

JUDICIAL INTERPRETATION OF DETERRENCE IN CRIMINAL SENTENCING: A COMPARATIVE ANALYSIS OF SUPREME COURT AND HIGH COURT JUDGMENTS

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ABSTRACT

The philosophy of punishment has long been debated, with deterrence standing as one of its primary pillars. In the Indian criminal justice system, where codified sentencing guidelines are absent, the judiciary plays a pivotal role in shaping sentencing policy through its interpretations. This paper undertakes a comparative analysis of judgments from the Supreme Court of India and various High Courts to examine how the principle of deterrence is judicially interpreted and applied. It explores the theoretical foundations of deterrence, its relationship with other sentencing goals like reformatory and retributive justice, and the inconsistencies that arise from the exercise of wide judicial discretion. By analyzing landmark cases and recent decisions, this paper reveals a complex judicial landscape where deterrence is often invoked for heinous crimes but balanced against reformatory ideals for lesser offences. The study highlights significant disparities in sentencing, the occasional subordination of deterrence to sympathy or delay, and the consequent need for a structured yet flexible sentencing framework to ensure consistency, proportionality, and public faith in the rule of law.

1. INTRODUCTION

Sentencing is arguably the most critical stage of a criminal trial. It is the point at which the abstract principles of criminal law crystallize into a concrete consequence for the offender and a statement of societal values. As one legal scholar notes, the declaration and imposition

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of punishment represent the "essential objectives of any justice delivery system," serving to uphold accountability, deter future misconduct, and facilitate an offender's reintegration into society.³ Among the various philosophies underpinning punishment retribution, incapacitation, rehabilitation, and restoration deterrence holds a position of significant prominence. It operates on a utilitarian logic: the pain of punishment should outweigh the pleasure of the crime, thereby dissuading both the individual offender (specific deterrence) and the broader public (general deterrence) from engaging in criminal conduct.

In India, the judiciary's role in sentencing is particularly pronounced. Unlike many Western jurisdictions that have detailed, codified sentencing guidelines, the Indian penal framework, primarily the Bharatiya Nyaya Sanhita (BNS), formerly the Indian Penal Code (IPC), typically prescribes only the maximum and minimum punishment for an offence.⁴ This legislative framework grants judges wide discretion to determine the quantum of punishment within these statutory boundaries. Sections of the procedural law, such as the Bhartiya Nagarik Suraksha Sanhita (BNSS), mandate that courts consider aggravating and mitigating circumstances and provide reasons for the sentence awarded, especially in cases of life imprisonment or the death penalty.⁵ However, the absence of structured guidelines has led to a situation where judicial philosophy, personal perception, and the unique facts of each case significantly influence the final sentence. This discretion, while allowing for individualized justice, also opens the door to inconsistency and disparity.

This research paper undertakes a comparative analysis of judgments from the Supreme Court of India and various High Courts to decipher their interpretation and application of the deterrence principle. The central research question is: How do Indian courts conceptually frame and practically apply the doctrine of deterrence in criminal sentencing, and what are the consequences of this interpretation for the consistency and fairness of the justice system? The paper will first explore the theoretical foundations of deterrence as recognized by Indian courts. It will then delve into a comparative analysis of case law, examining how the Supreme Court and High Courts balance deterrence with other sentencing goals, particularly reformation. Finally, it will address the issue of sentencing disparities that arise from inconsistent judicial approaches and evaluate potential solutions for a more coherent sentencing policy. The hypothesis is that while the superior judiciary consistently

³ Garima Sachan, *Towards Consistency: Addressing Disparities in Sentencing Practices in India's Criminal Justice System*, NLIU L. REV. BLOG (Jan. 13, 2025)

⁴ *Id.* (discussing the framework under the Bharatiya Nyaya Sanhita).

⁵ *Id.* (referring to Sections 258, 401, and 402 of the BNSS).

acknowledges deterrence as a crucial objective, its application is often inconsistent, leading to a jurisprudence that is rich in principle but fragmented in practice.

2. The Theoretical Framework of Deterrence in Indian Jurisprudence

Before examining specific case law, it is essential to understand how Indian courts have theoretically conceptualized deterrence. The judiciary has not viewed it in isolation but as one of several interconnected aims of punishment.

