract an excessively severe punishment, while a grave offence may justify a more serious sentence. The principle of proportionality helps prevent arbitrary and excessive punishment and promotes fairness in the criminal justice system. In Bachan Singh v. State of Punjab, the Supreme Court of India emphasised that the death penalty should be imposed only in the "rarest of rare" cases, demonstrating the importance of restricting the most severe punishment to exceptional circumstances.[3]

- **Promotes Fairness and Equality Before the Law**

Sentencing plays a significant role in ensuring that similar offences are treated consistently and fairly. Without appropriate sentencing principles, different courts may impose widely different punishments for similar crimes, resulting in uncertainty and injustice. A structured approach to sentencing helps reduce arbitrary decisions, personal bias and discrimination. However, fairness does not mean that every offender must receive exactly the same punishment. Courts must consider the circumstances of each case while ensuring that the law is applied equally. This approach strengthens public confidence in the judiciary and reinforces the constitutional principle of equality before the law.

- **Considers the Individual Circumstances of the Offender**

Sentencing is important because offenders may commit similar offences under different circumstances. Their age, mental condition, previous criminal record, role in the offence, intention, level of participation and prospects of rehabilitation may differ considerably. Individualised sentencing enables the court to consider these circumstances before determining an appropriate punishment. It prevents the mechanical imposition of identical sentences without examining the particular facts of each case. In State of Punjab v. Prem Sagar, the Supreme Court of India highlighted the importance of principled sentencing and the need for courts to consider relevant circumstances when determining punishment.[4]

- **Deters the Commission of Crime**

One of the principal objectives of sentencing is deterrence. A punishment may discourage the offender from committing further crimes and warn other members of society against engaging in similar unlawful

[3]Bachan Singh v. State of Punjab, (1980) 2 SCC 684; AIR 1980 SC 898.
[4]State of Punjab v. Prem Sagar, (2008) 7 SCC 550.

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conduct. Specific deterrence aims to prevent the particular offender from reoffending, whereas general deterrence seeks to discourage the public from committing similar offences. Nevertheless, deterrence does not mean that the harshest punishment is always the most effective. The certainty and fairness of the criminal justice process, together with the nature of the offence and the circumstances of the offender, are also important considerations.

- **Protects Society and Maintains Public Order**

Sentencing helps protect society by holding offenders accountable and, where necessary, restricting their ability to commit further offences. Imprisonment may be justified in serious cases where the offender presents a significant risk to public safety. At the same time, less restrictive measures, such as probation, community-based sanctions and other non-custodial measures, may be appropriate for certain offenders. An effective sentencing system must therefore balance public protection with the rights of the offender and the wider interests of society. The United Nations Standard Minimum Rules for Non-custodial Measures, commonly known as the Tokyo Rules, encourage the use of suitable non-custodial measures where appropriate.[5]

- **Encourages Rehabilitation and Reintegration**

Sentencing is not concerned solely with punishment; it may also provide opportunities for the offender to reform and return to society as a responsible individual. Rehabilitation is particularly important when dealing with young offenders, first-time offenders and persons whose circumstances indicate a reasonable prospect of reform. Educational programmes, vocational training, counselling, probation and other rehabilitative measures can help address the factors that contributed to criminal behaviour. A sentencing system that considers rehabilitation may reduce reoffending and support the long-term safety of society.

- **Recognises the Rights and Interests of Victims**

Sentencing is also important because crime often causes physical injury, emotional suffering, financial loss and social difficulties for victims. An appropriate sentence recognises the seriousness of the harm caused and the need to hold the offender accountable. Depending on the applicable law, sentencing proceedings may also involve compensation, restitution or other measures intended to address the victim's loss. However, the victim's interests must be considered within the framework of law and fair procedure, rather

[5]United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), G.A. Res. 45/110, 14 December 1990.

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than allowing punishment to be determined solely by anger or a desire for revenge. A balanced sentencing process recognises the dignity of victims while preserving the rights of the accused and the offender.

