

## **ISSUES CONCERNING SENTENCING POLICY IN INDIA**

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### **ABSTRACT**

Sovereign States do have the obligation to promote respect for observance of rule of law, maintain peace and order in a manner conducive to the enjoyment of human rights by all the people.<sup>1</sup> States can discharge this obligation by adopting necessary measures, such as legislative, executive and judicial. However, such measures would be incomplete in the absence of apposite preventive and punitive steps contained in them to either forbid or rectify wrongful actions of the individuals. In addition, it is necessary to understand that wrongful actions are capable of striking other subjects of the society or the society as a whole. Thus, it becomes the duty of the State to apprehend the person guilty for such wrongful action or invasion, and then subject him/her to fair trial and if found guilty to punish him/her in accordance with the rule of law. At the same time, efforts are needed to balance the pulls and pressures between the idea of giving exemplary punishment and its proportionality. As a result, in this context, sentencing becomes an important area under criminal law that not only comes to the forefront but also undoubtedly needs attention, as there are many issues associated with it. This article attempts to expound some of the important issues concerning sentencing policy in India in the light of judicial remarks.

### **FUNDAMENTALS OF SENTENCING**

Sentencing, usually, is understood as one of the most vital aspects of the penal laws which is believed to be a most powerful and invasive technique of the State.<sup>2</sup> This is because, sentencing is not only significant for the accused before the Court but also for his family, friends, the victim/s of the crime, and the society or community as a whole. Besides, it is appropriate to

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<sup>1</sup> Dr. Justice V.S. Malimath, Committee on Reforms of Criminal Justice System has asserted that the chief responsibility of the State is to maintain law and order and consequently the citizens can enjoy peace and security and the same is internationally recognised as a Human Right. See Dr. Justice V.S. Malimath, Committee on Reforms of Criminal Justice System, Report Volume I, March 2003, p. 23, available at [http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf)

<sup>2</sup> Mirko Bageric, *Punishment and Sentencing: A Rational Approach*, (London: Cavendish Publishing, 2001), p.3

perceive sentencing as an idea that is dependent on moral and social values existing in a given society at a given point of time. Indeed, it is believed that the fundamental validation of any criminal justice delivery system is determined based on the kind of punishment given for various offences.<sup>3</sup> Therefore, it must be just and proportional.

In India, “The bulk of the criminal justice system is formed by the substantive Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act... The Indian Penal Code is also supplemented by a number of special and local laws-legislation varying from anti-terror laws to those protecting civil rights to those preventing cruelty to animals and so on...”<sup>4</sup> .<sup>5</sup> At the same point of time, it is important to note “...Substantive penal laws can be effective only when the procedural laws for enforcing them are efficient.”<sup>6</sup> This in essence is the function of the criminal justice system.

However, questions concerning which actions or omissions are punishable, who is to be punished with what kind of punishment or extent of punishment requires contemplation of many aspects including the consideration of law in force, role of offender in commission of the offence, nature or severity of the offence, availability of evidence against the accused, appreciation of such evidence by judicial officers, criminal antecedents of the offenders, and statements of witnesses. Therefore, sentencing is one of the difficult tasks that a judge may be facing.<sup>7</sup> According to Justice R.C. Lahoti “a judge while passing a sentence has also to be sociologist, psychologist, socio-therapist and administrator at all times. Above all, he has to be humane. Justice knows no friends and has no foes. While law has to be administered with a hard hand, justice cannot be divorced from mercy.”<sup>8</sup> This would suggest that sentencing is quite a challenging task for the judge and that he discharge this responsibility judiciously.

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<sup>3</sup> R. Niruphama, *Need for Sentencing Policy in India*, Calcutta Research Group, available at [www.mcrg.ac.in/Spheres/Niruphama.doc](http://www.mcrg.ac.in/Spheres/Niruphama.doc)

Kalpana Kannabiran, and Ranbir Singh, *Challenging The Rules(s) of Law: Colonialism, Criminology and Human Rights in India*, (New Delhi: SAGE Publications India Pvt. Ltd., 2008), p.411

<sup>5</sup> Many times deprivation of right to property leads to invasion of personal liberty. Therefore, the State discharges the obligation to protect life, liberty and property of the citizens by taking suitable preventive and punitive measures which serve the object of preventing private retribution so essential for maintenance of peace and law and order in the society.

