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Lenient Sentencing: A Comparative Analysis

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ABSTRACT

Deterrence or Reformation? This is a question as old as criminology and penology itself. Answering this question is not only tricky, but is seemingly impossible. On the one hand, deterrence prevents further commitment of offences, or at least aims to, by means of imposition of harsh sentences; whereas reformation on the other hand, tends to be much more lenient with the object of reforming the perpetrator of offence. Whereas there are instances of unimaginably harsh sentences being imposed in the name of deterrence, the instances of unreasonably lenient sentencing for progressing the reformative mindset clearly outnumber them. These lenient sentencing may be politically motivated, or reflective of the ideology of the presiding judge, or even warranted by the existence of certain factors which are 'mitigative' in nature; yet the consequences of such leniency are visible in the society. Retribution is often ignored in the name of reformation, which is not necessarily wrong, but could amalgamate into it. In light of this, a uniform pattern of sentencing is required to be done by the Courts, balancing all three aspects: Reformation, Retribution, and Deterrence. Sentencing, however, is a judicial act which cannot be dictated by an algorithm, meaning whereby, that uniformity rests on the shoulder of judges, and not the legislatures of the State. Although it is seemingly imperative for uniform sentencing guidelines to exist, there exist inherent conundrums which can only be found either by close inspection, or practical application. One such factor is construing 'aggravating' and 'mitigating' factors, which often are the determinants of harshness or leniency of sentencing. A straitjacket formula to construe such factors cannot exist; and if it does, it might be even more ineffective than the absence of the same. The need of the hour is uniformity in sentencing for protection of the rights of the accused, the victim, as well as the society; the only question is how?

I. INTRODUCTION

Principles of Criminal jurisprudence and criminology have been developed through years of primary, secondary, and empirical research, as well as philosophical thesis. Through all this, 'deterrence' and 'retribution' have been identified to be the major factors in determination of the sentence of the individual. Deterrence is that aspect of the sentence that is intended

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towards two outcomes; *firstly*, to prevent the individual from committing the same (or any other) offence again. And *secondly*, to be exemplary towards the other members of the society to discourage them from committing any offence as well. Retribution is best defined by the phrase "an eye for an eye". It is believed to be a payment to the society in lieu of the mal effect of the ill acts committed by the individual.

Even though sentencing is a judicial act, it is, before that, a human act. The Hon'ble Supreme Court of India has noted on multiple occasions that human factor cannot be removed from the act of sentencing. But this human factor seldom raises doubts because what makes us human are our mistakes and imperfections. Human factor sometimes leads to 'lenient sentencing'.

Lenient sentencing is when an extraordinarily low punishment is awarded for an act which is generally either governed by minimum sentencing rule, or a practice of the Court to award a certain minimum punishment. This could either be a result of bias, overtaking emotions, or simply an error in judgment of the gravity of the offence.

In any scenario, such leniency is a threat to social *status quo* and could result in an increase in social deviance, and by extension in crime itself. It is for this reason that this term paper shall comparatively evaluate the disadvantages of lenient sentencing and the exceptional cases wherein this could be permitted.

II. COMPARISON WITH SENTENCING IN FOREIGN JURISDICTIONS

The Supreme Court of India in *Ajahar Ali v. State of West Bengal*[2]noted that a sentence of 6 months Simple Imprisonment for offences under Section 354A, 354B, 354C, 354D is too lenient. Furthermore, placing reliance on *Karamjit v. State of Punjab*[3] also concluded that accused is not entitled to the benefit under Probation of Offenders Act.[4] The accused had also previously been convicted of offences under Section 354A for which he was awarded benefits under the Probation of Offenders Act by virtue of being only 20 years of age.