- **Strengthens Public Confidence in the Judiciary**

A reasoned and transparent sentencing process strengthens public confidence in the criminal justice system. When courts explain why a particular punishment is appropriate, people can better understand the legal principles and circumstances underlying the decision. Conversely, unexplained or apparently inconsistent sentences may create the impression that justice is arbitrary. In India, the Supreme Court has repeatedly recognised the need for a principled approach to sentencing. In Soman v. State of Kerala, the Court discussed relevant considerations in determining an appropriate sentence, including proportionality, deterrence and the circumstances of the case.[6]

- **Balances Punishment with Human Rights**

Sentencing must operate within constitutional and human rights limits. Although the State has the authority to punish persons convicted of crimes, that authority must be exercised according to law and with respect for human dignity. Punishments must not be arbitrary, cruel or otherwise prohibited by the applicable constitutional and legal framework. The principle of proportionality is particularly important because it limits the severity of punishment and requires a rational relationship between the offence and the sentence. International standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, emphasise the humane treatment and dignity of prisoners.[7]

- **Supports the Just Deserts Theory of Punishment**

Sentencing is central to the Just Deserts Theory, which holds that an offender should receive punishment that is deserved in proportion to the seriousness of the offence and the offender's culpability. According to this theory, punishment should not be determined exclusively by the desire to deter future crimes or rehabilitate the offender. Instead, it should reflect the offender's responsibility for the crime committed. The theory supports proportionality by preventing punishment that is excessively harsh or unjustifiably lenient. At the same time, its application requires courts to evaluate the seriousness of the offence and the offender's degree of blameworthiness carefully.

[6]Soman v. State of Kerala, (2013) 11 SCC 382.
[7]United Nations Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules), G.A. Res. 70/175, 17 December 2015.

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4. OBJECTIVES OF SENTENCING

Sentencing is an important stage of the criminal justice system in which a court determines the appropriate punishment for a person convicted of an offence. The primary objective of sentencing is not merely to punish the offender but also to prevent crime, protect society, rehabilitate the offender and uphold the principles of justice. The appropriate sentence depends on the nature and gravity of the offence, the offender's degree of responsibility, the circumstances of the crime and the objectives recognised by the applicable law. Different criminal justice systems give different levels of importance to these objectives, but most attempt to balance the interests of the offender, the victim and society.

- **Retribution and Just Deserts**

Retribution is based on the principle that an offender deserves punishment for committing a crime. Under the concept of just deserts, the punishment should reflect the seriousness of the offence and the offender's culpability. It does not mean that the offender should be subjected to revenge; rather, punishment must be imposed according to law and should not be excessive. This objective is closely connected with proportionality, which requires that the severity of the punishment correspond to the seriousness of the crime.[8]

- **Deterrence**

Deterrence aims to discourage criminal behaviour through the imposition of punishment. It has two forms: specific deterrence, which seeks to prevent the particular offender from committing further offences, and general deterrence, which seeks to discourage other members of society from engaging in similar criminal conduct. The effectiveness of deterrence may depend on factors such as the certainty and promptness of punishment, the nature of the offence and the circumstances of the offender.[9]

- **Rehabilitation and Reformation**

[8]Andrew von Hirsch, Doing Justice: The Choice of Punishments (Hill and Wang, 1976).
[9]18 U.S.C. Section 3553(a)(2)(B); Andrew von Hirsch, Doing Justice: The Choice of Punishments (Hill and Wang, 1976).

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Rehabilitation aims to reform offenders and help them become responsible members of society. It focuses on addressing the circumstances that contribute to criminal behaviour through education, vocational training, counselling, treatment and other appropriate interventions. This objective is particularly significant in relation to juvenile offenders and persons whose circumstances indicate that reform is possible. In India, the reformative approach is reflected in judicial decisions that recognise the importance of considering the offender's circumstances while determining an appropriate sentence.[10]

- **Incapacitation and Protection of Society**

Incapacitation seeks to protect society by restricting an offender's ability to commit further crimes. Imprisonment may serve this purpose by separating an offender who presents a serious risk to the public from the community. However, the restriction imposed must be legally justified and proportionate to the offence and relevant circumstances. Incapacitation should not be used as a justification for imposing unnecessarily harsh punishment without adequate consideration of the principles of justice.[11]

- **Prevention of Crime**

The prevention of crime is a broader objective that combines deterrence, rehabilitation and incapacitation. Sentencing seeks to reduce future criminal conduct by discouraging potential offenders, reforming convicted persons and protecting the public from serious risks. The balance between these approaches depends on the nature of the offence and the purposes recognised by the applicable sentencing framework.