See Dr. Justice V.S. Malimath, Committee on Reforms of Criminal Justice System, Report Volume I, March 2003, p. 23, available at

[http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf)

<sup>6</sup> *Ibid.*

<sup>7</sup> Firstly because the consequences of sentence are high, and secondly due to substantial conflicting pressure upon the sentencing judge. See, Julian V. Roberts and David P. Cole, *Making Sense of Sentencing*, (Toronto: University of Toronto Press, 1999), p.4.

<sup>8</sup> Mahendra K. Sharma, *Minimum Sentencing for Offences in India: Law and Policy*, (Delhi: Deep and Deep Publications, 1999), cover page.

The Constitution of India being the fundamental law of the State has conferred the power upon both the Central and the State governments to make laws concerning regulation of crimes, enactment of criminal procedure, and preventive detention laws.<sup>9</sup> Arts. 13, 14, 20 and 21 of the Constitution of India limits and governs the legislative power of the Legislatures.<sup>10</sup> Penal laws must be clear and certain besides being reasonable, just, and fair. Arts. 72 and 161 of the Constitution of India confers upon appropriate Executives the powers to pardon, respite, remit or commute sentences. Lastly, it is important to note that power to pass a sentence must be granted by the law, which is usually vested in judiciary, and the same must be exercised in accordance with the law. The legality and correctness of the sentence passed by the lower judiciary may be challenged before the higher courts as recognised by the penal laws.

### **“WHAT AND WHY ASPECTS” OF SENTENCING**

Usually, it is the systems under the law through those offenders are punished. Sentencing is that stage of criminal justice system where the actual punishment of the convict is decided by the judge.<sup>11</sup> Thus, sentencing and punishment are inextricably linked.<sup>12</sup> Punishment is primarily used as a method of protecting society by reducing the incidence of criminal behaviour<sup>13</sup> and to suppress anti-social elements. According to theories of punishments, the purpose of punishment could be fourfold- retribution<sup>14</sup>, prevention<sup>15</sup>, reformation<sup>16</sup> and deterrence.<sup>17</sup>

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<sup>9</sup> The Constitution of India. Schedule VII, Entries 1-3 of List III. This apart, Entry 97 of List I is to be read with Article 248.

<sup>10</sup> State shall not make any law inconsistent with fundamental rights (Article 13 (2)), State shall not deny to any person equality before law and equal protection of laws within the territory of India (Article 14), Right against conviction except for violation of law and right against subjection to higher penalty than provided in the law that prevailed at the time of commission of the offence, protection against prosecution and punishment for the same offence more than once and protection from retroactive criminal laws, and protection from compulsion to be a witness against himself (Article 20 (1) to (3)) and no deprivation of right to life and personal liberty except according to procedure established by law (Article 21) .

<sup>11</sup> R. Niruphama, *Supra* note 3.

<sup>12</sup> Richard Edney & Mirko Bagaric, *Australian Sentencing*, (New York: Cambridge University Press, 2007), p.378.

<sup>13</sup> Mahendra K. Sharma, *Supra* note 6.

<sup>14</sup> In primitive society, punishment was mainly retributive. The person wronged was allowed to have revenge against the wrong doer. The principle of ‘an eye for an eye’, ‘a tooth for a tooth’, ‘a nail for a nail’, ‘limb for limb’ was the basis of criminal administration.

<sup>15</sup> In Preventive theory, offenders are disabled from repeating the crime by awarding punishments, such as death, exile or forfeiture of an offence. By putting the criminal in jail, he is prevented from committing another crime.

<sup>16</sup> Reformation theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. The idea behind this theory is that no one is born criminal and criminals are also humans. Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens.

<sup>17</sup> The object of Deterrent theory is not only to prevent the wrong-doer from doing a wrong the second time, but also to make him an example to others who have criminal tendencies.

