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Punishment and sentencing: The good, the bad, and the ugly

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Abstract
This article aims to explore in detail the flagrant inconsistencies and lack of structure that plague the sentencing process followed by the Indian judiciary, with a focus on the sentencing practices under Section 105 of the Bharatiya Nyaya Sanhita, 2023, i.e., Sections 304(1) and 304(2) of the erstwhile Indian Penal Code by various High Courts. By way of a detailed analysis of cases from the High Courts of Madras, Madhya Pradesh, Bombay and Punjab & Haryana within the span of 10 years (2010-2020), the author seeks to establish the lack of coherence and predictability in the Indian sentencing framework. This lacuna establishes glaring disparities in the treatment and consequences faced by similarly placed offenders. Further, it negatively impacts the credibility in the exercise of judicial discretion while determining the punishment to be meted out to an offender. The study undertaken by the author on the aforementioned case law unveils the fact that while a marginal number of cases involve the furnishing of reasoning behind sentencing decisions by the courts, a majority of the cases is marred by arbitrary and unstructured decision making. Courts often ignore the aggravating and mitigating factors that govern the offending conduct and the offender while deciding on a sentence. The author aims to highlight that these inadequacies imbibe the development of jurisprudence which is rooted in randomness, instead of establishing a methodical and principled approach towards sentencing. The article aims to furnish the urgent need for the Indian judiciary to adopt a uniform sentencing policy that creates a much-needed balance between the punishment imposed and the nature of the offence committed, while mandating the provision of clear reasoning for every act of exercise of judicial discretion regarding sentencing matters.

Keywords: Punishment, sentencing, disparities, sentencing guidelines, proportionality

Introduction

Standing as a fundamental pillar of the legal system, the criminal law, in its essence, mirrors the social contract under which individuals surrender certain liberties to the state and its institutions while expecting protection and order in return. Those wings of the state established to punish individuals having committed actions that translate into legal and moral infractions and the footing which authorises such punishment form the bulk of the criminal law and its institutions of authority. [1]

Punishment, according to HLA Hart's interpretation of the definitions propounded by Anthony Flew and SI Benn, is something that must involve pain/unpleasant consequences. Along with this, it must be attributable to an offence antithetical to legal rules; it must be imposed on an individual who is the actual offender of the rule(s); it must be intentionally administered by human beings other than the offender; and it must be imposed by an authority constituted by the legal system against which the offender has acted. All the five elements, in concert, aptly define punishment in its most standard sense, according to Hart. [2]

A qualified priority the criminal law enjoys is the ability for the punishments meted out by it to act as multifaceted benefactors to the causes of the state and society. By appropriately punishing wrongdoers deservant of the same, the state upholds the rights of the various stakeholders involved in such wrongdoing. Punishments, such as imprisonment for instance, act as a deterrent among general society while attempting to incapacitate and reform the wrongdoer.

These composite effects on society, inter alia, that the act of punishment sets out to achieve can be called the aims of punishment, as clarified by extensive theories purporting the same. These theories are as follows.

a. Retributivism
b. Deterrence
c. Rehabilitation
d. Restorative justice

Problematising the Theories of Punishment

The Rawlsian perspective as to the nature of the concept of punishment, in line with the Hartian adage, prescribes that punishment must fundamentally involve the deprivation of a person's normal rights enjoyable as a citizen, as a consequence of their violation of an existing rule of law. Such a violation must be vetted by a court acting under the due process of law, and such deprivation must be inflicted by recognised legal authorities. [3]

This essentially implies that punishment, as a practice, has a few constituent inalienable elements, the first of them being that it must be imposed only on a person whose conduct constitutes a violation of an existing rule of law. Second, such imposition must be upon a person who has actually committed the conduct amounting to the breach— this solidifies the tenet that innocent persons should not be punished. Such punishment, when inflicted upon a person with the above attributes, must not be arbitrary or unexpected— it must be principled, predictable, just, and fair. Furthermore, punishment must actually involve the incurring of some loss or deprivation by the individual. This may be a loss or deprivation of liberty as well as wealth. Lastly, criminal punishment, as a practice, differs from civil sanctions in the sense that the state intends it to be an act of censorship that communicates the denouncement and condemnation of the conduct of the implicated person. This act of stigmatisation positions itself as a deterrent among the general public.

