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The Principle of Proportionality in Sentencing: A Case Study

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The Principle of Proportionality in Sentencing: A Case Study

ABSTRACT

A sentence is awarded to a convict to achieve three objectives of punishment namely, punitive, deterrent and protective. The Indian criminal justice system confers full discretion on the judges to impose the appropriate sentence. However, the courts are required to exercise this discretion with due consideration of various factors like the nature, gravity, the manner and the circumstances of the commission of the offence, the personality of the accused, character, aggravating as well as mitigating circumstances, antecedents, etc. The courts must impose a punishment that is proportional to the offence. The principle of proportionality in sentencing an offender is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the offender. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence. This paper studies a recent judgment of the Supreme Court of India delivered which revisits the doctrine of proportionality in sentencing as adopted in India. It argues that the sentencing requires meticulous consideration of both mitigating and aggravating circumstances and also society's cry for justice.

KEYWORDS

Antecedents, discretion, life imprisonment, proportionate, sentencing.

INTRODUCTION

The crucial stage in every criminal proceeding is the stage of sentencing. It is the most complex and difficult stage in the judicial process. Award of punishment following conviction at a trial in a system wedded to the rule of law is the outcome of cool deliberation in the court room after adequate hearing is afforded to the parties, accusations are brought against the accused, the prosecuted is given an opportunity of meeting the accusations by establishing his innocence. It is the outcome of cool deliberations and the screening of the material by the informed man i.e. the judge that leads to determination of the lis. When a sentence is imposed on an offender, it is done so with trifold purpose i.e. punitive, deterrent and protective. The prime objective of punishing an offender is to free the society of criminal activities and it is done by ensuring that the sentence imposed is proportional to the offence. The Indian criminal justice system confers ample discretion on the judges to impose the

appropriate sentence. However, this discretion is not unfettered in nature rather various factors like the nature, gravity, the manner and the circumstances of the commission of the offence, the personality of the accused, character, aggravating as well as mitigating circumstances, antecedents etc., which cumulatively constitute as the yardsticks for the judges to decide on the sentence to be imposed. Indisputably, the trial courts shall consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the crime committed. This paper examines a recent judgment of the Supreme Court of India delivered in the case of *Ehsaan v. State of National Capital Territory of Delhi*,¹ wherein the learned judge revisits the doctrine of proportionality in sentencing.

THE BACKGROUND OF THE CASE

Ehsaan, the appellant along with another person committed the offence of gang rape² and they were convicted and sentenced by the Additional Sessions Judge, Tis Hazari Courts, Delhi under Section 376-D Indian Penal Code, 1860 (IPC).³ The sentence awarded was rigorous imprisonment for life that is till the remainder to natural life and payment of a fine of Rs.25,000 to the victim, in default whereof simple imprisonment for two years. A portion of the trial court judgment dealing with the sentence reads: “[c]onsidering the manner of commission of offence, brutality inflicted by accused persons in injury and act of both the convicts and submissions of the parties, I am of the opinion that ends of justice would only meet if the convicts namely Umesh Giri and Ehsaan are sentenced as under: For offence punishable under section 376-D IPC, the above named convicts are sentenced to undergo Rigorous Imprisonment for life which shall mean imprisonment for the remainder of convicts natural life, in addition to payment of fine of Rs. 25,000/- each, to be paid to the victim and default whereof, they shall also undergo two years, simple imprisonment.” The trial court in imposing the sentence of remainder of natural life referred to the judgments in, inter alia, *State of Punjab v. Saurabh Bakshi*,⁴ *Gopal Singh v. State of Uttarakhand*,⁵ and *State of Punjab v. Bawa Singh*.⁶ On appeal, the finding of conviction and sentence by the trial court was affirmed by the High Court of Delhi.⁷ Hence, he preferred the present appeal before

¹ 2026 INSC 720, the judgment was written by Justice Sanjay Karol along with Justice Augustine George Masih.

² Offence was committed on September 7, 2016.

³ Vide orders dated June 7, 2017 and June 9, 2017.

⁴ (2015) 5 SCC 182.

⁵ (2013) 7 SCC 545.

⁶ (2015) 3 SCC 441.

⁷ Criminal Appeal No.814 of 2017, dated November 1, 2017.

the Supreme Court.