- **Proportionality and Consistency**

Proportionality requires that punishment be commensurate with the seriousness of the offence and the offender's culpability. Consistency seeks to ensure that offenders who commit comparable offences in comparable circumstances receive reasonably similar sentences. These principles help prevent arbitrary or discriminatory sentencing and strengthen public confidence in the judiciary. In State of Punjab v. Prem Sagar, the Supreme Court of India discussed the need for a principled approach to sentencing and highlighted the importance of consistency and judicial reasoning.[12]

- **Restoration and Victim-Oriented Justice**

[10]Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Soman v. State of Kerala, (2013) 11 SCC 382.
[11]18 U.S.C. Section 3553(a)(2)(C).
[12]State of Punjab v. Prem Sagar, (2008) 7 SCC 550; Soman v. State of Kerala, (2013) 11 SCC 382.

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Sentencing may also seek to recognise the harm suffered by victims and, where legally appropriate, provide compensation or other forms of reparation. Victim-oriented justice acknowledges that crime can cause physical, financial and emotional harm. Restorative approaches encourage accountability and, where suitable, efforts to repair the harm caused by the offence. However, the interests of victims must be considered within the legal framework and alongside the principles of proportionality, fairness and the rights of the accused.[13]

- **Expression of Social Condemnation and Maintenance of Public Confidence**

Punishment communicates society's condemnation of unlawful conduct and affirms the authority of law. A reasoned and fair sentence demonstrates that criminal conduct has consequences while also showing that punishment is imposed through lawful procedures rather than personal vengeance. When courts explain the reasons for their sentencing decisions, they promote transparency, accountability and public confidence in the administration of criminal justice.[14]

THE THREE CENTRAL PRINCIPLES OF SENTENCING IN CRIMINAL JUSTICE

The three central principles of sentencing in criminal justice are proportionality, individualised punishment, and the just deserts theory. These principles guide courts in determining a fair, lawful, and appropriate punishment for a person convicted of a crime. The principle of proportionality requires that the severity of the punishment correspond to the seriousness of the offence and the offender's degree of culpability, ensuring that the punishment is neither excessive nor inadequate.[15] Individualised punishment emphasises that sentencing should take into account the particular circumstances of each case, including the offender's age, background, intention, role in the crime, previous criminal record, and prospects of rehabilitation.[16] The just deserts theory, on the other hand, is based on the idea that an offender should receive punishment that is deserved according to the seriousness of the crime and the offender's blameworthiness.[17] Although these principles have distinct meanings, they are closely connected and collectively seek to ensure fairness, consistency, accountability, and justice in sentencing. A comparative study of India, the United Kingdom,

[13]United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, G.A. Res. 40/34, 29 November 1985.
[14]Sentencing Act 2020 (UK), s. 52; 18 U.S.C. s. 3553(c).
[15]Solem v. Helm, 463 U.S. 277 (1983); State of Punjab v. Prem Sagar, (2008) 7 SCC 550.
[16]State of Punjab v. Prem Sagar, (2008) 7 SCC 550; United States v. Booker, 543 U.S. 220 (2005).
[17]Andrew von Hirsch, Doing Justice: The Choice of Punishments (Hill and Wang, 1976).

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and the United States helps explain how these principles are interpreted and applied within different criminal justice systems.

PRINCIPLE OF PROPORTIONALITY

The principle of proportionality requires that the severity of punishment should bear a reasonable relationship to the seriousness of the offence and the culpability of the offender. A minor offence should not ordinarily attract a punishment that is excessively severe, while a serious offence may justify a more substantial penalty. Proportionality prevents punishment from becoming excessive and ensures that the sentence is justified by the nature of the wrongdoing.

The principle is important because criminal offences differ in their seriousness, consequences and circumstances. Even where two offences fall under the same statutory provision, differences in intention, planning, degree of participation, harm caused and other relevant circumstances may justify different sentences. Proportionality therefore requires more than identifying the maximum or minimum punishment prescribed by law. It demands a reasoned assessment of the relationship between the offence and the punishment.