Thus, the idea of punishment, as understood in this article, is broad and pluralistic to include various authoritative legal sanctions imposed against unlawful conduct. In India, the Indian Penal Code, 1860 ["IPC"], being the codification of the substantive criminal law, defines the elements and punishments of various crimes like rape, theft, dacoity, murder, etcetera. While the statute does provide for the minimum and maximum sentence imposable for various offences, there is a wide discretion awarded to the judiciary to choose the exact sentence to be imposed in light of the various purposes of punishment, and the characteristics of the offence and offender. Thus, it becomes important to examine the theories of punishment in order to understand and decipher the use of judicial discretion in the arena of sentencing and punishment.

While the theories of retribution and deterrence justify the use of imprisonment as punishment under different circumstances, the theories of restorative justice and retribution advocate for an approach that looks away from the prison system due to its deficiencies (rising costs and ineffectiveness, inter alia). [4] While they do pose promising avenues to achieve holistic transformation of the offender and reconciliation between the offender and the offended, it is imperative for this article to focus on the theories rooting for the imposition of imprisonment as punishment, in order to best understand the sentencing practices of the Indian High Courts for the offence of culpable homicide not amounting to murder.

Retribution

Often considered to be a polished version of the Hammurabian adage "an eye for an eye", the theory of retribution advocates for punishment as the expression of blame purported on a person as a consequence of their wilful and intentional wrongful conduct. [5] Retribution, as understood as an expression of revenge, supports the concept of mirror punishment, as seen in the adage supra. An evolved understanding of retribution recommends a measured approach towards punishing unlawful conduct, while being mindful of the climate under which it was performed. [6]

The idea of desert, in consonance with retribution, pushes for the understanding that a person who indulges in wrongful conduct must be treated with well-deserved sanctions that are appropriate to the aforesaid conduct. This approach comfortably allows for the incorporation of mitigative and aggravative elements in different cases, thus accounting for the increasing complexities of modern criminal law. [7] Further, desert is usually ascertained on the basis of one's conduct. Thus, under this theory, it is much needed for an offender to be punished in proportion to the extent and nature of their unlawful conduct. Thus, retribution calls for the importance of a principled approach towards punishment by emphasising on who and how to punish by harmonising the specificities of the act and the actor.

Deterrence

The theory of deterrence is a proponent for the idea that persons can be prevented from offending if faced with the fear and/or threat of punishment. [8] This operates on the premise that all individuals are rational and would subscribe to certain conduct which is unlawful only if they foresee some gain that they are likely to accrue which outweighs the penal consequences that they would suffer in the form of punishment. Thus, the success of this theory depends on the role played by punishment as a consideration when a person chooses between lawful and unlawful courses of action.

Deterrence can be general or specific. The former, alternatively termed macro-deterrence, justifies the use of punishment in the sense that it presents a general threat to the public, thus creating a force of discouragement from participating in criminal conduct among society as a whole. This dons a society-wide perspective whereas micro-deterrence, or specific deterrence, focusses on punishment as a tool to prevent offenders from committing the same or any other criminal conduct again, i.e., it focuses on preventing reoffending. Both these approaches converge on their aim to achieve crime reduction with the use of punishment as a looming consequence, thus creating avenues for them to congregate to achieve a common purpose.

Irrespective of its nature, deterrence utilises the notions of fear, incapacitation and reform as agents to prevent offending conduct among society, generally or specifically. It is essential to identify the appropriate level and nature of punishment to be imposed in order to effectively employ these agents. For instance, incapacitation as imprisonment whether rigorous or simple, counters the threat of reoffence by confining offenders to the prison system.

Sentencing and Punishment

Sentencing is the process undertaken by the judiciary to further the end of punishment. It is the deliberate judicial practice of identifying and imposing a specific quantum of punishment from the available statutory alternatives on an offender convicted of having committed some unlawful act. Thus, sentencing acts as the means to the end envisioned in the act of punishing.

As mentioned supra, the IPC defines various offences and prescribes a range of punishments for the same. The courts are free to exercise their discretion to choose the most appropriate punishment for the same. This decision-making action of the courts forms the sentencing process. For instance, in the case of Yuvaraj vs State, the Madras High Court convicted seven of the appellants for the offence of murder under Section 302 of the IPC. Acting upon this conviction, it embarked on the sentencing process wherein it found fit a quantum of life imprisonment without entitlement to remission as an appropriate sentence in light of the circumstances of the case. [9]

There is no statutory proclamation that details the purposes of sentencing as a necessary practice of judicial discretion in India. However, other commonwealth jurisdictions like Australia, Canada, and New Zealand, inter alia, have specific legislation dealing with this aspect. Due to the glaring lacuna in the Indian legal system, the author seeks inspiration from the Australian model to explain the purpose of the sentencing process. The purpose behind the sentencing activities of the courts, as envisaged in Australian legislation, is to ensure that the offender is adequately punished for their actions in a just manner; to prevent crimes by deterring the offender and others from repeating or committing similar offences; to protect the community from the offender and to promote their rehabilitation; to denounce the offender's conduct and to recognise the harm done by the offender's actions to the victims of the offence and the community. [10]

One of the main tenets of this process is to ensure that the offender is appropriately punished. This creates an imperative need to approach the sentencing process from the vantage point of the offender, rather than the offence. This involves being mindful of various factors which may be aggravative or mitigative to the offender's culpability. Achieving this, along with the other purposes, is essential to create a principled and consistent model of sentencing to effectively actualise the ends of punishment.