Under the Indian Penal Code 1860, the following categories of punishments<sup>18</sup> are prescribed in order of gravity of the offence<sup>19</sup>: (1) Death; (2) Life Imprisonment; (3) Imprisonment, rigorous with hard labour or simple; (4) Forfeiture of Property; and (5) Fines.<sup>20</sup> The death penalty may be imposed, *inter alia*, for the following offenses: (1) waging or attempting to wage war or abetting the waging of war against the Government of India<sup>21</sup>; (2) abetting a committed mutiny<sup>22</sup>; (3) giving or fabricating false evidence upon which an innocent person suffers death<sup>23</sup>; (4) murder<sup>24</sup>; (5) abetting the suicide of a minor or an insane or intoxicated person<sup>25</sup>; and (6) Dacoity accompanied by murder<sup>26</sup>. The Criminal Law amendment Act 2013 must be borne in mind in this context as it has introduced many changes into IPC.<sup>27</sup> Life imprisonment<sup>28</sup> may be imposed for such crimes as violence; causing an illicit miscarriage; criminal breach of faith by a public official, banker, merchant, or agent; and habitually dealing in stolen goods. Large number of the statutes provide for Imprisonment. There are two types of imprisonment: rigorous<sup>29</sup> and simple<sup>30</sup>. Exemplary deterrent sentences still are imposed commonly for such offenses as abuse of public trust, sexual deviance, and adulteration of food. In India, white-collar crime has been defined as that committed by persons of respectability and high social status in the course of their occupation. These include tax evasion, usury<sup>31</sup>, hoarding, profiteering, bribery and corruption, and election malpractices, among others. Substantial steps have been taken in the area of reformatory sentences. The probation of

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<sup>18</sup> Six kinds of punishment were described in the original Indian Penal Code. In the year 1949 the third punishment "Penal Servitude" was removed. Now there are five kinds of punishment under I.P.C.

<sup>19</sup> Section 53 of the IPC prescribes five types of punishments to be meted out to a person convicted of a crime under the Code, depending on the nature and gravity of the offence

<sup>20</sup> The Indian Penal Code, 1860, Sections 53 to 75.

<sup>21</sup> *Ibid*, Section 121.

<sup>22</sup> *Ibid*, Section 132.

<sup>23</sup> *Ibid*, Section 194.

<sup>24</sup> *Ibid*, Section 302.

<sup>25</sup> *Ibid*, Section 305.

<sup>26</sup> *Ibid*, Section 396.

<sup>27</sup> Such as public servant's liability and making throwing of acid an act punishable and has also addressed on the issue of rape by public servant, gang rape, etc.

<sup>28</sup> Before 1955, the words "transportation for life" was used. The Code of Criminal Procedure Amendment Act, 1955 (Act No. 26 of 1955) substituted the words "Imprisonment for life" in place of "transportation for life"

<sup>29</sup> In rigorous imprisonment, the convicted person is put to do hard labour such as digging earth, cutting stones, agriculture, grinding corn, drawing water, carpentry, etc. The offenders imposed with hard labour shall be paid minimum wages. Eg: House- trespass under Section 449 of IPC; fabricating false evidence with intent to procure conviction of an offence which is capital by the Code (Sec. 194); etc.

<sup>30</sup> Simple imprisonment is imposed for the lighter offences. Eg: public servant unlawfully engaging in trade or unlawfully buying or bidding for property (Sections 168-169); absconding to avoid service of summons or other proceedings, or not attending in obedience to an order from a public servant (Sections 172-174); to obstruct traffic or cause public nuisance; eve-teasing, drunken brawls, etc.; refusing oath when duly required to take oath by a public servant (Section 178); wrongful restraint (Sec. 341); defamation (Sec. 500) etc

<sup>31</sup> The act of lending money at an exorbitant rate of interest.

offenders Act was passed in 1958, the Children Act followed in 1960 and then the Juvenile Justice Act with its amended versions, under which the death penalty and life imprisonment is prohibited in case a convict being a child.<sup>32</sup> Forfeiture is the divestiture of specific property without compensation in consequence of some default or act of forbidden by law. The Courts may order for forfeiture of property of the accused in certain occasions.<sup>33</sup> The imposition of fines may be made in four different ways as provided in the Indian Penal Code, 1860. It is the sole punishment for certain offences and the limit of maximum fine has been laid down; in certain cases it is an alternative punishment but the amount is limited; in certain offences it is imperative to impose fine in addition to some other punishment and in some it is obligatory to impose fine but no pecuniary limit is laid down. Fines can be an effective punishment in cases of traffic offences or offences against property. However, where the offence is grave, in the sense of murder or rape or kidnapping for death etc., it is questionable whether fine can achieve the object of punishment. Another shortcoming of this form of punishment is that it pins the poor and eases the rich. The rich can easily get away by paying a huge fine while the poor may have to toil hard even to get a hundred rupees.<sup>34</sup> The sentence apportionment is left entirely to the discretion of the judges; it has been found that sentencing practices between judges are grossly disproportionate. Besides, the Cr.P.C. 1973 provides for wide discretionary powers to