PRINCIPLE OF PROPORTIONALITY IN INDIA

In India, proportionality is an important principle of criminal sentencing, although there is no single comprehensive sentencing code that determines the precise sentence for every offence. The legislature prescribes the available punishments and their limits, while the judiciary determines the appropriate sentence by considering the seriousness of the crime, the circumstances in which it was committed, the offender's culpability and other relevant factors.

The Supreme Court of India has repeatedly emphasised that sentencing must reflect the gravity of the offence and should not be arbitrary. Courts must balance the nature of the crime with the circumstances of the offender. A sentence that is excessively harsh may be unjust, while a sentence that is disproportionately lenient may undermine public confidence in the administration of criminal justice.

A leading authority is Bachan Singh v. State of Punjab.[18] In this case, the Supreme Court upheld the constitutional validity of the death penalty but restricted its imposition to the "rarest of rare" cases, when the alternative option is unquestionably foreclosed. Although the case primarily concerned capital

[18] Supra note 2

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punishment, it demonstrates the importance of judicial restraint and the need to ensure that the most severe punishment is reserved for the gravest cases.

In Machhi Singh v. State of Punjab,[19] the Supreme Court further explained the approach to the rarest-of-rare doctrine and discussed circumstances relevant to determining whether a case justified the death penalty. The judgment illustrates the relationship between the gravity of the crime and the severity of punishment. However, its categories must be read alongside the principles laid down in Bachan Singh.

In State of Punjab v. Prem Sagar,[20] the Supreme Court highlighted the need for a principled approach to sentencing and observed that the absence of comprehensive sentencing guidelines may result in inconsistency. The Court stressed that sentencing should be based on relevant legal considerations rather than arbitrary discretion.

Similarly, in Soman v. State of Kerala,[21] the Supreme Court discussed the principles governing the determination of an appropriate sentence. The judgment recognises the relevance of proportionality, deterrence and the circumstances of the offence and offender. It demonstrates that sentencing requires a careful assessment rather than the mechanical imposition of punishment.

Another relevant decision is Alister Anthony Pareira v. State of Maharashtra,[22] which concerned a fatal road accident involving serious criminal conduct. The Supreme Court examined the sentence in light of the gravity of the offence and the need for an appropriate punishment. The case is relevant to proportionality because it illustrates that the sentence must reflect the seriousness of the conduct and the harm caused.

Therefore, in India, proportionality operates through statutory sentencing limits and judicial interpretation. It requires courts to impose punishment that is appropriate to the offence while also considering individual circumstances, public safety and the legitimate interests of victims.

PRINCIPLE OF INDIVIDUALISED PUNISHMENT

Individualised punishment means that the court should consider the specific circumstances of the offence and the offender before deciding the appropriate sentence. It recognises that individuals convicted of

[19]Machhi Singh v. State of Punjab, (1983) 3 SCC 470; AIR 1983 SC 957.
[20]State of Punjab v. Prem Sagar, (2008) 7 SCC 550. The Supreme Court discussed the need for principled and consistent sentencing.
[21] Supra note 5
[22]Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648.

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similar offences may have different levels of responsibility and different prospects of rehabilitation. A sentence should therefore reflect the particular facts of the case rather than being imposed mechanically.

Relevant considerations may include the offender's age, role in the offence, intention, previous criminal record, degree of participation, personal circumstances, conduct after the offence and prospects of rehabilitation. The court must also consider aggravating factors, such as deliberate planning or serious harm, and mitigating factors, such as a minor role or other circumstances recognised by law. These factors do not automatically determine the outcome; their relevance depends on the applicable legislation and the facts of the case.

INDIVIDUALISED PUNISHMENT IN INDIA

In India, the principle of individualised punishment is reflected in judicial sentencing discretion, statutory provisions and constitutional safeguards. Although the legislature prescribes the punishments for different offences, courts generally have discretion to select an appropriate sentence within the statutory limits. While exercising this discretion, judges must consider the seriousness of the offence, the degree of culpability of the offender, aggravating and mitigating circumstances, and the objectives of sentencing.

