

Reforming the Sentencing Policy in India: A Critical Study of Punishment, Proportionality, and Judicial Discretion

Dr Parag Mukherjee

LL.M.-Ph.D. (Law)

High Court, Calcutta

Abstract: India is among the few major criminal justice systems that prescribe punishments in statute yet offer almost no structured guidance on how courts should choose between them. Penal provisions fix an outer limit, and sometimes a floor, but the actual determination of sentence rests largely on the unstructured discretion of individual judges. This article critically examines that arrangement. It traces the theoretical foundations of punishment, assesses the constitutional principle of proportionality, reviews the leading judicial pronouncements on capital and life sentences, and evaluates the effect of mandatory minimum sentences. It argues that the absence of a statutory sentencing framework has produced inconsistency, opacity and, in capital cases, arbitrariness that the Supreme Court itself has acknowledged. The article concludes by proposing a calibrated reform: a statutory Sentencing Commission, structured guidelines that preserve judicial discretion within reasoned bounds, a mandatory and separate sentencing hearing, and the rationalisation of mandatory minimums.

Keywords: sentencing policy; proportionality; judicial discretion; death penalty; sentencing guidelines; Bharatiya Nyaya Sanhita

I. INTRODUCTION

A criminal trial in India is structured around one central question: is the accused guilty? Considerable procedural machinery exists to answer it, from rules of evidence to appellate review. The second question, what should be done with a person found guilty, receives far less attention. It is often resolved in a few paragraphs at the end of a judgment, sometimes in a few lines.

This imbalance matters because sentencing is where the State's coercive power is actually exercised on the individual. A conviction is a finding; a sentence is a deprivation of liberty or, in the gravest cases, of life. Yet the Indian Penal Code, 1860 (IPC) and its successor, the Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1 July 2024, prescribe punishments by offence and leave the method of choosing among them almost entirely to the judge. Neither statute states the purposes of punishment, ranks aggravating and mitigating factors, or requires reasoned calibration between offences of differing gravity.

The consequence is a system in which two offenders convicted of comparable conduct may receive markedly different sentences depending on the court, the judge, or the period in which the case was decided. The Supreme Court has repeatedly lamented this. In *Soman v. State of Kerala* (2013) it observed that Indian law lacks any legislative or judicial guidelines on sentencing, and that this has left courts to rely on judicial instinct rather than principle. The Court's concerns in capital cases have been sharper still.

This article asks whether the present model of near-total judicial discretion is compatible with the constitutional values of equality, fairness and proportionality, and what a reformed sentencing policy should look like. Part 2 sets out the theoretical foundations of punishment. Part 3 describes the existing legal framework. Part 4 examines judicial



discretion and its inconsistencies. Part 5 considers proportionality and mandatory minimums. Part 6 addresses the death penalty and life imprisonment. Part 7 draws brief comparative lessons, and Part 8 proposes reforms.

II. THEORETICAL FOUNDATIONS OF PUNISHMENT

Any sentencing policy rests, expressly or implicitly, on a theory of why the State punishes. Four rationales dominate the literature.

Retribution holds that punishment is deserved because the offender has committed a wrong. Its modern form, "just deserts", insists that the severity of punishment should correspond to the gravity of the offence and the offender's culpability. Retribution is therefore both a justification for punishment and a limit on it.

Deterrence looks forward. Punishment is justified by its capacity to discourage the offender (specific deterrence) and others (general deterrence) from offending. Empirical research across jurisdictions suggests that the certainty of detection and punishment deters more reliably than the severity of the penalty, a point that is frequently overlooked in legislative debates that respond to public outrage by raising maximum sentences.

Incapacitation seeks to prevent further harm by removing the offender from society. It is the most defensible rationale for long sentences in cases involving demonstrable and continuing danger, but it is prone to over-reach when applied by reference to the offence alone and not to an assessment of risk.

Reformation and rehabilitation treat the offender as capable of change. This theory has deep roots in Indian jurisprudence. The Probation of Offenders Act, 1958, juvenile justice legislation, and the Supreme Court's repeated invocation of reformation in sentencing discussions, most prominently in *Bachan Singh v. State of Punjab* (1980), all reflect it.

The difficulty is not that Indian law favours one theory, but that it chooses none. Courts draw eclectically on all four, often within a single judgment, and the weight given to each is neither explained nor predictable. A coherent sentencing policy must state which purposes are primary, how they are to be balanced, and which of them operates as a ceiling. The most defensible approach, widely endorsed in comparative scholarship, is limiting retributivism: proportionality to culpability sets the outer bounds, within which deterrence, incapacitation and rehabilitation may guide the choice.