2.1. Defining Deterrence: Specific and General

Indian courts have consistently recognized the dual nature of deterrence. The Bombay High Court, in a significant judgment, articulated that the "deterrent effect of a sentence is to prevent the commission of a similar offence by the convict by confining him to jail and to prevent the prospective offenders from committing such a crime."⁶ This succinctly captures the essence of specific deterrence (directed at the convict) and general deterrence (directed at society). The Gujarat High Court, drawing from Supreme Court precedents, further elaborated that the purpose of punishment can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration, and a sentence can be driven by any combination of these factors.⁷

The jurisprudential justification for deterrence, particularly general deterrence, lies in its societal function. The courts have recognized that for crimes that are heinous or perceived as crimes against society, the State has a duty to punish the offender not merely for the victim's sake but to send a clear message to the community. As observed in *Narinder Singh v. State of Punjab*, when an offence is treated as one against society, the will of the individual victim cannot prevail, and punishment becomes paramount to deter others effectively, serving "the greatest good of the greatest number."⁸

2.2. The Balancing Act: Deterrence vs. Reformation

A recurring theme in Indian sentencing jurisprudence is the need to balance the seemingly conflicting goals of deterrence and reformation. The courts have moved away from a purely punitive model to one that acknowledges the possibility of an offender's correction. The Bombay High Court emphasized this balance, stating that the "sentencing policy of criminal

⁶ Aslam Shaikh v. State of Maharashtra, Bombay High Court (2023), as reported in *Can't allow 'Miscarriage of Justice', says HC; orders release of man sentenced to 83 years jail in 41 cases*, LAW TREND (July 18, 2023)

⁷ Dahyabhai Naranbhai Rabari v. State of Gujarat, Gujarat High Court (Mar. 21, 2017), citing *Narinder Singh v. State of Punjab*

⁸ *Id.* (quoting *Narinder Singh v. State of Punjab*).

jurisprudence mandates courts to pass such sentences as would meet its primary twin objects of deterrence and re-formation."⁹ It added that a sentence should not demoralize the offender but should instead provide an opportunity for self-improvement.¹⁰

However, this balance is not always equal. The Supreme Court has clarified that the weight given to each objective depends on the facts of the case. In *State of M.P. v. Babulal*, the Court, while enhancing a lenient sentence, cited *Mahesh v. State of M.P.* to assert that in cases involving cruel and heinous acts, to give a lesser punishment would be a "mockery of justice." In such instances, the common man "understands and appreciates the language of deterrence more than the reformatory jargon."¹¹ This establishes a crucial principle: while reformation is an ideal, its application is secondary to deterrence when the crime's nature shocks the collective conscience.

2.3. The Principles of Proportionality and Just Punishment

Superimposed on the deterrence-reformation debate is the overarching principle of proportionality. The Supreme Court has repeatedly held that the sentence must be proportionate to the gravity of the offence. In *State of Rajasthan v. Banwari Lal*, the Court quashed a High Court order that had reduced a sentence to the period already undergone, calling it a "travesty of justice" and emphasizing that the discretion in sentencing must pass the tests of proportionality and deterrence.¹² This principle ensures that the punishment is not excessive, thereby preserving its moral credibility. As observed in *Alister Anthony Pareira v. State of Maharashtra*, the "principle of just punishment is the bedrock of sentencing," and the financial, emotional, and social trauma caused to the victims cannot be quantified, requiring a sentence that responds to society's cry for justice.¹³

Thus, the theoretical framework adopted by Indian courts is a multi-faceted one. Deterrence is a primary goal, but it must be calibrated. For routine or less serious offences, the reformatory objective may hold greater sway. For heinous crimes, deterrence becomes the imperative language of the law, and the sentence must be a proportional response to the collective outrage and the need to protect societal order.

⁹ *Aslam Shaikh v. State of Maharashtra*, *supra* note 4

¹⁰ *Id.*

¹¹ *State of M.P. v. Babulal*, (2013) (Supreme Court of India), citing *Mahesh v. State of M.P.*, AIR 1987 SC 1346

¹² *Discretion in sentencing of crimes must pass the tests of proportionality and deterrence: Supreme Court*, THE LEAFlet (Apr. 8, 2022) (discussing *State of Rajasthan v. Banwari Lal*)

¹³ *Id.* (quoting *Alister Anthony Pareira v. State of Maharashtra*, AIR 2012 SC 3802).

3. Comparative Analysis of Supreme Court and High Court Judgments

The theoretical principles outlined above find concrete expression in the case law of the Supreme Court and various High Courts. A comparative analysis reveals distinct patterns in how these courts apply the doctrine of deterrence.