DOCTRINE OF PROPORTIONALITY AS ADOPTED IN INDIA

Punishment consists of doing something unpleasant to an offender under circumstances and in a manner that conveys a blame or disapprobation. It is scaled according to the seriousness of crimes. Proportionality in sentencing is an important requirement of fairness. The principle of proportionality in sentencing an offender is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the offender. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence. The concept of proportionality can be traced back to the Magna Carta and is rooted in liberal modern theories of punishment.⁸ When a sentence is imposed on an offender, it is done so with trifold purpose i.e. punitive, deterrent and protective. The overall objective is to rid the society of criminal proclivity. The same is done by ensuring that the sentence imposed is proportional to the offence. In other words, sentencing is not overly influenced by the possibility of reformation and instead, striking a judicious balance between the interest of the victim, society and the accused, after following the due process of law.⁹ The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. In the case of *State of U.P. v. Satish*,¹⁰ the Supreme Court observed: "Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out

⁸ Manikis, Marie. "The Principle of Proportionality in Sentencing: A Dynamic Evolution and Multiplication of Conceptions." *Osgoode Hall Law Journal* 59.3 (2022): 587-628.

⁹ *Supra* note 1 at para 6.4.

¹⁰ (2005) 3 SCC 114.

of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.”

At the outset, the bench clarified that the task before it was only to examine whether the sentence concurrently imposed upon the convict by the trial court and confirmed by the High Court, satisfies the doctrine of proportionality or not, in the attending facts and circumstances of this case. In determining as to the application of the doctrine of proportionality in the present case, the bench conducts a brief foray into the doctrine and its application in sentencing. It started by referring to the dissenting opinion of Justice P.N. Bhagwati (as he then was) on the aspect of constitutionality of the death penalty provided under Section 302 IPC, in the landmark case of *Bachan Singh v. State of Punjab*,¹¹ wherein it was observed: “Now it is an essential element of the rule of law that the sentence imposed must be proportionate to the offence. If a law provides for imposition of a sentence which is disproportionate to the offence, it would be arbitrary and irrational, for it would not pass the test of reason and would be contrary to the rule of law and void under Articles 14, 19 and 21. The principle of proportionality is implicit in these three Articles of the Constitution. If, for example, death penalty was prescribed for the simple offence of theft-- as indeed it was at one time in the seventeenth century England — it would be clearly excessive and wholly disproportionate to the offence and hence arbitrary and irrational by any standards of human decency and it would be impossible to sustain it against the challenge of these three Articles of the Constitution. It must therefore be taken to be clear beyond doubt that the proportionality principle constitutes an important constitutional criterion for adjudging the validity of a sentence imposed by law.”¹²

The bench then referred to the observation made by Justice Surya Kant (as he then was) in the case of *Surinder Singh v. State (UT of Chandigarh)*,¹³ wherein the doctrine of proportionality was discussed in the following terms: “The equality of ratio between two sets of variables is now well known as the doctrine of proportionality. The bedrock of sentencing policy in our criminal justice system is also based on the axiom of proportionality. This principle of commensurate sentencing treats offenders as agents capable of evaluating their own illegal conduct and the social censure associated with it, which is communicated to them by imposing a proportionate sentence.”¹⁴ The exercise for assessing “proportionality” is thus dependent upon the gravity of the offence which is determined according to — (a) mischief caused or risk involved

¹¹ (1982) 3 SCC 24 at para 36.

¹² *Supra* note 1 at para 6.1.

¹³ (2021) 20 SCC 24 at para 34.

¹⁴ Andrew Ashworth, 2010, *Sentencing and Criminal Justice*, 5th ed. Cambridge University Press.

in the offence; (b) the overall conduct of the offender and; (c) motives ascribed to the felon. Further, the equality of treatment so as to eliminate discriminatory practices in the award of sentencing, is integral to the canons of proportionality. Needless to say, the guarantee of even-handedness before the law(s), as enshrined in Article 14 of our Constitution, encompasses the administration of criminal justice system as well.”¹⁵

It was also observed: “Having said that, we cannot be incognizant of the fact that there are practical difficulties in achieving absolute consistency in regards to sentencing. It must be candidly acknowledged that there is an element of discretion present while adjudicating the issue of sentence, however, the same cannot be exercised in an unprincipled manner. This Court has explicitly ruled out the practice of awarding disproportionate sentences, especially those that showcase undue leniency, for it would undermine the public confidence in efficacy of law.”¹⁶ The Court further observed: “The sentencing policy, therefore, keeps pace with changing time. Undoubtedly, the primary emphasis while deciding the quantum of sentence should lie on the gravity or penal value of the offence. However, other guiding elements of rehabilitative justice model, including, appreciation of grounds for mitigation of sentence also deserve to be duly considered within the permissible limits of judicial discretion. The awarding of just and proportionate sentence remains the solemn duty of the courts and they should not be swayed by non-relevant factors while deciding the quantum of sentence. Naturally, what factors should be considered as “relevant” or “non-relevant” will depend on the facts and circumstances of each case, and no straitjacket formula can be laid down for the same.”¹⁷

THE MAKING OF NEW FACETS

The bench clarified that although the offence committed upon the victim is, without any manner of doubt, grave, its effort will be confined to examining whether the sentence concurrently imposed upon the appellant, satisfies the doctrine of proportionality or not, in the attending facts and circumstances of this case. The bench referred to the decision of the Supreme Court in the case of *State of Karnataka v. Krishnappa*,¹⁸ wherein a three-judge bench of the Court observed: “[T]he measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt

¹⁵ Supra note 1 at para 6.2.