III. THE EXISTING LEGAL FRAMEWORK

3.1 Statutory prescription

The BNS, like the IPC before it, lists the punishments available: death, imprisonment for life, imprisonment (rigorous or simple), forfeiture of property, and fine. The BNS adds community service as a punishment for certain minor offences, an overdue recognition that incarceration is not the only response to petty wrongdoing. For most offences the statute sets a maximum term and leaves the judge to select any sentence up to that limit. For a subset of offences, including aggravated sexual offences and certain offences under special statutes, it fixes minimum terms as well.

3.2 Procedural provisions

The Code of Criminal Procedure, 1973 (CrPC), now replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), contains the only real procedural safeguards on sentencing. Section 235(2) of the CrPC required a judge who convicted an accused to hear the accused on the question of sentence, and the BNSS retains an equivalent provision. Section 354(3) required "special reasons" to be recorded when imposing the death penalty, and the BNSS retains that requirement. Provisions on probation and release on admonition continue in modified form, alongside the Probation of Offenders Act, 1958.

These safeguards are real but thin. The hearing on sentence is frequently perfunctory, conducted immediately after conviction, with no opportunity for the defence to gather or present material about the offender's background, mental health, family circumstances, or prospects of reform. In practice, the trial court's judgment on conviction and sentence is often delivered on the same day.



3.3 The absence of guidelines

India has no sentencing commission, no statutory sentencing guidelines, and no statement of sentencing principles in legislation. Official bodies have recognised this gap for two decades. The Committee on Reforms of the Criminal Justice System (the Malimath Committee, 2003) recommended the establishment of a statutory committee to lay down sentencing guidelines. The Madhava Menon Committee's draft National Policy on Criminal Justice (2007) pressed similar concerns. Neither recommendation has been legislated.

IV. JUDICIAL DISCRETION AND ITS INCONSISTENCIES

4.1 Discretion without structure

Discretion is indispensable to just sentencing. No legislature can foresee every combination of offence and offender. The problem lies in discretion that is wide, unguided and unreviewable in practice. Sentencing in India proceeds from an intuitive synthesis of the nature of the offence, the circumstances of the offender, and the judge's own conception of what society demands. Without structure, the same material can support entirely different outcomes.

The Supreme Court has articulated principles in individual cases. It has insisted that the sentence be proportionate to the gravity of the offence, that both aggravating and mitigating circumstances be considered, and that the offender's prospects of reform be weighed. In *Alister Anthony Pereira v. State of Maharashtra* (2012), the Court emphasised that sentencing should reflect the seriousness of the crime, its impact on the victim and society, and the offender's circumstances. But such pronouncements are case-bound and have not hardened into a coherent, administrable framework that a trial judge can apply with confidence.

4.2 Evidence of inconsistency

The inconsistency is visible in the Court's own decisions. Sentences in similar factual settings have varied widely, and appellate courts have at times reduced, and at times enhanced, sentences with little explanation of the principle applied. Where appeals are decided by different benches within the same year, the divergence compounds. The result is not simply unfairness to individual offenders, though that alone would be serious; it also undermines the legitimacy of the system by making outcomes appear a matter of chance.

4.3 Public opinion and the risk of populism

Unstructured discretion is also vulnerable to external pressure. High-profile offences generate intense media attention and public demand for severity. In *Machhi Singh v. State of Punjab* (1983), the Court itself spoke of the "collective conscience" of society in the context of the death penalty, a formulation that later benches have criticised for importing public sentiment into a decision that must rest on the individual offender and offence. Where the sentencing standard is vague, public emotion can fill the vacuum.

V. PROPORTIONALITY AND MANDATORY MINIMUMS

5.1 Proportionality as a constitutional principle

Proportionality, the idea that punishment must correspond to the gravity of the offence and the culpability of the offender, is an established feature of Indian constitutional reasoning. It is anchored in Article 14's guarantee against arbitrariness and Article 21's requirement that any deprivation of life or liberty follow a procedure that is fair, just and reasonable, a requirement made central by *Maneka Gandhi v. Union of India* (1978). In *Mithu v. State of Punjab* (1983), the Supreme Court struck down Section 303 of the IPC, which mandated death for a murder committed by a life convict, because a mandatory sentence that left no room to consider the circumstances was unjust and arbitrary. *Mithu* is a doctrinal landmark: it establishes that sentencing is a function that must be individualised. A legislature that removes the judge's capacity to consider the circumstances of the offender prevents the very proportionality analysis that Articles 14 and 21 require.

5.2 The problem of mandatory minimums

Despite *Mithu*, Indian legislation has increasingly used minimum sentences, often in response to public outrage over particular categories of crime. Minimum terms appear in provisions on sexual offences, offences under the Narcotic



Drugs and Psychotropic Substances Act, 1985, and several other special statutes. The Supreme Court has sometimes reined in the most extreme versions; in *State of Punjab v. Dalbir Singh* (2012), it struck down the mandatory death penalty in the Arms Act.