3.1. The Supreme Court's Stance: Deterrence as an "Imperative Necessity"

The Supreme Court, as the apex judicial body, has consistently underscored the importance of deterrence, particularly in cases involving moral turpitude, violence, or crimes against vulnerable sections of society.

In a recent and powerful affirmation of this principle, the Supreme Court in *Bhaggi Bhagirath Naran v. State of Madhya Pradesh* (2024) modified a life sentence to a fixed term of 30 years for the rape of a seven-year-old girl. The bench, comprising Justices C.T. Ravikumar and Rajesh Bindal, explicitly observed that a "barbaric act deserves a deterrent punishment."¹⁴ The Court took into account the victim's age and the location of the crime, noting the potential for the incident to haunt her and adversely impact her future. This judgment highlights the Court's willingness to move beyond standard sentences to impose a punishment that serves the specific goal of general deterrence for crimes that are particularly abhorrent. It also cited the power of Constitutional Courts to impose modified sentences, as established in *Union of India v. V. Sriharan*.¹⁵

Further solidifying this stance, in *State v. [Respondent]* (2023), a bench of Justices M.R. Shah and C.T. Ravikumar held that while corrective measures are recognized, "there are occasions when deterrence is an imperative necessity depending upon the facts of the case."¹⁶ This observation came in a case where the High Court had reduced a sentence under Section 304-A (causing death by negligence) from two years to eight months. The Supreme Court restored the trial court's sentence, emphasizing that undue sympathy in such cases, where a life had been lost, would be misplaced. This demonstrates a clear appellate tendency to correct what it perceives as an excessive emphasis on leniency by lower courts at the expense of the deterrent effect.

In *State of M.P. v. Babulal* (2013), the Supreme Court dealt with a case where the High Court had reduced a sentence for violent offences (causing grievous hurt with dangerous weapons)

¹⁴ *Barbaric Act Deserves Deterrent Punishment: Supreme Court Sentence to 30 Years in Child Rape Case*, LAWYER E NEWS (May 6, 2024) (discussing *Bhaggi @ Bhagirath @ Naran v. State of M.P.*, SLP (Crl.) No.2888 of 2023)

¹⁵ *Id.*

¹⁶ *Deterrence Is Imperative Necessity Of Sentencing, SC Holds*, BW LEGAL WORLD (Mar. 29, 2023)

from two years to just three months, citing the long pendency of the trial. The Supreme Court strongly deprecated this approach, restoring the original sentence. It relied on precedents like *State of U.P. v. Shri Kishan*, which held that a "liberal attitude by imposing meager sentences...will be result-wise counter productive...against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."¹⁷ The Court firmly rejected the idea that delay alone could be a ground for reducing a sentence in a serious case, reinforcing that the "enormity of the crime" warrants public abhorrence and a fitting response.

These apex court judgments reveal a clear philosophy: while reformation is a desirable goal, it cannot be pursued at the cost of undermining the deterrent impact of the law, especially in grave crimes. The Supreme Court positions itself as the guardian of this balance, often intervening to restore the punitive and deterrent weight of a sentence that a High Court has diluted.

3.2. High Court Approaches: Balancing Deterrence with Reformatory and Humanistic Concerns

High Courts, while bound by Supreme Court precedents, often operate at a closer level to the facts and the convicts, leading to judgments that exhibit a more nuanced, and sometimes divergent, application of the deterrence principle.

A remarkable illustration of this is the Bombay High Court's decision in *Aslam Shaikh v. State of Maharashtra* (2023). The petitioner had been sentenced to a cumulative 83 years of imprisonment across 41 separate theft cases, with all sentences ordered to run consecutively. A division bench of Justices Revati Mohite Dere and Gauri Godse intervened, ordering his release. The Court grounded its decision in the very philosophy of sentencing, stating that any sentence must maintain a "proper balance between the deterrent and reformatory objects."¹⁸ It reasoned that forcing the convict, a poor and illiterate young man, to serve over 90 years in prison for theft would be a "travesty of justice" and would completely negate any reformatory aim. The sentence would "demoralise the offender" with "no hope whatsoever to even come out of jail."