¹⁶ Supra note 13 at para 35.

¹⁷ Id at para 36.

¹⁸ (2000) 4 SCC 75 at para 18.

with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. 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. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court."

The view above was referred to by a three-judge bench of the Court in *Shimbhu v. State of Haryana*,¹⁹ wherein it was observed: "Thus, the law on the issue can be summarized to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim or the long pendency of the criminal trial or offer of the rapist to marry the victim or the victim is married and settled in life cannot be construed as special factors for reducing the sentence prescribed by the statute."

The bench also observed: "When a sentence is imposed on an offender, it is done so with trifold purpose i.e. punitive, deterrent and protective. The overall objective is to rid the society of criminal proclivity. The same is done by ensuring that the sentence imposed is proportional to the offence or in other words not overly influenced by the possibility of reformation and instead, striking a judicious balance between the interest of the victim, society and the accused, after following the due process of law."²⁰ The bench then analyzed a number of other judgments, inter-alia, *Allauddin Mian v. State of Bihar*,²¹ *Navas v. State of Kerala*,²² *Sevaka Perumal v. State of T.N.*,²³ and *Parsuram v. State of M.P.*,²⁴ and it ruled that a sentence must:

- a. Be in accordance with the nature and gravity of the crime;
- b. Adequately protect the interest of the society;
- c. Take into account the deterrent purpose of punishment;

¹⁹ (2014) 13 SCC 318 at para 21.

²⁰ Supra note 1 at para 6.4.

²¹ (1989) 3 SCC 5.

²² (2024) 14 SCC 82.

²³ (1991) 3 SCC 471.

²⁴ (2019) 8 SCC 382.

- d. Consider the motive behind the crime, if any;
- e. Give due weight to the conduct of the accused;
- f. Examine whether the crime in question was pre-meditated or not;
- g. Keep in view the age of the accused and whether he has engaged in any similar offence in past for which he has been duly convicted;
- h. Account for the number of victims of the offence;
- i. Not consider the religion, race, caste or creed of the offender as a factor;
- j. Consider the possibility of reformation of the accused. It is the duty of the State to establish that the same does not exist; and
- k. The abuse of trust or misuse of personal relationship, if any.

Thus, the bench has been successful in making certain facets that need to be considered by trial courts while sentencing. However, the bench clarified that the above facets identified by it are illustrative and not exhaustive. A holistic view of the entire case must be taken in the attending facts of each case, it observed. The bench then ruled that by considering all these factors among others, the foremost duty of the court is to assess the evidence in a given case; imposing just and adequate punishment upon the accused.

REVISIT OF LANDMARK PRECEDENTS

Thereafter, the bench ventured into revisiting the following landmark precedents decided by the Supreme Court wherein sentence has been modified by the Court either from capital punishment to rigorous imprisonment for life or for an otherwise fixed term.²⁵

- a. In *Shankar Kisanrao Khade v. State of Maharashtra*,²⁶ a two judge Bench of the Supreme Court, was considering an appeal of the convict who had kidnapped, raped and murdered an intellectually disabled 11-year-old girl in which the High Court of Judicature of Bombay, had awarded the death sentence, but the Supreme Court reduced the same to rigorous imprisonment for life having considered four aspects - the enormity of the crime;

²⁵ Supra note 1 at paras 7.1 – 7.6.

²⁶ (2013) 5 SCC 546.

satisfaction of the criminal test; the previous criminal record of the accused, and the non-reporting of the offence of sexual assault.

- b. In *Rajkumar v. State of M.P.*,²⁷ the Supreme Court altered the death sentence, on a conviction under Section 376 IPC, to 35 years of rigorous imprisonment without remission, upholding the conviction of an uncle for having committed breach of trust since she was in his care and custody.
- c. In *Selvam v. State*,²⁸ a three-judge Bench of the Supreme Court while examining the correctness of conviction and sentence of the appellant having been convicted of rape and murder, refused to interfere with the conviction but modified the sentence to minimum thirty years without remission.
- d. In *Parsuram v. State of M.P.*,²⁹ the sentence of death awarded to a tutor for having committed rape and murder of a student was modified to actual imprisonment of 30 years on account of the fact that the trial court and the High Court did not consider (a) the possibility of reformation; (b) lack of criminal antecedents; and (c) the age of the accused at the time of the offence which was 22 years.
- e. In *Sundar v. State*,³⁰ a three judge Bench of the Supreme Court had while upholding the conviction of the accused on the aspect of kidnapping and murdering a seven year old victim modified the sentence to a minimum of twenty years rigorous imprisonment without remission considering that at the time of the offence the accused was 23 years old, had no prior antecedent, had maintained a good conduct in prison and had also made efforts to mend his ways in anticipation of release.
- f. In *Ravinder Singh v. State (NCT of Delhi)*,³¹ the Court while examining the conviction of a father accused of having raped his own daughter, observed that the conviction cannot be disturbed. The aspect of sentence, it was observed had to be enhanced should the view be that the father will be eligible for remission after 14 years since at the time of release the victim will be still in her 20s and so his presence in her life will be greatly disturbing. Thus, sentence was modified to fixed terms of 20 years.