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<sup>32</sup>M.K.Chawla, Sentencing Structure and Policy in India, available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=41783>

<sup>33</sup> In white collar crimes, and where a Government employee or any private person accumulates black money and black assets, and there is no genuine answer and proof for such money and properties with such person, the Court may award for forfeiture of property. In cases of smugglers, goondas, anti-national personalities, etc., the Government or the Courts are empowered to forfeiture of property of such anti-social elements.

<sup>34</sup> <http://www.sascv.org/ijcjs/angira.html>

the judge once the conviction is determined. Ss.235,<sup>35</sup> 248,<sup>36</sup> 325,<sup>37</sup> 360,<sup>38</sup> and 361<sup>39</sup> of Cr.P.C. deal with sentencing. S.235 is a part of Chapter 18 dealing with a proceeding in the Court of

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<sup>35</sup> The Criminal Procedure Code, 1973, Section 235 of. provides for judgment of acquittal or conviction. (1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case. (2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.

<sup>36</sup> 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 325 or section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law. (3) Where, in any case under this Chapter, a previous conviction is charged under the provisions of sub-section (7) of section 211 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).

<sup>37</sup> Procedure when Magistrate cannot pass sentence sufficiently severe. (1) Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate. (2) When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate. (3) The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.

<sup>38</sup> Order to release on probation of good conduct or after admonition. (1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is- convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such Magistrate, who shall dispose of the case in the manner provided by sub-section (2). (2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken. (3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860 ), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition. (4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision. (5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided

Session. It directs the judge to pass a judgement of acquittal or conviction and in case conviction to follow S. 235 (2) that gives the procedure to be followed in cases of sentencing a person convicted of a crime.<sup>40</sup> Section 416 of Cr.P.C. provides for postponement of capital sentence on pregnant woman.<sup>41</sup>

Most offences under the Indian criminal law were created by Statute and have a statutory maximum penalty. For the purposes of trial, offences were divided into different categories, offences triable by indictment (warrant cases) or offences triable only summarily, or offences triable either way. The most serious offences (eg: murder, rape) are triable only on indictment, at the Sessions Court. A large mass of less serious offences are triable only summarily, in magistrates' courts. The middle category of offences triable either way and comprises of mostly burglaries, thefts and frauds.<sup>42</sup> Yet, sentencing is a crucial strategy of criminal law in achieving social defence and re-socialization of the delinquents.<sup>43</sup>

## ISSUES ASSOCIATED WITH SENTENCING SYSTEM IN INDIA

From the preceding section, it would be clear that there are number of issues that require government's attention. The High Court of Delhi<sup>44</sup> while considering a matter for confirmation of death sentence conceded that there is glaring lack of a sentencing policy in India and

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that the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted. (6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section. (7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions. (8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension. (9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence. (10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.

<sup>39</sup> Special reasons to be recorded in certain cases. Where in any case the Court could have dealt with,-

(a) an accused person under section 360 or under the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or (b) a youthful offender under the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment the special reasons for not having done so.

<sup>40</sup> *Supra* note 38.

<sup>41</sup> If a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if thinks fit commute the sentence to imprisonment for life.

<sup>42</sup> Andrew Ashworth, *Sentencing and Criminal Justice*, 5<sup>th</sup> edn., (New York: Cambridge University Press, 2010), p.1

<sup>43</sup> K.D.Gaur, *Criminal Law and Criminology*, (New Delhi: Deep & Deep Publications, 2002), 851

<sup>44</sup> *State v. Raj Kumar Khandelwal*, date of judgment 08 May 2009

observed that, “for certain offences a minimum sentence is prescribed with a cap in so far as the maximum. For some offences, an upper limit of sentence is prescribed, leaving the minimum, at the discretion of the Court, which may be a single day. To somewhat mitigate the problem of sentencing, the principle of proportion between crime and punishment, requiring the Judge to prepare a balance sheet of mitigating and aggravating circumstances and after balancing the two, awarding an appropriate sentence have been evolved over the period of time. We note various decisions on the point, each bringing out a circumstance or two; listing out the same to be aggravating or mitigating.”<sup>45</sup>