Studying the Sentencing Practices Under Culpable Homicide Not Amounting to Murder of Indian High Courts

The author has undertaken a detailed study of cases involving convictions under Sections 304(1) and 304(2) by High Courts across the country. In particular, around 731 cases from the High Courts of Allahabad, Bombay, Calcutta, Delhi, Gujarat, Karnataka, Kerala, Madhya Pradesh, Madras, Patna, Punjab & Haryana, and Rajasthan have been comprehensively analysed to understand the trends in sentencing under Sections 304(1) and 304(2).

This analysis has been conducted on the touchstone as to

a. whether the courts have identified and considered the aggravating factors relevant to the case of the offender while deciding the sentence;
b. whether the courts have identified and considered the mitigating factors relevant to the case of the offender while deciding the sentence; and
c. whether there is a general consistency in the approach adopted by the courts while sentencing the offenders.

In light of the above, an emphasis is placed on the manner in which the courts identify and consider these factors. Further, the author has sought to determine whether the courts have provided reasons for the final decision as to the sentence, and where reasons have been furnished, whether the same is logical tenable in relation to the principles and purposes of sentencing and punishment.

Section 304(1)

In the Allahabad High Court, out of a total of 52 cases studied, 31 were convicted under Section 304(1). In the Bombay High Court, out of a total of 135 convictions studied, 53 were convicted under Section 304(1). In the Gujarat High Court, out of a total of 143 cases studied, 88 were convicted under Section 304(1). In the Madras High Court, out of a total of 53 convictions studied, 31 were convicted under Section 304(1). In the Patna High Court, out of a total of 62 cases studied, 18 were convicted under Section 304(1). In the Madhya Pradesh High Court, out of a total of 35 convictions studied, 22 were convicted under Section 304(1). In the Kerala High Court, out of a total of 13 cases studied, 4 were convicted under Section 304(1), whereas, in the Gujarat High Court, out of a total of 143 cases studied, 88 were convicted under Section 304(1). In the Karnataka High Court, out of a total of 13 cases studied, 5 were convicted under Section 304(1). In the Delhi High Court, out of a total of 95 cases studied, 55 were convicted under Section 304(1). In the Punjab & Haryana High Court, out of a total of 41 convictions studied, 5 were convicted under Section 304(1). In the Rajasthan High Court, out of a total of 45 convictions studied, 28 were convicted under Section 304(1). In the Calcutta High Court, out of a total of 99 cases studied, 40 were convicted under Section 304(1).

In the case of Dulal Pandit v. State, [11] the trial court convicted the appellant under Section 302 with life imprisonment and a fine of Rs. 2000. The High Court amended the conviction to one under Section 304(1), and imposed a sentence commensurate to the period already undergone, i.e., ten years. The Court considered that the "intention to kill was not writ large on the part of the appellant" as a mitigating factor to arrive at this sentence. The Court has not elaborated on the aggravating circumstances relevant to the case.

However, the case of Poovammal v. State paints a different picture. [12] Here, the accused was convicted by the trial court under Section 302 and sentenced to rigorous imprisonment for life, and a fine of Rs. 1000, for causing the death of her son. The High Court modified the conviction to one under Section 304(1). While engaging in the sentencing process, the Court opined that the Hammurabian adage of an "eye for an eye" is a relic of the past, and that sociological considerations must be factored into the sentencing decision. In this regard, the Court considered the age of the accused (sixty years), the fact that she lost her son, and the concomitant mental trauma (the Court noted that "as and when his glimpses comes before her, we have no words to explain the mental torture that she will undergo and it will be ever as long as she is in this world"), and stated that the same would not justify her killing of her son. The Court considered as aggravative, the fact that the widow of the victim lost her husband and that their daughter lost a father. In an attempt to balance the aforesaid considerations, the Court sentenced the appellant to six years of rigorous imprisonment.