This judgment is not a rejection of deterrence. The Court acknowledged that the "deterrent effect of a sentence is to prevent the commission of a similar offence." However, it

¹⁷ *State of M.P. v. Babulal*, *supra* note 9, citing *State of U.P. v. Shri Kishan*, AIR 2005 SC 1250

¹⁸ *Aslam Shaikh v. State of Maharashtra*, as reported in *Bombay High Court Orders Release of Man Sentenced to 83 Years...*, LAWBEAT (July 19, 2023)

subordinated the mechanical application of deterrence (through consecutive sentences) to a higher principle of justice and humanity. The Court invoked its inherent powers to prevent the "abuse of the process of the Court" and to "secure the ends of justice."¹⁹ It quoted William Scott Downey: "Law without justice is a wound without a cure."²⁰ This case exemplifies a High Court prioritizing the reformatory and human rights dimensions of sentencing to prevent a miscarriage of justice that a purely deterrent-focused approach would have caused.

Another instance of High Court divergence is seen in the varying outcomes of rape cases. The article by Garima Sachan highlights this inconsistency. For example, in the Shakti Mills gang-rape case, the Bombay High Court commuted the death sentence of repeat offenders to life imprisonment, citing their economic conditions and circumstances. In contrast, while the Unnao rape case resulted in a life sentence for a former MLA, the Kathua rape case, involving the brutal rape and murder of an eight-year-old, also resulted in life sentences, a decision that many compared unfavorably to the death penalty awarded in the Nirbhaya case. These examples suggest that while the Supreme Court sets a high benchmark for deterrence in theory, its translation into practice by High Courts can be influenced by a wider range of factors, leading to a perception of disparity.

3.3. Synthesis of Comparative Analysis

The comparative analysis reveals a dynamic interplay between the two tiers of the judiciary. The Supreme Court primarily functions as a policy-setting court, repeatedly laying down the principle that for heinous crimes, deterrence is paramount and cannot be sacrificed on the altar of sympathy, delay, or minor mitigating circumstances. Its language is often that of societal interest and the need for the law to speak firmly.

High Courts, while adhering to these principles, often act as courts of last resort for individuals, bringing a greater focus on the unique circumstances of the convict. This can lead to judgments like *Aslam Shaikh*, where the humanistic and reformatory goals triumph, or to instances where seemingly lenient sentences are passed in serious cases, prompting Supreme Court intervention. The divergence is not necessarily a conflict but a reflection of the different roles these courts play within a system that lacks strict sentencing guidelines. The Supreme Court provides the constitutional and philosophical scaffolding, while High Courts often fill in the details, for better or worse, based on the specific human story before them.

¹⁹ *Aslam Shaikh v. State of Maharashtra*, *supra* note 4

²⁰ Sachan, *supra* note 1

4. Disparities in Sentencing: The Consequences of Unchecked Discretion

The preceding analysis inevitably leads to a discussion of the significant disparities that plague the Indian sentencing landscape. The absence of structured guidelines, coupled with the broad discretion granted to judges, creates an environment where the outcome of a case can depend heavily on the presiding judge's personal philosophy.

4.1. The Problem of Inconsistency

As noted in the NLIU Law Review article, cases like *Modi Ram v. State of M.P.*, the Shakti Mills case, and the Khairlanji massacre illustrate the wide variation in sentences for seemingly comparable offences. In *Modi Ram*, the Supreme Court had to balance the severity of a mutilation crime with the circumstances of provocation, eventually settling on a three-year sentence after the trial court and High Court had arrived at different conclusions. The Khairlanji massacre, a case of brutal caste-based violence, saw death sentences awarded by the trial court being commuted to life imprisonment by the High Court, a decision upheld years later by the CBI.

The *Banwari Lal* case, discussed earlier, is a textbook example of this disparity. The trial court, after a full appreciation of evidence, found that the accused had inflicted injuries sufficient to cause death and sentenced him to three years. The High Court, without adequately considering the gravity of the offence, reduced this to the 44 days already undergone.²¹ The Supreme Court's strong censure of this "shortcut" and "travesty of justice" underscores the real-world consequences of inconsistent judicial discretion. Such orders not only undermine the deterrent value of the law but also erode public confidence in the fairness of the system. Victims and their families are left with a sense of injustice when they perceive the punishment to be grossly disproportionate to the crime.

4.2. The Search for Guiding Principles: The Three-Test Framework

In an attempt to bring some order to this discretionary chaos, the Supreme Court has, over time, articulated guiding principles. One of the most significant frameworks is the "three-test" principle established in cases like *State of M.P. v. Udham* (2019).²² This framework mandates that sentencing must pass the touchstone of three tests:

1. **The Crime Test:** This involves assessing the objective seriousness of the offence. Factors include the extent of planning, the choice of weapon, the modus operandi, the role of the accused, and the anti-social character of the crime. It also considers the impact on the victim, including bodily integrity, humiliation, and loss of support.