These observations would reveal that much needs to be done in this area. Many scholarly writings on this subject assert that the lawmakers should legislate even on such areas wherein the quantum of punishment to be meted out of the offence is prescribed. In fact, most criminal law provides the minimum and maximum amount of punishment/fine that is to be imposed in various situations. However, complete objectivity in this regard is also not permissible. No two cases would have the same grounding in criminal law. This is because the circumstances surrounding the commission of the offence, the presence of aggravating and mitigating factors could vary from one case to another and this would mean that they call for different punishments. It is observed that the net result is that sentencing policy remains a quagmire with various celebrated cases only culling out principles but continues the inability to provide a complete test to act as a guide to the judges for sentencing the convicts.<sup>46</sup>

India does not have structured sentencing guidelines that have been issued by either the legislature or the judiciary. In March 2003, the Committee on Reforms of Criminal Justice System (the Malimath Committee), a body established by the Ministry of Home Affairs, issued a report that emphasized the need to introduce sentencing guidelines in order to minimize uncertainty in awarding sentences, stating,

“[t]he Indian Penal Code prescribed offences and punishments for the same. For many offences, only the maximum punishment is prescribed and for some offences, the minimum may be prescribed. The Judge has wide discretion in awarding the sentence within the statutory limits. There is now no guidance to the Judge in regard to selecting the most appropriate sentence given the circumstances of the case. Therefore, each Judge exercises discretion accordingly to his own judgment. There is therefore no uniformity. Some Judges are lenient and some Judges are harsh. Exercise of unguided discretion is not good even if it is the Judge

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<sup>45</sup> The circumstances that are to be considered in alleviation of punishment are the following: age of the offender-minority or old age, health condition of the offender, provocation, combination of circumstances, sex of the person, state of mind, self-preservation, and antecedents.

<sup>46</sup> Supra 32/ <http://legalperspectives.blogspot.in/2009/12/sentencing-policy-thurst-of-criminal.html>



that exercises the discretion. In some countries guidance regarding sentencing option[s] is given in the penal code and sentencing guideline laws. There is need for such law in our country to minimise uncertainty to the matter of awarding sentence. There are several factors which are relevant in prescribing the alternative sentences. This requires a thorough examination by an expert statutory body.”<sup>47</sup>

The Committee advised further that, in order to bring “predictability in the matter of sentencing,” a statutory committee should be established “to lay guidelines on sentencing under the Chairmanship of a former Judge of Supreme Court or a former Chief Justice of a High Court experienced in criminal law with other members representing the prosecution, legal profession, police, social scientist and women representative.”<sup>48</sup>

In a 2007 paper on the need for sentencing policy in India, author R. Niruphama asserted that, in the absence of an adequate sentencing policy or guidelines, it comes down to the judges to decide which factors to take into account and which to ignore. Moreover, she considered that broad discretion opens the sentencing process to abuse and allows personal prejudices of the judges to influence decisions.<sup>49</sup> In 2008, the Committee on Draft National Policy on Criminal Justice (the Madhava Menon Committee), reasserted the need for statutory sentencing guidelines.<sup>50</sup> In an October 2010 news report, the Law Minister had quoted that the government is looking into establishing a “uniform sentencing policy” in line with the United States and the United Kingdom in order to ensure that judges do not issue varied sentences.<sup>51</sup>

The Supreme Court of India, in *State of Punjab v. Prem Sagar & Ors.*,<sup>52</sup> also noted the absence of judiciary-driven guidelines in India’s criminal justice system, stating, “[i]n our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts [,] except [for] making observations with regard to the purport and object for which punishment is imposed upon an offender, had not issued any guidelines.” The Court stated that the superior courts have come across a large number of cases that “show anomalies as regards the policy of sentencing,” adding, “[w]hereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where [the] same sentence is

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<sup>47</sup> Government of India, Ministry of Home Affairs, Committee on Reforms of Criminal Justice System Report 170 (Mar. 2003), available at [http://www.mha.nic.in/hindi/sites/upload\\_files/mhahindi/files/pdf/criminal\\_justice\\_system.pdf](http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf)

<sup>48</sup> *Ibid* p.171

<sup>49</sup> R. Niruphama, *Need for Sentencing Policy in India*, Calcutta Research Group, available at [www.mcrg.ac.in/Spheres/Niruphama.doc](http://www.mcrg.ac.in/Spheres/Niruphama.doc)

<sup>50</sup> <http://www.loc.gov/law/help/sentencing-guidelines/india.php>

<sup>51</sup> *Ibid*

<sup>52</sup> (2008) 7 SCC 550

imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine[s].