Absurdity in reasoning is a guiding characteristic of judicial opinion in the case of State v. Jayendrasinh Mepubha Jhala, [13] where the trial court charged and convicted the respondents under Section 304(1) with a sentence of rigorous imprisonment for six years, and a fine of Rs. 1000. The High Court upheld the conviction, and noted that the sentence imposed by the trial court was on the lower side. The Court chose to not enhance the sentence in light of the fact that the accused had already undergone the period incarcerated, and that they "were released on Gandhi Jayanti, i.e., 2nd October 2013." The Court refrained from explaining the relevance of the latter.

In the case of Kailash v. State of Maharashtra, the Court failed in identifying factors which are relevant to the sentence. [14] The appellant-accused was convicted under Section 302, with a sentence of life imprisonment and a fine of Rs. 1000 by the trial court. The High Court, on appeal, decided to convict the accused under Section 304(1). It considered the nature of the weapon used and the lack of knowledge attributable to the accused as mitigative to the sentence, thus imposing a sentence of rigorous imprisonment for eight years.

The trend of absurdity continues in the case of Sangit v. State of Maharashtra. [15] Here, the trial court charged and convicted the appellant under Section 302 with a sentence of rigorous imprisonment for life and a fine of Rs. 500. The High Court altered the conviction to one under Section 304(1). The Court considered the aggravating and mitigating circumstances of the case in a randomised manner, wherein no differentiation between the former and the latter was established. It gave regard to the age of the accused and the victim (below forty years); the facts that the family of the deceased lost their male member (this is

contrary to the fact that the deceased had three sons), that the appellant has a "long life to live," and that he had spent around seven years incarcerated in relation to the case. In light of this, the Court sentenced the appellant to ten years of rigorous imprisonment. The Court also imposed a fine of Rs. 5000, and compensation of Rs. 2,00,000 (to be paid to the family of the victim), despite noting that the appellant is a labourer who may not have the means to pay such a hefty fine stipulation.

Similarly, the case of Nisar Ahmed vs State of UP exhibits unprincipled application of the fine function in the sentence. [16] The accused was charged and convicted under Section 302 by the trial court, and was sentenced to rigorous imprisonment for life with a fine of Rs. 10,000, a portion of which was to be paid to the widow of the victim. The High Court, on appeal, converted the conviction to Section 304(1). While deliberating the sentence to be imposed, the Court took note of the age of the deceased victim (i.e., thirty years); the impact of the acts of the offender on the family of the victim; and the year of the occurrence as mitigating factors. The Court further considered the fact that the accused had failed to pay the compensation amount due to the widow of the victim as an aggravating factor. Further, it noted that the accused was confined in jail for around fourteen years, and had meagre financial means. In light of the above, the Court decided to impose a sentence of 14 years on the accused person, with an increase in fine to around Rs. 50,000. The Court further stipulated that the period of the sentence already undergone would be set off against the current sentence imposed under Section 428 of the Code of Criminal Procedure, 1973, only upon the payment of the fine by the accused to the legal heirs of the victim.

Analysis

Whether a particular sentencing decision can be deemed as consistent in approach is determined by its capacity to serve as precedence. The propensity to be applied in other cases of similar calibre must be inherent in the reasoning employed by the court. In this sense, the examination of the sentencing practices under Section 304(1) adopted by the High Courts reveals significant distortions in the sentencing of offenders. Deep-rooted inconsistencies and elements of arbitrariness have caused a lack of uniformity in the exercise of judicial decisions, thus seriously undermining consistency of the approach adopted by the judiciary.

For instance, the practices pertaining to the imposition of fines and awarding of compensation to the victims are largely disparate. In the case of Sangit, the Court chose to award the appellant with a fine of Rs. 205000, wherein Rs. 200000 was to be disbursed to the family of the victim. The Court, despite noting that "the appellant is doing labour work and may not be having much earning to pay more compensation," decided to impose such a significant amount, thus exhibiting a clear oversight in balancing the principles of restorative justice and fairness. The Court's inability to factor in the financial circumstances of the appellant despite being aware of the same is indicative of an unprincipled approach in the imposition of fines.

Another indicator of inconsistency is seen in the manner in which the courts have identified and evaluated mitigating factors in the sentencing process. For instance, there are many cases wherein the courts have considered the extensive pendency of the trial/appeal as the sole mitigating factor to the sentence to be imposed on the offender. While the right to a speedy trial has been upheld as a fundamental right by the Supreme Court of India, [17] it must not find relevance in the sentencing of a convict. Prolonged pendency and delays impede the Indian judicial system in a systemic manner, thus affecting all cases, irrespective of the offence and offender. Given that pendency as a factor fails to operate in an offence-specific, as well as an offender-specific manner, its relevance in the sentencing process is completely misjudged.