Mandatory minimums are defended on grounds of deterrence, uniformity and the expression of societal condemnation. These arguments have some force where the offence is narrowly defined and uniformly grave. But for broad offences that cover conduct of widely varying culpability, a fixed floor guarantees disproportion. The courier of a small quantity of a controlled substance and a large-scale trafficker may be bound by the same minimum term. Such rules also transfer discretion rather than eliminate it: when judges cannot calibrate the sentence, discretion shifts to the police and prosecution, who decide what charge to bring, and to the plea bargain, which operates without transparency.

The better course is to preserve judicial authority to depart from a minimum for recorded reasons in exceptional circumstances, an approach that retains the legislative signal of seriousness without sacrificing individualisation.

5.3 Systemic effects

Sentencing policy cannot be studied apart from prison conditions. National Crime Records Bureau prison statistics consistently show Indian prisons operating above their sanctioned capacity, with undertrial prisoners comprising roughly three-quarters of the prison population. Heavier sentencing without systemic investment worsens overcrowding, impairs rehabilitation, and imposes costs that are rarely weighed when penal provisions are enacted. A reformed policy should require an assessment of the likely impact on prison population whenever new offences or enhanced penalties are proposed.

VI. THE DEATH PENALTY AND LIFE IMPRISONMENT

6.1 The *Bachan Singh* framework

The constitutional validity of the death penalty was upheld by the Constitution Bench in *Bachan Singh v. State of Punjab* (1980), by a four-to-one majority. The Court held that death may be imposed only in the "rarest of rare" cases, where the alternative of life imprisonment is unquestionably foreclosed, and directed that the circumstances of the offender, not merely the offence, be weighed. Mitigating factors such as age, the possibility of reform, and the circumstances of the crime were to be given full consideration.

6.2 Drift and criticism

In practice the framework has proved unstable. *Machhi Singh* attempted to operationalise "rarest of rare" through categories focused on the manner of commission, motive and magnitude of the crime, tilting the analysis toward the offence and away from the offender. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009), the Court acknowledged that the application of the doctrine had been inconsistent, in part because it had become crime-centric, and that principled sentencing had suffered. In *Sangeet v. State of Haryana* (2013), the Court questioned the utility of the *Machhi Singh* categories altogether. Empirical work, notably Project 39A's *Death Penalty India Report* (2016), documented that capital sentences have often been imposed with minimal consideration of mitigating material and with inadequate legal representation.

The Court has begun to respond. In *Manoj v. State of Madhya Pradesh* (2022), a three-judge bench directed that trial courts must collect information on the accused's psychological and social background, jail conduct and other mitigating matters before imposing a capital sentence. The broader question of framing guidelines in potential death penalty cases was referred to a Constitution Bench, and the outcome of that reference will be central to any reform.

The Law Commission of India, in its 262nd Report (2015), recommended abolition of the death penalty for all offences other than terrorism-related offences, citing the lack of evidence of unique deterrent value and the arbitrariness evident in its application. Parliament has moved in the opposite direction, expanding capital punishment for certain categories of sexual offences and, under the BNS, for offences such as mob lynching resulting in death. Whatever one's view on abolition, the expansion of capital offences without reform of the procedural framework compounds the risk of arbitrary outcomes.



6.3 The uncertain meaning of life imprisonment

Life imprisonment in India has been held to mean imprisonment for the remainder of the convict's natural life, subject to remission by the appropriate government (*Gopal Vinayak Godse v. State of Maharashtra* (1961); *Maru Ram v. Union of India* (1981)). Over time, the Supreme Court developed the sentence of life imprisonment for a fixed term of years, or without remission, as an intermediate option between a standard life term and death, beginning with *Swamy Shraddananda v. State of Karnataka* (2008). A Constitution Bench in *Union of India v. V. Sriharan* (2016) confirmed that such special categories of sentence may be imposed by the High Courts and the Supreme Court, but not by trial courts.

This development is significant because it creates a meaningful alternative to death, narrowing the group of offenders for whom the extreme penalty seems necessary. But it also illustrates the core problem: an important sentencing category was created by judicial innovation, with no legislative statement of when it should be used, who may use it, or how long such terms should run.

VII. COMPARATIVE PERSPECTIVES

Several jurisdictions have confronted similar problems and adopted structured responses that are instructive, though none can be transplanted unchanged.

In **England and Wales**, the Sentencing Council, created under the Coroners and Justice Act 2009, issues offence-specific guidelines with defined categories of harm and culpability, indicative sentence ranges, and a list of aggravating and mitigating factors. Courts must follow the relevant guideline unless it would be contrary to the interests of justice. This model combines transparency and consistency with retained judicial discretion.