In Bachan Singh v. State of Punjab, the Supreme Court upheld the constitutional validity of the death penalty but restricted its imposition to the "rarest of rare" cases. The Court emphasised that the circumstances of both the crime and the criminal must be considered before imposing the death penalty. This approach demonstrates the importance of individualised sentencing because the decision cannot be based solely on the seriousness of the offence; the offender's circumstances and the possibility of reform must also be considered.[23]

In State of Punjab v. Prem Sagar, the Supreme Court recognised the need for a principled approach to sentencing and highlighted the importance of considering relevant circumstances while determining punishment. The Court observed the need for consistency in sentencing while acknowledging that each case must be assessed according to its own facts.[24] Similarly, in Soman v. State of Kerala, the Supreme Court discussed the relevant principles governing sentencing and emphasised that the punishment should

[23] Supra note 2
[24] Supra note 3

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be proportionate to the gravity of the offence, taking account of the circumstances of the case and the offender.[25]

Individualised punishment is also reflected in the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which provides procedural safeguards relevant to sentencing. For example, section 258(2) requires the court, in the specified context of a trial before a Court of Session, to hear the accused on the question of sentence before passing sentence in accordance with law. Such a hearing provides an opportunity for relevant mitigating circumstances to be brought to the court's attention.[26]

Therefore, in India, individualised punishment aims to ensure that sentencing is neither automatic nor based exclusively on the category of the offence. Courts must balance the demands of justice, the interests of society, the rights of victims and the offender's capacity for rehabilitation.

JUST DESERTS THEORY

The Just Deserts Theory is associated with retributive theories of punishment. It maintains that an offender should receive punishment that reflects the seriousness of the wrongdoing and the offender's culpability. Under this approach, punishment is justified primarily because a criminal offence has been committed, rather than solely because punishment may produce future benefits such as deterrence.

The theory seeks to establish a moral and legal relationship between wrongdoing and punishment. It rejects the idea that a person should be punished more severely than their offence and responsibility justify. At the same time, it recognises that serious wrongdoing may deserve a more severe response than less serious criminal conduct. The central concern is not revenge, but proportionate accountability.

Just Deserts also differs from a purely rehabilitative approach. Rehabilitation focuses on changing the offender's behaviour and reducing the likelihood of reoffending, whereas Just Deserts focuses primarily on the punishment deserved for the offence. Modern sentencing systems frequently combine these approaches, recognising that accountability, public protection and rehabilitation can operate together.

JUST DESERTS THEORY IN INDIA

In India, the Just Deserts Theory is not established as a separate, comprehensive statutory sentencing system. However, its underlying principles are reflected in judicial decisions, particularly through the

[25] Supra note 5
[26] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 258(2).

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principles of proportionality, culpability and fairness in determining sentences. Indian courts generally exercise sentencing discretion within the punishment prescribed by law, taking into account the nature and gravity of the offence, the circumstances in which it was committed, the offender's role and relevant aggravating and mitigating circumstances.

In Bachan Singh v. State of Punjab, the Supreme Court of India upheld the constitutional validity of the death penalty while limiting its imposition to the "rarest of rare" cases.[27] The decision demonstrates that even for the gravest offences, punishment cannot be imposed arbitrarily. The court must consider the circumstances of the crime and the offender before deciding whether the extreme punishment of death is justified. This approach is consistent with the Just Deserts Theory because it requires the punishment to be justified by the seriousness of the offence and the offender's culpability.

In Machhi Singh v. State of Punjab, the Supreme Court further explained the application of the rarest-of-rare principle and discussed circumstances relevant to determining whether the death penalty is warranted.[28]Although the judgment is particularly associated with capital sentencing, it illustrates the importance of evaluating the gravity and circumstances of an offence before imposing punishment.

Another significant decision is State of Punjab v. Prem Sagar, where the Supreme Court recognised the difficulty of sentencing in the absence of a comprehensive statutory sentencing framework and emphasised the need for a principled approach to sentencing discretion.[29] Similarly, in Soman v. State of Kerala, the Supreme Court discussed proportionality, deterrence and the need to consider the relevant circumstances while determining an appropriate sentence.[30] These decisions support the view that sentencing should not be arbitrary and that the punishment must be justified by the nature of the crime and the offender's culpability.