In Kailash, the Court considered the lack of knowledge attributable to the accused as a mitigating factor. Further, in Dulal Pandit, the Court considered that the "intention to kill was not writ large on the part of the appellant" as a mitigating factor to arrive at the sentence. Knowledge, and intention to kill are of utmost importance in deciding whether or not an individual is guilty of the offence alleged (here, 304(1)). Factors relevant to deciding whether or not the ingredients of the offence alleged are satisfied, and those relevant to determining the guilt of the offender need to be isolated from the sentencing process, as the conviction of the offender is a condition precedent to their sentencing. Ideally, the courts must engage in the identification of factors relevant to the sentence to be imposed on the convict from a lens independent of that used to determine guilt.

In Jayendrasinh Mepubha Jhala, the Court considered the fact that the offenders "were released on Gandhi Jayanti, i.e., 2nd October 2013" as a mitigating factor, without elaborating on how this operated as a mitigant to the sentence. The practice of such releases is usually done on a randomised basis, with no reference to the merits of the case of the offenders. [18] Therefore, as it neither aggravates nor mitigates the case of the offender, it cannot be considered as relevant to the sentencing process.

The approach towards identifying the aggravating factors taken by the courts has been found to be problematic. In Nisar Ahmed, the trial court, while convicting the appellant under Section 302, imposed a fine of Rs. 10000, a portion of which was to be given to the widow of the victim. The High Court, while sentencing the appellant under Section 304(1), considered the fact that he had failed to pay the aforementioned compensation as an aggravating factor, despite taking note of his meagre financial means. Further, the Court chose to increase the fine to Rs. 50,000, depicting the same error in approach identified in Sangit.

The confusion on how to factor in certain aggravators continues in Poovammal, where the convict was convicted under Section 304(1) for causing the death of her son. The Court considered as mitigating the notion that "as and when his glimpses comes before her, we have no words to explain the mental torture that she will undergo and it will be ever as long as she is in this world." At the same time, it placed emphasis on how the son's widow and daughter had lost a husband and father, respectively — a known aggravating factor. However, the Court fails to establish the rationale behind the former operating as a mitigant. The emotional impact of the offending on the offender is not a recognised mitigating factor to the sentence in other jurisdictions. [19] In fact, the Court, while attempting to step into the position of the offender, is unduly influenced by emotional considerations which are irrelevant to the purposes of the sentence. The incorporation of such a factor increases subjectivity and undermines objectivity in the sentencing process, thus further escalating the inconsistencies manifest in the sentencing approaches of the Indian judiciary.

Section 304(2)

In the Madras High Court, out of a total of 53 convictions studied, 22 were convicted under Section 304(2). In the Gujarat High Court, out of a total of 143 cases studied, 55 were convicted under Section 304(2). In the Karnataka High Court, out of a total of 13 cases studied, 8 were convicted under Section 304(2). In the Kerala High Court, out of a total of 13 cases studied, 9 were convicted under Section 304(2). In the Patna High Court, out of a total of 62 cases studied, 41 were convicted under Section 304(2). In the Madhya Pradesh High Court, out of a total of 35 convictions studied, 12 were convicted under Section 304(2). In the Rajasthan High Court, out of a total of 45 convictions studied, 17 were convicted under Section 304(2). In the Punjab & Haryana High Court, out of a total of 41 convictions studied, 35 were convicted under Section 304(2). In the Calcutta High Court, out of a total of 99 cases studied, 47 were convicted under Section 304(2). In the Allahabad High Court, out of a total of 52 cases studied, 17 were convicted under Section 304(2). In the Bombay High Court, out of a total of 135 convictions studied, 81 were convicted under Section 304(2). In the Delhi High Court, out of a total of 95 cases studied, 34 were convicted under Section 304(2).

The courts seem to have forgotten the role of the reasoning rendered as a general precedence on sentencing. For instance, in Anil Kumar v. State, [20] the trial court convicted the appellant under Section 304(2) with six years of rigorous imprisonment and a fine of Rs. 5000. The High Court upheld the conviction, but chose to alter the sentence. It noted that as the appellant was "a respectable doctor by profession," and was a first-time offender, the sentence required reduction. The Court noted that the appellant had spent around two years of the sentence; that he was a "young person of 34 years of age at the time of incident;" that he had a family with young children to maintain; and that the occurrence happened in the spur of the moment. The Court ultimately reduced the sentence to the period already undergone, without identifying any aggravating circumstances that govern the case to decide the quantum of the sentence.