In the **United States**, the federal Sentencing Guidelines, introduced in the 1980s, initially bound judges through a rigid grid. In *United States v. Booker* (2005), the Supreme Court rendered them advisory. The American experience is a cautionary lesson: excessive rigidity produced harsh and sometimes unjust outcomes and shifted power to prosecutors, whereas advisory guidelines retained a measure of uniformity while restoring judicial judgment.

Canada codifies the purposes and principles of sentencing in its Criminal Code, expressly stating that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender, and requiring courts to consider alternatives to imprisonment.

The common lesson is that the choice is not between unfettered discretion and mechanical rules. Guided discretion, with reasons recorded and subject to appellate review, is the model that best reconciles consistency with individual justice.

VIII. TOWARDS A REFORMED SENTENCING POLICY

The preceding analysis suggests that reform should be incremental, principled and institutionally grounded. The following measures are proposed.

8.1 A statutory statement of sentencing purposes and principles. Parliament should enact a provision stating the purposes of sentencing and establishing proportionality to gravity and culpability as the governing principle, with deterrence, incapacitation and rehabilitation as secondary considerations operating within that limit. This would give trial courts a framework that currently exists only in scattered judicial dicta.

8.2 A Sentencing Commission. A permanent, expert statutory body, comprising judges, criminal law practitioners, prosecutors, criminologists, prison administrators and victim-support representatives, should be established to issue offence-specific guidelines. It should also collect and publish sentencing data, which at present is not systematically available, and review the guidelines periodically. Data collection is itself a reform: without it, neither inconsistency nor reform can be measured.

8.3 Guided, not mandatory, guidelines. Following the English model, courts should be required to follow guidelines unless departure is warranted by recorded reasons. This preserves discretion while making its exercise visible and reviewable on appeal.



8.4 A separate and meaningful sentencing hearing. The hearing on sentence should be a distinct stage, held after a reasonable interval following conviction, with a pre-sentence report covering the offender's background, mental health, prospects of reform and, where appropriate, the impact on the victim. The directions in *Manoj* for capital cases should be extended in an appropriately scaled form to other serious offences.

8.5 Rationalisation of mandatory minimums. Existing mandatory minimums should be reviewed for proportionality, and future minimums should include a judicial power to depart for recorded reasons in exceptional circumstances. Any new penal provision should be accompanied by an assessment of its probable effect on prison populations.

8.6 Expanded use of non-custodial sanctions. The BNS's recognition of community service is a welcome start. Probation, fines scaled to means, restorative measures and community-based sanctions should be expanded and supported by adequate administrative capacity, so that imprisonment becomes a last resort for offences where it is genuinely necessary.

8.7 Capital cases. At a minimum, the Constitution Bench reference should result in binding guidelines requiring full mitigation inquiry at trial, proper legal representation, and a clear, offender-centred application of the *Bachan Singh* standard. Parliament should also consider the Law Commission's recommendations and debate the continued place of capital punishment in an informed manner, supported by empirical evidence.

8.8 Victims. A reformed policy must not treat victims as peripheral. Victim impact statements, compensation, and participation at the sentencing stage, within limits that prevent the sentence from becoming a vehicle for vengeance, can make sentencing both more informed and more legitimate.

8.9 Anticipating objections

Two objections are likely. The first is that guidelines will constrain judges and erode the independence of the judiciary. The English experience suggests the opposite: guidelines drawn up by bodies led by judges enhance judicial authority by providing a principled basis for decisions. The second is that structured sentencing will be too resource-intensive for an overburdened system. This overlooks that inconsistency generates its own costs, in appeals, in the erosion of public confidence, and in the incarceration of offenders for longer than necessary. Investment in structured sentencing is, in the long run, an investment in efficiency.

IX. CONCLUSION

The sentencing regime in India has long been the neglected half of criminal justice. Statutes prescribe maximum penalties, and sometimes minimums, but offer no theory of punishment and no method for selecting a sentence. Courts have filled the gap through case-by-case principles, some of them thoughtful, such as the *Bachan Singh* framework, the invalidation of mandatory death in *Mithu*, and the evolution of fixed-term life imprisonment. But judicial effort cannot substitute for legislative design, and the result has been inconsistency, a drift toward crime-centric reasoning, and, as the Supreme Court has itself acknowledged, arbitrariness in the gravest cases.

The enactment of the BNS and BNSS in 2023 offered an opportunity to confront these problems. It was partly taken, through the introduction of community service, but the larger task of building a principled sentencing framework remains unaddressed. Reform need not be radical. A statutory declaration of sentencing principles, an expert Sentencing Commission, guided discretion with reasoned departures, a real sentencing hearing, and the rationalisation of mandatory minimums would together move Indian law toward a system in which punishment is proportionate, predictable and humane.

A just sentence is one that the offender, the victim and society can understand. At present, the Indian system too often denies all three of them that understanding. Structured, transparent sentencing is the means of restoring it.

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