Therefore, in India, the Just Deserts Theory operates mainly as an underlying principle of proportionate and reasoned sentencing rather than as a fully codified theory. Its application is influenced by statutory punishment limits and judicial discretion. A major challenge is the absence of a single, comprehensive sentencing-guideline framework applicable across offences, which can contribute to differences in sentences imposed in comparable cases.

[27] Supra note 2
[28] Supra note 20
[29] Supra note 3
[30] Supra note 5

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ROLE OF THE JUDICIARY IN SENTENCING

The judiciary plays a central role in the criminal justice system because sentencing is the stage at which the court determines the appropriate legal consequence for an offence after conviction. The judge must ensure that the punishment is lawful, proportionate to the seriousness of the offence, consistent with the principles of justice and appropriate to the circumstances of the offender. Sentencing is not merely the imposition of imprisonment or a fine, it requires a careful balance between the rights of the accused, the interests of victims, the protection of society and the objectives of criminal justice.

In India, the United Kingdom and the United States, the judiciary exercises sentencing powers within the limits prescribed by law. Although the scope of judicial discretion differs among these jurisdictions, judges are expected to provide reasoned decisions, avoid arbitrary punishment and consider the relevant circumstances of each case. The judiciary therefore acts as both the authority responsible for imposing punishment and a safeguard against excessive, discriminatory or unjust sentencing.

- **Determining an appropriate and proportionate sentence**

One of the primary functions of the judiciary is to determine a sentence that is proportionate to the seriousness of the offence and the offender's culpability. The punishment should reflect the harm caused, the offender's intention, the degree of participation and the circumstances surrounding the commission of the crime. A sentence that is excessively harsh may violate principles of fairness, while an unduly lenient sentence may undermine public confidence in the justice system.

In State of Punjab v. Prem Sagar, the Supreme Court of India highlighted the difficulties arising from the absence of comprehensive sentencing principles and the variations in punishment imposed in similar cases.[31] The decision illustrates the importance of a principled judicial approach to sentencing. Similarly, in Soman v. State of Kerala, the Supreme Court discussed proportionality and the need to consider relevant factors, including the seriousness and circumstances of the offence, when determining punishment.[32] These decisions demonstrate that judicial discretion must be exercised according to established legal principles rather than personal opinion.

- **Considering aggravating and mitigating circumstances**

[31] Supra note 3
[32] Supra note 5

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The judiciary must examine the circumstances that may justify a more severe or a more lenient sentence. Aggravating circumstances may include the seriousness of the harm, deliberate planning, abuse of a position of trust and the vulnerability of the victim, where relevant under the applicable law. Mitigating circumstances may include the offender's age, limited role, personal circumstances, genuine remorse and prospects of rehabilitation, depending on the offence and governing sentencing rules.

The purpose of considering these circumstances is to ensure that sentencing is individualised rather than automatic. Two people convicted of the same offence may have different levels of culpability or different legally relevant circumstances, which may justify different sentences within the limits of the law.

In Bachan Singh v. State of Punjab, the Supreme Court of India held that the death penalty should be imposed only in the "rarest of rare" cases, after considering the circumstances of both the crime and the offender.[33] This decision demonstrates the judiciary's responsibility to carefully evaluate aggravating and mitigating factors before imposing the most severe punishment.

- **Individualised sentencing**

The judiciary must consider the individual circumstances of the offender while determining an appropriate sentence. This principle recognises that punishment should not be imposed mechanically merely because two offenders have been convicted of the same offence. The judge may need to consider the offender's age, previous criminal record, degree of participation, personal circumstances and prospects of rehabilitation, insofar as these factors are legally relevant.

Individualised sentencing is particularly important in cases involving children in conflict with the law, first-time offenders and offenders whose circumstances indicate that rehabilitation may be appropriate. At the same time, individualisation does not permit a judge to disregard the seriousness of the offence or the statutory limits on punishment. The judiciary must balance the circumstances of the offender with the need for accountability, public safety and justice for victims.

- **Ensuring consistency and avoiding sentencing disparities**

Another important role of the judiciary is to promote consistency in sentencing. If different courts impose significantly different punishments for similar offences without adequate justification, public confidence in the justice system may be weakened. Judicial precedents, statutory sentencing provisions and sentencing

[33] Supra note 2

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guidelines help judges reach decisions that are consistent while allowing them to account for the particular facts of each case.