The decision of Khodabhai Mangalbhai Chauhan v. State of Gujarat [21] further evidences the statement. Here, the trial court convicted the appellants under Section 304(2), the sentence of which is not clear from the judgement of the High Court. The Court upheld the conviction of the appellants, but chose to modify the sentence in light of the fact that the case had been pending for around nineteen years; the extent of involvement of each of the accused persons (not elaborated by the Court); and the ruling as to compensation in Ankush Shivaji Gaikwad v. State of Maharashtra. [22] The Court imposed a sum of Rs. 25,000 to be paid as compensation by the appellant Khodabhai, in lieu of which he would have to complete the sentence imposed by the trial court (which has not been delineated). With regard to the second appellant, the Court reduced her sentence to the period already spent incarcerated by her (not identified) because "she is a lady." The Court has not identified any other aggravating or mitigating factors relevant to the affixation of the sentence, nor has it explained the nature of those factors that it has managed to identify.

In the case of Bhabesh Mondal v. State, [23] the trial court convicted the appellant under Section 304(2), with rigorous imprisonment for five years, and a fine of Rs. 2000. The High Court upheld the conviction, and chose to reduce the sentence and increased the compensation to be paid to the victim. While arriving at this conclusion, the Court noted that both the appellant and victim had assaulted each other, and that they did not use any weapons. The Court stated that the substantive sentence could be reduced, while increasing the compensation to be paid to achieve restitutive justice. Ultimately, the appellant was sentenced to three years of rigorous imprisonment and a fine of Rs. 15000, 75% of which is to be paid to the wife of the victim.

In the case of Pramod v. State, [24] the trial court convicted the appellants under Section 302 read with Section 34 with life imprisonment and fine of Rs. 5000. The High Court altered the conviction to one under Section 304(2) read with Section 34. The Court chose to award the sentence in a manner proportionate to the extent of involvement of each of the accused persons. The Court chose to award a higher sentence, i.e., seven years, to Pramod, on the grounds that the motive is attributable only to him. A lower sentence of five years was awarded to the other respondents on the ground that they only assisted Pramod in the incident. The Court has not identified any aggravating or mitigating circumstances that govern the case to decide the quantum of sentence. A similar example is seen in the case of Sitaram v. State, [25] where the trial court convicted the appellants under Section 304(2) read with Section 34 with a sentence of ten years of rigorous imprisonment and a fine of Rs. 500. The High Court upheld the conviction, but chose to amend the sentence. It considered as mitigating the fact that the appellants had families to maintain, with young children; that the incident occurred as a quarrel; and that the appellants have completed a sizable portion of their sentence to reduce the sentence to five years of rigorous imprisonment. Despite noting the need to balance aggravating and mitigating factors in the sentencing process, the Court has failed to identify those circumstances that aggravate the sentence of the case, such as the existence of common intention between the parties, as evidenced by the conviction under Section 34. In the case of Bhiwa Sidhu Patil v. State, [26] the trial court convicted the appellants under Section 302 for life imprisonment and a fine of Rs. 500. The High Court altered the conviction to one under Section 304(2) read with Section 149, with a sentence of three years rigorous imprisonment and a fine of Rs. 10000. The High Court noted that thirty years had passed since the incident to justify the sentence imposed. The Court has not identified any aggravating or mitigating circumstances that govern the case to decide the quantum of the sentence.

The treatment of aggravating and mitigating factors is peculiar in the case of Ramjibhai Chitharbha Bhaliya v. State, [27] where the appellant was convicted by the trial court under Section 304(2) with a sentence of rigorous imprisonment for ten years and a fine of Rs. 5000. The High Court upheld the conviction, but chose to reduce the sentence to seven years because the accused was inebriated, and that he made attempts to save the victim by procuring medical aid. The Court has failed to elaborate on the aggravating circumstances relevant to the matter, if any.

In Bhudev Pal v. State, [28] the trial court convicted the appellants under Section 304(2) read with Section 34 with ten years of rigorous imprisonment and a fine of Rs. 5000. The High Court upheld the conviction, but reduced the sentence to eight years. The Court considered as mitigative

the fact that the appellants were not involved in any other criminal cases; that they had no criminal antecedents, with satisfactory jail conduct; that the occurrence "took place over a trivial issue;" that the injuries of the victim were not visible and were largely internal, due to which he passed away; that the appellants had families to take care of; and that they were around 22 and 26 at the time of the occurrence. The Court, at the same time, emphasised as aggravative, "the fact that an innocent life was done to death without any fault of his by giving merciless beatings without provocation inside his house." The Court has not considered any other aggravating circumstances.

