

## Mandatory Minimum Sentence Vis-À-Vis Judicial Discretion

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### Abstract

Punishment is a method of protecting society by reducing the occurrences of criminal behaviour by the state. Sentencing is the stage of criminal justice system wherein the court imposes actual punishment on the convict after he is found guilty of commission of offence. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence." While awarding punishment the court is supposed to follow the Legislative Policy as well as the Judicial Policy. When mandatory minimum or maximum punishment is fixed by the legislature it is mandatory for the courts to give effect to that legislation. In between the minimum and maximum punishment the court has got vast discretion to award punishment. While exercising the discretion the court is expected to follow the judicial policy i.e. the principles or guidelines laid down by the judiciary in various cases and not according to their whims and fancies. Generally it is mandatory for the courts to follow the mandatory minimum and maximum punishment prescribed by the statute. But if the court wishes to impose less than the minimum punishment, it can do so under exceptional circumstances by supplying adequate, special, cogent and convincing reasons. In the light of few important judgments of the apex court, the author in this paper has endeavored to examine the actual exercise of the discretion by the courts and its impact on the society.

**KEYWORDS:** sentencing policy, discretion, adequate and special reason, mandatory minimum.

### Introduction

The essential object of criminal law is to protect society against criminals and law-breakers. For this purpose the law holds out threats of punishments to the prospective lawbreakers as well as attempts to make the actual offenders suffer the prescribed punishments for their crimes. Therefore, criminal law, in its wider sense, consists of both the substantive criminal law and the procedural (or adjective) criminal law. Substantive criminal law defines offences and prescribes punishments for the same, while the procedural law administers the substantive law.<sup>1</sup> Punishment is a method of protecting society by reducing the occurrences of criminal behaviour. It can protect the society either by deterring potential offenders, by preventing the

<sup>1</sup> Available at <https://www.lawteacher.net/free-law-essays/administrative-law/administration-of-criminal-justice-law-essays.php> - (last visited on 21.8.2021).

offenders from committing further offences or by reforming and turning them into a law abiding citizens.<sup>2</sup>

### **What is sentencing?**

The post-conviction stage of the criminal justice process deals with bringing the accused before the court for the imposition of a penalty. If the accused is convicted in a criminal prosecution, the event that follows the verdict is called sentencing.<sup>3</sup> Sentencing is the stage of criminal justice system wherein the court imposes actual punishment on the convict after he is found guilty of commission of the offence. Speaking about the concept of sentence, the apex court has laid down<sup>4</sup> that “it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.”

Criminal justice system demands that courts should impose punishment befitting the crime so that public abhorrence of the crime is duly reflected through court’s verdict. The quantum of punishment depends on the atrocity of the crime, the conduct of the criminal and the defenseless and unprotected state of victim. By imposing appropriate punishment, the court responds to the cry of society for justice against the criminals. Courts must not only keep in view the rights of the criminal but also the rights of the victims of crime and the society at large while considering imposition of appropriate sentence.<sup>5</sup>

As held in *Ravji v. State of Rajasthan*<sup>6</sup> the court should see nature and gravity of the crime and not the criminal, which are relevant for deciding the appropriate punishment in criminal trial. The punishment awarded must be relevant which should conform to and be consistent with the atrocity and brutality with which the crime is committed and it should respond to the society’s cry for justice against the criminal.

### **Factors for consideration**

While awarding punishment the court is supposed to follow two significant things viz., (a) The Legislative Policy and (b) The Judicial Policy. The legislative policy is the mandate fixed by the statute and the judicial policy is the set of guidelines issued by the superior courts through precedents.

The legislature fixes the quantum of punishment through a statute. While prescribing so it fixes the maximum and minimum sentence for a particular offence. When mandatory minimum or maximum punishment is fixed by the legislature it is mandatory for the courts to give effect to it. That means the court is not supposed to impose less than the minimum and not more than the maximum punishment fixed by the statute. For instance sec 304B of IPC deals with offence of Dowry death wherein

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<sup>2</sup> P.J. Fitzgerald, ‘*Salmond on Jurisprudence*’, 12<sup>th</sup> ed., Indian Economy Reprint (Universal Law Publishing Co. Pvt. Ltd, 2002) p. 94.

<sup>3</sup> Available at <https://legal-dictionary.thefreedictionary.com/Sentencing> (Last visited on 6.6.2019).

<sup>4</sup> *Jameel v. State of Uttar Pradesh*, (2010) 12 SCC 532.

<sup>5</sup> N.V. Paranape, *Crime and Punishment – Trends and Reflections*, 1<sup>st</sup> ed., (Gurgaon: LexisNexis, 2016) p. 256-57; *Dhananjoy Chatterjee v. State of West Bengal*, 1994 SCR (1) 37: 1994 SCC (2) 220.

<sup>6</sup> 1996 (2) SCC 175.

the minimum punishment of seven years and maximum punishment up to life imprisonment is provided.