In USA, Brian Valera was sentenced to only 34 months (14 months suspended) imprisonment (whereby meaning effectively 20 months imprisonment), for being guilty of Manslaughter, Rape, and Unlawful disposal of human remains.[5] The State Supreme Court of the State of Washington rejected the appeal of the victim's family to conduct retrial on grounds of protection against double jeopardy. Brian Valera shouted to victim's older sister and friends,

[2] 2013 (10) SCC 31.
[3] 2009 (7) SCC 178.
[4] Probation of Offenders Act, Act 20 of 1958.
[5] Kristine Phillips, *He raped a teenager as she was dying of an overdose. His sentence: 34 months.*, THE WASHINGTON POST (Apr 23, 2021, 04:21 PM) https://www.washingtonpost.com/crime-law/2018/11/20/he-raped-teenager-she-was-dying-an-overdose-his-sentence-months/

"See you soon, sweethearts"[6] after his sentence.

These two scenarios reflect the issues with lenient sentencing and how leniency in sentencing can lead to a greater chance in multiple offences in the future. A study also showed that people who got away with offences as post-pubescent adolescents, reflected a higher tendency to commit similar offences as adults.[7]

It is for these reasons that throughout centuries 'deterrence' has been established to be a factor necessarily required to be incorporated in the decision making of sentencing. Deterrence not only sets an example toward the society that a particular act is taken seriously by law and no deviation of any level is permitted, it also prevents the individual from committing another offence in the future.

"Deterrence is a step towards restoration"

-Justice Samuel Alito (Former Associate Justice, US Federal Supreme Court)

III. BALANCING RIGHTS

Sentencing is a judicial decision. And every judicial decision is an evaluation of Rights and Duties of the parties. Similarly, sentencing also needs to be a decision which balances the rights of all effected parties. The difference is, in sentencing, there are not two but three parties. Firstly, the accused: who has been alleged to have committed an offence under a law in force, Secondly, the victim: who has suffered damages or injury or both as a consequence of such unlawful act (or sometimes omission), and Lastly, the Society at large: whose conscience has been stricken, and it is threatened by similar actions in future.

The first point of balance must be towards the accused and he shall not be sentenced to unreasonably harsh punishment for the wrong reasons. His sentence must be determined by the gravity of his actions. He shall not be subjected to any punishment not mandated by a law in force and his innocence must be assumed until guilt is proven. Whilst sentencing him after establishing the commission of an offence, he must receive the benefits of *'Mitigating circumstances'*[8] which might have caused him to act irrationally.

Secondly, the victim must be imparted with wisdom and restitution. Justice must not only be done but seen to be done. The harm might be irreversible, but retribution towards the perpetrator is owed to the victim, and this must be complied with. The class, caste, or any other social symbols must play no role in determination of sentencing.

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[6] *Id.*
[7] Nagel, I., & Hagan, J. (1983). Offense Patterns and Criminal Court Sanctions. Crime and Justice, 4, 91-144.
[8] Santosh Kumar Santibhushan Bariyar v. State of Maharashtra, 2009 (6) SCC 498.

Lastly, the society's interest must be given importance. The sentence must not be so irrational that it is seen as inhumane by the society and must be in conformity with societal standard of punishment. On the other hand, it must be harsh enough to impart trust in the society that offenders will face retribution. Sentence must also be a deterring agent to prevent the same individual or any other individuals from affecting the rights and conscience of the society as a whole, as well as its individual members.

IV. LIMITATIONS AND CRITICISM

Sentencing must not be lenient. But on the other hand, it must not also be too harsh. If lenient sentencing germinates fear that the society is not safe from offenders, very harsh sentencing germinates distrust that the judicial bodies are not taking the individual liberties seriously. Too lenient as well as too harsh sentencing can become the cause of social disruptions such as protests.

Whereas lenient sentencing is perceived as bias favouring the accused, harsh sentencing is viewed as bias against the offenders. In 2016, two men in USA were found guilty of sexually assaulting their daughters. The native American Caucasian male was sentenced to 16 months in prison, whereas the African American man was sentenced to the equivalent of approximately 1500 years[9] by means of multiple life sentences. These cases are simultaneously an example of too lenient and too harsh sentencing at the same time. Judges sometimes fail to take into note the aggravating or mitigating circumstances.