In Ram Shanker v. State, [29] the trial court convicted the appellants under Section 304(2) with five years of rigorous imprisonment. The High Court upheld the conviction, but chose to reduce the sentence to the period already undergone, which is around one month. To justify its decision, the Court cited the sentencing decisions of Uthem Rajanna v. State of AP, [30] and Neelam Bahal v. State of Uttarakhand. [31] The Court had failed to realise that while sentencing under Section 304(2), reliance cannot be placed on the sentencing decisions of the aforementioned cases, given that the convictions were under Sections 304A and 307, respectively. The considerations that must aid the judicial mind must be of a different calibre when sentencing under Section 304(2). The Court has also not identified any aggravating or mitigating circumstances that govern the case at hand to guide its decision as to the sentence.

The sentence imposed in Subal Roy v. State shows lack of deliberation by the judicial mind in the sentencing process. [32] The trial court convicted the appellants under Section 304(2) with a sentence of ten years of rigorous imprisonment and a fine of Rs. 3000. The High Court upheld the conviction, but was of the opinion that the trial court had erred in the sentence prescribed. It stated that the reasoning of the trial court was relevant to the conviction of the appellants, and not to the quantum of punishment. Ultimately, it chose to reduce the sentence to seven years of rigorous imprisonment. The Court has not identified any aggravating or mitigating circumstances to guide its decision as to the sentence, despite criticising the trial court.

There are cases were the court is giving due importance to the sentencing practice, such as in Sachin v. State, [33] wherein the trial court convicted the appellant under Section 304(2) with seven years of rigorous imprisonment and a fine of Rs. 5000. The High Court upheld the conviction. It noted that "a precious life had been lost on a trivial issue," while considering the young age of the appellant, and his lack of criminal antecedents as mitigative to the sentence. In light of the above, the Court reduced the sentence to five years of rigorous imprisonment. It also considered the decision of Ankush Shivaji Gaikwad to impose a fine of Rs. 100000 to be disbursed as compensation to the legal heirs of the victim.

Analysis

In the analysis conducted of the cases involving convictions under Section 304(2), various inconsistencies have been identified. For instance, there is no uniformity regarding when the age of the offender can be considered as a mitigation to the sentence. In the case of Sachin, the Court considered the "young age" of the offender, i.e., around 24 years, as a mitigating factor. However, in Anil Kumar, the Court considered that the appellant was "a young person of 34 years of age at the time of incident," as a mitigating factor while arriving at the quantum of the sentence. This disparity in approach enunciates the absence of standards for the courts to refer to while deciding what age qualifies as a mitigating factor to the sentence.

It is understood from the analysis that the manner in which the courts have awarded fines and compensation is inherently problematic. In Khodabhai Mangalbhai Chauhan, the Court imposed a compensation of Rs. 25,000, wherein if the appellant failed to fulfil the same, he would have to serve a substantive sentence of imprisonment. This creates a conditional relationship between the sentence and the compensation, wherein the failure to satisfy the latter triggers the operation of the former. In Bhabesh Mondal, the Court reduced the substantive sentence and increased the compensation to be paid in a bid to "achieve restitutive justice." By creating interrelations between the sentence and the compensation, predictability and consistency in the sentencing outcome are seriously undermined. Further, this approach has the potential to weaken the achievement of the objective of deterrence in punishing and sentencing a person for the commission of an offence, as affluent offenders would consider financial penalties as a minor inconvenience, rather than as a substantial repercussion to their actions.

There are many cases wherein the courts have convicted offenders under Section 304(2) read with Section 34 (such as in Pramod, and Sitaram), and under Section 304(2) read with Section 149 (as seen in Bhiwa Sidhu Patil). This implies the existence of a common intention, or common object attributable to the offenders which is indicative of premeditation, thus warranting the treatment of the same as an aggravating factor. However, the courts have repeatedly failed in identifying and considering the same in the sentencing process, thus undermining the assessment of the gravity and severity of the offending.

There are significant shortcomings in the manner in which the courts have identified and assessed mitigating factors. In Ramjibhai Chitharbha Bhaliya, the Court considered the inebriated state of the accused (an established aggravating factor) as a mitigating factor, on the basis of which it reduced the sentence. In Bhudev Pal, the injuries caused to the victim were primarily internal, due to which he passed away. The Court considered the fact that the injuries were not visible externally as a mitigating factor, and chose to reduce the sentence applicable. In Gopal Krishan, the Court noted the dismissal of the offender from the Air Force as a mitigating factor while affixing the sentence. In Anil Kumar, the Court classified the fact that the appellant was "a respectable doctor by profession," as a mitigating factor. This trend of inconsistent identification and consideration of mitigating factors reveals an inherent incoherence in the sentencing process. By treating established aggravators as mitigants, inter alia, the courts exhibit carelessness and a clear lack of logic in exercising the sentencing function, thus compromising fairness and consistency.