In India, State of Punjab v. Prem Sagar is significant because the Supreme Court recognised concerns about variations in sentences and the need for a principled approach to sentencing.[34] In England and Wales, section 59 of the Sentencing Act 2020 requires courts to follow relevant sentencing guidelines unless doing so would be contrary to the interests of justice.[35]

These approaches demonstrate that the judiciary has a responsibility to ensure fairness and consistency without treating every case as identical.

- **Giving reasons for the sentence**

A judge must explain why a particular sentence is appropriate. Reasoned sentencing demonstrates that the court has considered the relevant facts, applied the law and arrived at a decision based on legally relevant considerations. It also helps the accused understand the punishment, enables appellate courts to review the decision and strengthens public confidence in the administration of justice.

The requirement to give reasons is especially important when the court departs from a relevant sentencing guideline or imposes a sentence that may appear unusually severe or lenient. It helps ensure that judicial discretion remains accountable and transparent.

- **Protecting the rights of the accused**

The judiciary must ensure that sentencing takes place in accordance with the Constitution, statutory law and the principles of a fair trial. A person should not receive punishment beyond that authorised by law, and sentencing decisions must not be influenced by discrimination, prejudice or irrelevant considerations. The court must also respect applicable procedural safeguards and the legal rights of the convicted person.

- **Protecting victims and considering society's interests**

The judiciary must consider the legitimate interests of victims while imposing a lawful and proportionate sentence. Depending on the applicable law, this may include considering the harm suffered by the victim, ordering compensation or restitution, and ensuring that the sentence recognises the seriousness of the

[34] Supra note 3
[35] Sentencing Act 2020 (UK), s. 59.

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offence. However, the punishment must be determined according to law rather than solely by public pressure or a demand for revenge.

The judiciary must also consider public protection and the prevention of future crime.

- **Promoting rehabilitation and reducing reoffending**

The judiciary also contributes to rehabilitation by selecting appropriate non-custodial sentences, probation-related measures or other legally available interventions where the circumstances and statutory framework permit them. Rehabilitation aims to address factors contributing to offending and to support the offender's lawful reintegration into society. It may also help reduce reoffending and improve long-term public safety.

However, rehabilitation does not mean that every offender should avoid imprisonment. The court must consider the seriousness of the offence, the risk posed to the public, the legal requirements for the available sentences and the prospects of successful rehabilitation. The judiciary's responsibility is to impose a sentence that is just and appropriate in the particular case, rather than automatically favouring either imprisonment or leniency.

- **Exercising appellate review and correcting sentencing errors**

Higher courts play an important role in reviewing sentences imposed by lower courts. Where the law permits an appeal, an appellate court may examine whether the sentence is illegal, disproportionate, based on an error of law, or affected by an improper exercise of judicial discretion. Depending on the applicable procedure and the facts, the appellate court may uphold, reduce, increase or otherwise modify the sentence within its lawful powers.

Appellate review helps maintain consistency, correct errors and ensure that sentencing principles are applied properly. It also provides an important safeguard against arbitrary punishment. Nevertheless, appellate courts must exercise their powers according to the relevant statutory framework and established principles governing interference with sentencing decisions.

16. CONCLUSION

Sentencing is an essential component of the criminal justice system because it determines the consequences of criminal conduct and reflects society's response to wrongdoing. A fair sentencing system must ensure that punishment is lawful, proportionate and supported by clear reasons. Proportionality requires the

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severity of punishment to correspond to the seriousness of the offence and the culpability of the offender. Individualised punishment requires the court to consider the particular circumstances of the offence and the person convicted. The Just Deserts Theory emphasises that punishment should reflect the wrongdoing committed, rather than being imposed arbitrarily or excessively.

Ultimately, the success of a sentencing system should not be measured solely by the severity of the punishment imposed. It should be measured by whether the sentence is legally justified, proportionate to the offence, responsive to the individual circumstances of the case and consistent with the principles of justice. A balanced approach can protect society, recognise the harm suffered by victims, respect the rights of offenders and strengthen public confidence in the criminal justice system.

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