The judicial bodies need to command trust of the society. Even though judiciary is independent of general opinion, but it exists to protect for two fundamental reasons: evaluating individual rights, and protecting the societal conscience as a whole. A distrust in the functioning of judicial bodies results in non-registration of complaints, and attempting to resolve conflicts outside the ambit of judiciary. The latter might be a good thing if done in accordance with the established law and being answerable to judicial bodies (example: Arbitration, Mediation, Conciliation etc.) but if individuals take punitive actions after deciding the merits of the case without the backing of law, it takes an ugly picture. It results in honour killings and mob lynching. What are the reasons for judiciary to exist if such actions are permitted to be normalised?

[9] Kristine Phillips, *Two fathers raped their daughters. One got 60 days in jail. The other? 1,503 years in prison,* THE WASHINGTON POST (Apr 23, 2021, 04:21 PM) https://www.washingtonpost.com/news/true-crime/wp/2016/10/24/two-fathers-raped-their-daughters-one-got-60-days-in-jail-the-other-1503-years-in-prison/

V. SUGGESTED CHANGES

Unorderly leniency and harshness both are a result of human factor of decision making in sentencing. This factor, however, is extremely important. Sentencing cannot be an entirely robotic process wherein an algorithm determines the sentence of an individual.

So, what is the solution?

The possibly resolution that can be possibly fathomed is striking a balance between the scientific methods and human factor in sentencing. Whereas there must be minimum sentencing laws in place for offences, but judges must be awarded the discretion (but not prerogative)[10] to, in certain exceptional circumstances, abstain from these minimum sentencing rules and use their wisdom in determining the sentence after taking into note the mitigating and extenuating circumstances.

Without this, an only scientific method where the statute provides for strict rules for sentencing and leaves no scope for discretion will not allow for taking into note the mitigating or extenuating circumstances and would not be rational. It will not do justice to all the parties who hold a stake in the outcome of the trial.

On the other hand, a totally unsupervised unwarranted power to the trial court judges to sentence as they see fit would leave a huge scope for personal bias. These biases are sometimes subconscious and not actively intended, they are still equally harmful.

Therefore, the only solution is a combination of both, leaving judges with limited discretion, but which is enough to incorporate the interests held by all three parties.

VI. CONCLUSION

Sentencing is the determination of the punishment which must be awarded to the perpetrator of the offence after establishing his guilt. Such sentencing needs to incorporate the interests of all three parties which hold a stake in the outcome of the trial: the accused, the victim, and the society at large. It apparently seems that human factor in the decision of determining punishment is the cause of leniency and unorderly harshness and it might seem that removal of such discretion should be the best way to deal with the scenario. But this is not so the case. The mitigating and extenuating circumstances doctrine requires a humanly evaluation of the facts of the case. The intent which is an essential of a crime, has several levels. And in these levels, there are further degrees. Sentencing is not only a retribution for the crime but also a

[10] Discretion is inherently an exercise wherein the decision made is required to be based on reason, and accepted principles of law. On the other hand, prerogative is when there is no such requirement and the person is furthermore not answerable to anyone. Prerogatives have been held to be unconstitutional.

form of deterrence and a symbolic safeguard for society from criminal minded individuals who pose a threat to life and liberty to the members of the society. For this reason, an evaluation of the intent of the mind is necessary. An irrational harsh punishment to the offender germinates distrust towards the impartiality of the justice system and lenient sentencing is seen as a sign of failing legal systems. And when the public either does not trust the judicial bodies to be impartial, or believe that they cannot do justice by them, people tend to take matters into their own hands and argue that if we cannot be awarded our rights, we will snatch them. And by snatching of their rights, they generally mean honour killings, mob lynching, or publicly defaming. The judicial body must strive to prevent these and it would be a huge impairment if it becomes the cause of it.

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