²¹ State of Rajasthan v. Banwari Lal, discussed in THE LEAFlet, *supra* note 10

²² THE LEAFlet, *supra* note 10 (citing State of M.P. v. Udham, 2019)

2. **The Criminal Test:** This shifts focus to the offender. It involves evaluating factors such as age, gender, socio-economic background, motivation for the crime, state of mind, possibility of reformation, and prior criminal record.
3. **The Comparative Proportionality Test:** This requires the court to compare the case with other similar cases to ensure that the sentence is not wildly inconsistent with prevailing judicial standards.

This framework is a crucial judicial response to the lack of legislative guidelines. It forces judges to undertake a structured inquiry, balancing the aggravating factors related to the crime (which often call for greater deterrence) with the mitigating factors related to the criminal (which may call for a more reformatory or lenient approach). In *Banwari Lal*, the Supreme Court found that the High Court had failed to apply this structured analysis, focusing solely on the delay in the trial (a criminal test factor) while ignoring the gravity and brutality of the crime (the crime test).

The three-test framework represents the judiciary's attempt to self-regulate its discretion and promote consistency. However, its application still relies on judicial interpretation, meaning that the potential for disparity, though reduced, is not eliminated. The weight assigned to each factor can vary, leading to different outcomes even under a common analytical framework.

5. Conclusion and The Path Towards a Consistent Sentencing Policy

The judicial interpretation of deterrence in India is a rich tapestry woven from constitutional values, philosophical debates, and the grim realities of crime and punishment. The Supreme Court has firmly established deterrence as an "imperative necessity" in heinous crimes, using its appellate power to ensure that sentences reflect societal abhorrence and serve as a warning to prospective offenders. Its jurisprudence consistently links deterrence with proportionality, demanding that the punishment be a just desert for the gravity of the offence. High Courts, on the other hand, often engage in a more granular balancing act, weighing the demands of deterrence against the reformatory potential and human rights of the convict. The *Aslam Shaikh* case stands as a powerful testament to this humanistic approach, prioritizing justice over a rigid, punitive arithmetic.

This comparative analysis reveals that the current system, while producing some landmark judgments, is inherently fragile due to its reliance on unstructured judicial discretion. The resulting disparities, as seen in numerous rape and violent crime cases, risk making the sentencing process appear arbitrary, thereby undermining both specific and general deterrence. A sentence that is perceived as too lenient fails to deter, while one that is

disproportionately harsh breeds sympathy for the convict and alienates the public from the justice system.

The path towards a more consistent and fair sentencing policy lies in a multi-pronged reform, as suggested by various committees and legal experts.²³ First, there is an urgent need for the legislature to consider formulating structured sentencing guidelines. These guidelines, developed in consultation with judges, legal experts, and correctional authorities, could categorize offences by severity, provide defined sentencing ranges, and list relevant aggravating and mitigating factors. This would provide a clear framework for judges to exercise their discretion, reducing the scope for arbitrary variations. The United States' experience with the Federal Sentencing Guidelines serves as a cautionary tale, highlighting the dangers of rigidity and complexity, but it also underscores the value of having a structured starting point for judicial deliberation.²⁴

Second, the diversification of punishments, a step already taken with the introduction of community service in the BNS, must be expanded.²⁵ For a vast category of non-serious offences, alternatives to incarceration, such as fines, restitution, probation, and mandatory rehabilitation programs, can serve both reformatory and deterrent purposes more effectively than short prison terms. Third, specialized training for judges on sentencing philosophy and the application of frameworks like the three-test principle is essential to ensure uniformity in approach.

In conclusion, the judiciary's interpretation of deterrence has evolved significantly, but its impact is hampered by systemic inconsistencies. The goal should not be to eliminate judicial discretion, which is vital for individualized justice, but to channel it. A well-defined sentencing policy, blending legislative guidance with judicial wisdom, would strengthen the rule of law, ensure that the language of deterrence is spoken clearly and consistently, and ultimately, restore and enhance public faith in the criminal justice system. As one commentator aptly noted, "The sentences and sentencing require urgent attention of policy planners if criminal justice is to retain its credibility in the public mind."

²³ Sachan, *supra* note 1 (discussing the V.S. Malimath Committee and Madhav Menon Committee reports)

²⁴ See generally Carolyn Kubota & Lisa Chen, *Heart of the Matter*, LAW.COM (2008)

²⁵ Sachan, *supra* note 1 (mentioning community service under Section 4 of the BNS)

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