²⁷ (2014) 5 SCC 353.

²⁸ (2014) 12 SCC 274.

²⁹ (2019) 8 SCC 382.

³⁰ (2024) 12 SCC 764.

³¹ (2024) 2 SCC 323.

THE DECISION AND ANALYSIS

In the present case, the appellant convict has no criminal antecedents; he was of only 25 years at the time of incident and there is a possibility of reformation. The State has neither brought on record anything to show that the same would not be possible, nor has it contravened the statement made on behalf of the appellant that in the nearly ten years (including remission) that he has been convicted, he has maintained a good conduct. The bench opined that the Court cannot lose sight of the fact that the offence is heinous and is not only against the victim, but against the society at large. Despite much evolution, sociologically and psychologically, to break away from the chains of patriarchal thought, incidents such as these are only continuing blatantly. Various amendments have been brought in over the years in the law, and while they may have had positive impact to some extent, the urgency to root out such offences cannot be simmered down even for a bit till these incidents are recorded only in history and are viewed with collective disdain. The bench also brought on record certain statistics available with the National Crime Records Bureau (NCRB) related to horrendous crimes against women for the years 2021 – 2024, which are reproduced below for reference:

NCRB DATA ON RAPE CASES REPORTED AGAINST WOMEN DURING 2021-2024

SL.	Crime head	2021	2022	2023	2024
1	Murder with Rape/Gang Rape	284	248	230	266
2	Rape	31677	31516	29670	29536
3	Attempt to Commit Rape	3800	3288	2796	2561

The statistics shows that the crimes of murder with rape, gang rape, rape and attempt to commit rape in the country have been not abated, and as such they must be dealt with sternly. Later on, the bench observed that the offence under which the appellant-convict has been sentenced, Section 376D IPC was substituted by way of the Criminal Law Amendment made in 2013, which was brought in the aftermath of the horrifying Nirbhaya incident that took place on the streets of the India's capital. In the said amendment, it has been made clear that for this

offence, minimum sentence is of twenty years, and the maximum is that has been imposed upon the appellant convict i.e., life imprisonment for the remainder of natural life. It opined that there appears quite plainly that considering the nature of the offence, the Legislature first made it an independent offence and then also provided for a minimum punishment. The bench noted, therefore, it has no other alternative and must, upon convicting, impose at least the minimum sentence. The judicial discretion in reducing the same by recording 'adequate and special reasons' which was given in proviso to the unamended Section 376 has been taken away. This indicates legislative recognition of the seriousness of the offence which the courts must abide by. Finally, considering the principles discussed above and applying them to the factors accruing in favour of the appellant - convict noted earlier, the bench ruled that it was deemed appropriate to modify the sentence to 20 years with benefit of remission, if any. We do agree to the decision of the bench regarding the term of imprisonment, which is commensurate for the offence committed in view of the attending facts and circumstances, but we respectfully differ on the benefit of remission to be made available to the appellant, even though power of granting remission lies with the appropriate Government. It is respectfully submitted that the sentence of 20 years imprisonment without remission would have been more appropriate, because the appellant had committed a grave crime against a hapless woman, the most disapproved by the civilized society.

CONCLUSION

It is undisputable that the ultimate objective of law is the protection of society and creating a deterrence against crime by imposing adequate punishment. It is reiterated that the fundamental principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. Thus, punishment consists of doing something unpleasant to an offender under circumstances and in a manner that conveys a blame or disapprobation. It is scaled according to the seriousness of crimes. Proportionality in sentencing is also an important requirement of fairness. The court will be failing in its duty to deliver justice if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not only be appropriate but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence. It should also respond to the society's cry for justice against the criminal. Thus, it is trite to observe that the object of punishment is to create an adequate deterrence against the said crime and to send a social message to the miscreants that any violation of the moral turpitude of

society would come with consequences, which cannot merely be influenced by money or muscle power. It can be safely concluded that a proportionate sentencing requires meticulous consideration of both mitigating and aggravating circumstances and also victim's cry for justice, including her rehabilitation. We sincerely hope that the judgment under examination shall not only become a mandatory precedent but also a guiding principle for trial courts in awarding an appropriate sentence in similar cases.