

Chanakya National Law University, Patna

B.A., LL.B. (H) / B.B.A., LL.B. (H) 2023-24;

Course Title: SENTENCING POLICY IN CAPITAL OFFENCES

1 Credit Course

Total Classes 16

Course Overview:

The goal of the criminal justice system is to deliver effective, responsible, transparent, equitable and fair justice for all. It is primarily a tool for social control. Its major goals are to uphold the rule of law in society and to put an end to criminal acts.

Sentencing guidelines in India are covered in Indian Penal Code, 1860 and the provisions of the Criminal Procedure Code, 1973. Criminal law procedures governing sentencing are laid down under Section 235, Section 248, Section 325, Section 360 and Section 361 of the Code of Criminal Procedure, 1973 which are scattered throughout the Code. These provisions provide for broad powers to the Court. For instance, in the case of an offence of murder, Indian Penal Code, 1860 provides for the punishment of life imprisonment or death along with fine. The guiding principle for determining the punishment was provided by the judiciary in Jagmohan Singh v. State of U.P., wherein it was held that a balanced approach of considering the aggravating and mitigating factors should be considered while deciding on the question of capital punishment. However, in the Bachan Singh v. State of Punjab, the judiciary stressed that the sentence of life imprisonment is granted for the offence of murder and the Courts should depart from this rule only in rarest of rare cases' to serve the ends of justice. This approach was criticised in Sangeet v. State of Haryana, wherein the Court stated that the approach in Bachan Singh case has taken a backseat and needs a fresh review for determining the issue of weightage to be given to aggravating and mitigating factors surrounding the crime and the criminal.

There is no law or straightjacket formula for ascertaining the quantum of punishment with regards to sentencing in India. Though, the Courts have stressed upon a number of principles that ought to be taken into consideration while sentencing the accused including proportionality, deterrence, rehabilitation, etc. However, the judiciary cannot be obliged to follow these principles as they are not absolute rules, thus, giving wide discretionary powers to the judiciary for ascertaining the sentencing of an accused. Such wide power often leads to the abuse of the process of law and to some extent conflicts with the separation of power process.

Objectives of the Course:

- To understand the philosophical approaches to punishments.
- To understand various objectives and justifications of sentencing.
- To know the kinds of punishment statutorily sanctioned with death penalty in the Indian Penal Code, 1860.
- To understand the process of judicial sentencing in capital offences in India through

- significant judicial decisions of the Supreme Court of India.
- To study the sentencing policy and framework in other jurisdictions.

Course Outcomes:

The students will be able to learn and understand:

- To understand the retributive theory in contrast to utilitarianism, deterrent and rehabilitative approaches.
- To understand the chronology of evolution of forms of punishments in different societies.
- To appreciate the factors which led to the change in the forms and modes of punishments inflicted in different times.
- That there exists unwarranted disparity in sentencing

Teaching Methodology:

- The course will be conducted through lectures, presentations and discussions.

Suggested Readings:

Legislations:

1. The Code of Criminal Procedure, 1973
2. The Indian Penal Code, 1860

Books:

1. Andrew Ashworth, 'Principles of Criminal Law', 5th edn., OXFORD UNIVERSITY PRESS.
2. Andrew Ashworth, 'Sentencing and Criminal Justice', 5th edn., CAMBRIDGE UNIVERSITY PRESS.
3. A. Lakshminath, K. S. Murty, 'Sentencing Jurisprudence: An Indian Perspective', 1st edn., THOMSON REUTERS, 2018.
4. Dr. K. N. Chandrasekharan Pillai, 'R.V. Kelkar's Criminal Procedure', 6th edn., EBC, 2019.
5. Dr. Ivneet Walia, 'Crime, Punishment and Sentencing in India', THOMSON REUTERS, 2019.

6. Glanville Williams, 'Text Book of Criminal Law', 2nd edn., UNIVERSAL LAW PUBLISHING COMPANY, 2009.
7. J.K. Verma, 'Sentencing Principles', 1st edn., EASTERN BOOK COMPANY, 2022.
8. Mrinal Satish, 'Discretion, Discrimination and Rule of Law, Reforming Rape Sentencing in India', Cambridge University Press, 2016
9. Ram Prasad Das Gupta, 'Crime and Punishment in Ancient India', BHARATIYA KALA PRAKASHAN, 2007.

Recommended Readings/Articles:

1. Amit Bindal, 'Rethinking the Theoretical Foundations of Retributive Theory of Punishment', Vol. 51, JOURNAL OF THE INDIAN LAW INSTITUTE, 2009.
2. A. Lakshminath, 'Criminal Justice in India: Primitivism to Post-Modernism', Vol. 48, JOURNAL OF THE INDIAN LAW INSTITUTE, 2006.
3. K.I. Vibhute, 'Choice between 'Death' and 'Life' for Convicts: Supreme Court Of India's Vacillation Sans Norms', Vol. 59, JOURNAL OF THE INDIAN LAW INSTITUTE, 2017.

CONTENTS

MODULE I

(2 Lectures)

GENERAL INTRODUCTION

- Classification of Crime and evolution of court-system
 - Ancient India
 - Islamic period
 - British period
- Criminal Justice System in India
- Hierarchy of courts

MODULE II

(3 Lectures)

CONCEPT OF CRIME AND THEORIES OF PUNISHMENT

- Crime: Definition, Nature and Causes
- School of Criminology
- Elements of Crime
- Meaning, Definition of Punishment
- Aims, Objectives and Purpose of Punishment
- Theories of Punishment

MODULE III

(5 Lectures)

SENTENCING PRINCIPLES, POLICY AND COURT PRACTICES IN OFFENCES PUNISHABLE WITH DEATH PENALTY

- Punishment under the IPC, 1860
- Arguments for and against Death penalty
- Constitutional safeguards of fundamental freedom, right to life and personal liberty vis-à-vis death penalty
- Legislative framework of sentencing policy in India
- Evolution of law on Death Penalty

MODULE IV

(4 Lectures)

INCONSISTENCY IN CAPITAL SENTENCING IN INDIA AND A STUDY OF SENTENCING POLICY IN THE UNITED KINGDOM

- Meaning of Sentencing Disparity and sentencing inconsistency
- Influence of various variables and their outcome on cases
- Judicial creativity in life imprisonment – an alternatives to death sentence
- Sentencing policy in United Kingdom

MODULE V

(2 Lectures)

SENTENCING IN CRIMINAL JUSTICE SYSTEM: A VICTIM'S PERSPECTIVE

- Definition of victim
- Impact of victimization

- Rights of the victim under the constitution of India and provisions of Code of Criminal Procedure, 1973
- Victim Impact Statement and its effect on the process of sentencing

Faculty: Ms. Sushmita Singh