The court has got vast discretion to award punishment in between the minimum and maximum punishment fixed by the statute. Here the court is expected to follow the judicial policy i.e. the set of principles or guidelines laid down by the judiciary in various cases. For instance to determine whether a case falls within the purview of 'rarest of rare case' for awarding death penalty, the guidelines issued by the apex court in *Bachan Singh* and *Machhi Singh v. State of Punjab*<sup>7</sup> are very significant. In addition to these the court shall have due regard to the various aggravating and mitigating circumstances. Thus the courts are not supposed to exercise their discretion according to their whims and fancies but such exercise of discretion shall be subject to the well established principles laid down by the superior courts.

Now the question is whether the court can impose less than the minimum punishment prescribed by the legislation? Yes, under exceptional circumstances, after recording the reasons for doing so the court can impose less than the minimum. For instance sec 376 of IPC prescribes punishment for the offence of rape. It prescribes minimum punishment of 7 years in clause 1 and 10 years in clause 2.<sup>8</sup> In the light of some important cases we will try and analyze the situation.

In *State of Madhya Pradesh v. Sheikh Shahid*<sup>9</sup> the accused had been convicted by the lower court for an offence of rape u/s 376 of IPC and sentenced him to undergo imprisonment for 7 years and a fine of Rs 1000/- with a default stipulation. On appeal the High Court of Madhya Pradesh has reduced the sentence to the period already undergone (6 months). The accused did not challenge finding of conviction but only prayed for reduction of punishment. The sentence was reduced only on the only ground that the accused belonged to rural areas.

<sup>7</sup> (1980) 2 SCC 684 & AIR 1983 SC 1957 respectively.

<sup>8</sup> Sec. 376 of IPC - Punishment for rape:

(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever, (a) being a police officer commits rape

(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman knowing her to be pregnant; or

(f) commits rape on a woman when she is under twelve years of age; or

(g) commits gang rape, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

<sup>9</sup> SC- Cr. Appeal no 660/2004, dated 15.4.2009.

On appeal it was held by the apex court that in order to exercise the discretion of reducing the sentence the court has to follow the statutory requirement of citing 'adequate and special reasons' and not fanciful reasons. The reason should not only be adequate but also special. Recording of reasons for departing from minimum sentence is not only applicable to the trial courts; it equally applies to High Courts. In dealing with the rape cases which was established in this case, the direction for reducing the sentence should not have been given on the specious reasoning that accused belonged to rural areas. By no stretch of imagination this reason could be considered as either adequate or special. The minimum sentence prescribed u/s 376 is 7 years which may extend up to imprisonment for life or up to 10 years. The order of the High Court is unsustainable hence set aside and court has directed the respondent to surrender forthwith to serve the remaining sentence.

In *State of Rajasthan v. Vinod Kumar*<sup>10</sup> an appeal had been preferred by the accused against judgement of the Rajasthan High Court which maintained the conviction of A1 & 2 but reduced the sentence of A1 from 7 years to 5 years and of A2 from 7 years to 11 months 25 days.

As per the case of prosecution the victim Guddi after attending a memorial function in respect of death of her relative was staying at Jai Hotel along with her brother-in-law Babulal. The accused 1 and 2 came to their room pretending that they were Station House Officers and wanted to check the room. When the accused came to know about the relationship of the victim with Babulal, they raised the question as to why the said information is not entered in the hotel register. Hence they took Babulal outside the room. Thereafter, one of the accused came inside, locked the door and committed rape on the victim. On the complaint of the victim a case was registered u/s 376, 120B of IPC and s. 3 (2) (5) of SC/ST (Prevention of Atrocities) Act, 1989. After the trial the court has convicted both accused and sentenced them to undergo 7 years of RI each. On appeal the High Court reduced the punishment of A1 to 5 years and of A2 to already undergone (11 months 25 days).

On appeal to the apex court it was held that accused did not challenge the conviction hence the same became final. The only question now is whether the reduction of sentence by the High Court is proper. As per s. 376 (1) proviso the minimum punishment is 7 years<sup>11</sup>. If the court wants to impose punishment lesser than 7 years, it has to supply 'adequate and special' reasons or exceptional reasons. Hence, the apex court by setting aside the High Court order has restored the trial court's sentence of 7 years of rigorous imprisonment.

As held in *Meer Singh v. State of Punjab*<sup>12</sup> special reasons have to be understood in contradistinction to the word 'general or ordinary.' Thus, anything which is common to a large class governed by the same statute cannot be said to be special. In the present case the court considered long pendency of the case as special reason. If this is considered as sufficient to reduce the minimum sentence mandated by the Parliament then the legislative exercise would stand defeated.

In *State of Jammu & Kashmir v. Vinay Nanda*<sup>13</sup> while dealing with a similar case it was held that if there are mitigating circumstances it will authorize the court to pass appropriate punishment but not less than the minimum prescribed under the law. For imposing less than the minimum punishment the court has to give 'special and

<sup>10</sup> SC- Cr. Appeal no. 1887/2008, dated 18<sup>th</sup> May 2012.