The Court exhibited carelessness in the application of precedence for sentencing in the case of Ram Shanker. The Court cited the sentencing decisions in two cases wherein the convictions were under Sections 304A and 307, respectively. The Court has clearly failed to realise that while sentencing under Section 304(2), reliance cannot be placed on the sentencing decisions of the aforementioned

cases. The considerations that must aid the judicial mind must be of a different calibre when sentencing under Section 304(2).

The Court was extremely critical of the sentence imposed by the trial court in Subal Roy, noting that the reasoning espoused by the latter on the sentence was more relevant to the conviction of the offenders and not the quantum of punishment imposed. Despite being aware of the need for coherence and consistency in the sentencing process (as evidenced in its critique of the trial court), the Court reduced the sentence applicable to the appellant without identifying and balancing the aggravating the mitigating circumstances relevant to the case to guide its decision as to the sentence.

A general critique identified in the study of the convictions under Sections 304(1) and 304(2) is the failure of the courts to identify the part of Section 304 under which the offender is convicted and eventually sentenced. Out of the 731 cases analysed, the courts did not specify which part of Section 304 would apply to the case of the offender in around 28 cases. This abject lack of clarity diminishes the seriousness with which the judicial exercise of discretion is conducted, while further contributing to the general ambiguity and inconsistency in the realm of sentencing. By neglecting to specify the specific provision to be applied, the courts not only fail in their basic responsibilities in administering justice, but also create a lacuna in sentencing precedence, which further weakens consistency, fairness and coherence in the criminal justice system.

Conclusion

The study performed above on the Indian approach to sentencing indicates that it lacks consistency, clarity, and predictability. In fact, a majority of the cases studied barely reason out the sentence so imposed. Furthermore, those that actually do so and consider the aggravating and mitigating circumstances, inter alia, execute it in a random and disorderly manner. This lackadaisical and cavalier approach to sentencing establishes a jurist-prudential legacy, rather than methodical and systematic precedence.

The law has to take it upon itself to treat similarly placed offenders with similar consequences. The unfortunate reality as seen above is that it is a herculean task to identify a set standard or system in the process of allocation of these consequences in the approach of the Indian courts. Consistency and limited polarity are a necessity in the sentencing process. In addition to this, there is a requirement for a balance of proportion to be struck between the punishment awarded and the actual offending. As the Indian courts do not have a point of reference to achieve all of these pressing necessities, a touchstone of reference must be devised to guide the courts in order to arrive at a conclusion that is proportional to the offending while complying with established norms that reinforce uniformity in the process.

Such a reference point must mandate the segregation of the characteristics of the offence to be sentenced into impersonal and personal. [34] Impersonal characteristics are those aspects of the offense that operate independently of the offender's identity, i.e., those aspects in rem, while personal characteristics are those that intermingle with the offender's identity, i.e., those in personam. The impersonal characteristics must necessarily be understood in concert with the general purposes of sentencing. For instance, the theory of retribution proposes that the offender must be punished in proportion to their desert. While punishing an offender for having committed theft, impersonal characteristics such as the value of the amount stolen, inter alia, must be given due consideration to arrive at a sentence that achieves the retributivist cause. This would ultimately result in a sentence that realises the paramount importance attributed to a sentence that is commensurate, if not congruent to the actual offending. This parting of circumstances thus sets the stage for a doctrinal and methodological approach to sentencing.

The provisions of the Crimes (Sentencing) Act, 2005, governing the jurisdiction of the Capital Territory of Australia can serve as an apt example of a point of reference that aids the judiciary in arriving at a holistic sentence. The statute proposes that the court must consider, inter alia, the nature, and circumstances of the offence; the personal circumstances of the victim which the offender is aware of; the injury caused; the effect on the victim and their family; any steps taken by the offender to remedy the damage caused; the plea of guilty by the offender and the stage at which the same was taken; the financial circumstances of the offender; the probable effect of the sentence on the offender's family or dependants; exhibitions of remorse by the offender; the reasons behind the commission of the offence; and current sentencing practices while deciding on a sentence for an offender. [35]

There is thus an impending requirement to incorporate such touchstones into the Indian legal system to direct the sentencing process which can appropriately be met by drawing insights from the laws of other countries such as Australia, Canada, and New Zealand, inter alia. This would be an indispensable step towards bridging the gap between the principles and purposes of sentencing and the exercise of judicial discretion that lies agape in the Indian sentencing process.

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