In *Alister Anthony v. State of Maharashtra*,<sup>53</sup> the Court held that sentencing is an important task in the matters of crime. “One of the prime objectives of the criminal law is imposition of [an] appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of [the] crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: [the] twin objective of the sentencing policy is deterrence and correction.”<sup>54</sup> What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

The Supreme Court in *Soman v. State of Kerala*,<sup>55</sup> observed the absence of structured guidelines. In addition, the court opined that 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. There are no legislative or judicially laid down guidelines to assist the trial Court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. However, in describing India’s sentencing approach the Court had also asserted that “[t]he impossibility of laying down standards is at the very core of the Criminal law as administered in India, which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment. The Court in this case cited a number of principles that it has taken into account “while exercising discretion in sentencing,” such as proportionality, deterrence, and rehabilitation. The Court also noted that, as part of the proportionality analysis, mitigating and aggravating factors should also be considered.”<sup>56</sup>

## **CRIMES COMMITTED BY JURISTIC PERSONS AND SENTENCING**

In the modern day world, juristic persons also play a tremendous role concerning several things such as providing health care service, medical treatment, supply of essential services, etc. that would have impact on the society. In their day-to-day activities, not only do they affect the lives of people positively but also many a times in a disastrous manner which come in the

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<sup>53</sup> (2012) 2 S.C.C. 648 para 69

<sup>54</sup> *Ibid.*

<sup>55</sup> (2013) 11 SCC 382

<sup>56</sup> *Ibid.*, Para 13.

category of crimes. The Indian statutes as they still make only the officials responsible for the act criminally liable and not the corporate itself.<sup>57</sup> Until now, the Courts have been able to impose only fine as a form of punishment because of statutory inadequacy and lack of new forms of punishments that could be imposed upon corporates.

The Supreme Court of India while discussing the scope and object of Section 357 Cr.P.C. in *Hari Krishnan and State of Haryana v. Sukhbir Singh*<sup>58</sup> observed that it is an important provision but the courts have seldom invoked it, perhaps due to the ignorance of the object of it. It empowered the courts to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of the accused. It may be noted that this power of the Court to award compensation is not ancillary to other sentences but is in addition thereto. However, since Section 357 (1) is subject to some limitations<sup>59</sup> it should be categorized as a separate form of punishment itself which is not dependent on the quantum of fine or constitutional provisions.

## **CONCLUSION**

From the above discussions, it follows that there are several issues concerning sentencing policy in India of which tackling subjective judicial determinations of sentencing is prominent and it requires the attention of the Legislatures and Judiciary as well. Though establishing objectivity in sentencing is a difficult task it must be attempted by the Legislature by considering the existing challenges in the present legal system. Judicial guidelines could be an immediate solution to the problem but it must be supplanted by the legislative incorporations at the earliest.

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<sup>57</sup> See the Indian Companies Act, 1956, Sections. 45, 63, 68, 70 (5), and 203 of wherein only the officials of the company are held liable and not the company itself; it is also reflected through the Takeover Code or Rules of Attribution. The various sections of the IPC that direct compulsory imprisonment does not take a corporate into account since such a sanction cannot work against the corporation.

<sup>58</sup> AIR 1988 SC 2127.

<sup>59</sup> 1. Compensation to victims can be awarded only when substantive sentence is imposed and not in cases of acquittal. 2. Quantum of compensation is limited to the fine levied and not in addition to it or exceed the fine imposed. 3. Compensation can be ordered only out of fine realized and if no fine is realized, compensation to victim cannot be directed to be realized. 4. In very rare cases under IPC, the maximum amount of fine is imposed. Moreover, the maximum fine as prescribed in IPC amount 150 years back is now inadequate in terms of real losses to victims. 5. Compensation to victim under this section can be allowed by the court if it is of the opinion that the compensation is recoverable by such person in a Civil Court.