<sup>11</sup> *Supra* note 8.

<sup>12</sup> AIR 1980 SC 1141.

<sup>13</sup> AIR 2001 SC 611.

adequate' reasons. Special reasons have to be distinguished from 'good' or other reasons. For e.g. accused reached his superannuation age is not special reason.

In *State of Karnataka v. Raju*<sup>14</sup> it was held that in case of a rape of minor below 12 years of age the High Court has reduced sentence from 7 years to 3 ½ years. In such case the minimum period of sentence provided by law is 10 years. But if special and adequate reasons are shown the court may impose less than 10 years of punishment. Socio-economic status, religion, caste or creeds of the accused are irrelevant considerations in sentencing policy. The court has to delicately balance both aggravating and mitigating circumstances.

In *State of Punjab v. Prem Sagar & Ors*<sup>15</sup> the apex court has considered the extent to which the sentence can be reduced while exercising discretion, which remained a vexed question. In India punishment always has to be proportionate to the crime. Judicial discretion must be exercised objectively having regard to facts and circumstances of each case.

In *State of Madhya Pradesh v. Santosh Kumar*<sup>16</sup> it was held that while reducing mandatory minimum sentence court has to exercise discretion by citing special and not fanciful reasons.

In *Kamal Kishore v. State of Himachal Pradesh*<sup>17</sup> it was held that the expression 'adequate and special reasons' indicate that it is not enough to have special reasons nor adequate reasons disjunctively. There should be a conjunction of both for enabling the court to invoke the discretion.

In *State of Madhya Pradesh v. Bala @ Balaram*<sup>18</sup> it was held that crime of rape is heinous, it is a crime against society, against human dignity, one that reduces man to an animal. When penal statute prescribes minimum punishment, courts taking it lightly would be an affront to the society. The power under the proviso to s. 376 (1) & (2)<sup>19</sup> has not to be used indiscriminately or routinely. It has to be used sparingly where the facts of the case justify a reduction. The special reasons must be set out clearly and cogently. The long pendency of the case or offer of the accused to marry the victim, age of the accused these are not relevant factors to reduce the punishment. Courts under the guise of applying the reformatory theory should not forget their duty towards the society and to the victim. Court has to consider the plight of the victim and social stigma that may follow the victim to the grave and in most of the cases practically ruins all prospects of a normal life for the victim.

Awarding lesser punishment than the minimum prescribed under the law (s.376) is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances. The exception clause has to be strictly interpreted, as the intention of the legislature is to exclude certain circumstances from scope of the basic law. Proviso is used to remove special cases from the general enactment and provide them separately. In order to make the enactment workable the proviso insists certain mandatory conditions to be fulfilled, i.e. to say recording of special reasons which is *sine qua non* for granting extraordinary relief. The legislature has introduced the minimum punishment w.e.f 25.12.1983.

In the present case commission of offence of rape is fully proved. The trial court after appreciation of evidence on record has rightly convicted the accused u/s

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<sup>14</sup> AIR 2007 SC 3225.

<sup>15</sup> (2008) 7 SCC 550.

<sup>16</sup> AIR 2006 SC 2648.

<sup>17</sup> AIR 2000 SC 1920.

<sup>18</sup> AIR 2005 SC 3567.

<sup>19</sup> *Supra* note 8.

363, 376 (2) (g) of IPC and to undergo rigorous imprisonment of 10 years and fine of Rs 3000/- in default of payment of fine to undergo imprisonment of 6 months. But the High Court without complying with the mandatory requirement of showing 'special reasons' has reduced the punishment to the period already undergone (9 ½ years) which is less than the one prescribed under the law and the same has defeated the legislative mandate.

### **Conclusion and Suggestions**

In the light of the above discussion it is clear that it is the duty of every court to impose appropriate punishment by considering all relevant factors. Generally it is mandatory for the courts to follow the mandatory minimum and maximum punishment prescribed by the statute. But if the court wishes to impose less than the minimum punishment, it can do so under exceptional circumstances by supplying adequate, special, cogent and convincing reasons. Such exercise of discretion should be based on sound judicial principles. The following suggestions would make the process of sentencing more effective:

1. The discretionary power of the judges cannot be completely taken away, as it would undermine the power of the judiciary in doing so; hence, it needs to be regulated in order to minimize the cases of improper exercise of discretion.
2. Discrepancy in sentences leads to an imbalance, which is highly undesirable. It would be wrong to criticize the judges for the same; hence, a strict sentencing policy would ensure less such instances.
3. To improve the criminal justice system in our country the need of the hour is the development and implementation of a uniform sentencing policy.
4. The courts while imposing punishment must follow the well established principles and guidelines issued by the superior courts in various landmark cases. This will ensure balance and uniformity in sentencing.