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MANDATORY MINIMUM SENTENCING

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Abstract:

The chief justice of India has decided to examine a petition which is challenging the constitutional validity of section 376DB of the Indian penal code which decides the punishment for gang rape of a minor below 12 years of age. Mandatory minimum sentencing is a sentence that is imposed without leaving any discretion to the court. In India, the prevention of children from sexual offenses [POCSO]act prevents such sentences for all sexual offenses except for sexual harassment.¹²⁸

Introduction

The term '**punish**' in the dictionary means 'to make someone suffer from a crime'. The concept of punishment is different in both criminal and civil law. In civil law the aggrieved party gets compensation, and the dispute is settled whereas in criminal law punishment is given by measuring the seriousness of the offense. The punishments awarded in ancient India were so severe and brutal that there was a smaller number of crimes. In modern India mainly two categories of punishment are given which include capital punishment and life imprisonment.¹²⁹

There are a lot of drug crimes that force the judge to give harsh punishment without showing any mercy to the defendants. A 45-year-old fast food restaurant worker was sentenced to 25 years in prison for selling painkillers worth \$1,800. Mandatory minimum

sentencing may or may not be justified. Some so many people oppose and support it. In the 1960s and 80s murders and robberies exploded as illegal drugs surrounded American cities. Congress responded to these drug crimes by passing tough mandatory sentences. Gleason from his chambers of Brooklyn had become one of the fiercest critics of mandatory minimum sentencing and he said it is bad for our system. The law forces the judges to lock the offenders in prison even for a small drug crime. Barkow says to her young students that if a four-year sentence is given to a person they will remain in prison for an entire stretch and miss out on their birthdays and all the lovely things happening in their family. Bill Otis had a different view from them. He emphasized the fact that people were in prison just because of their own bad choice. These strategies were held to lower crime records. However, even criminologists do not have an exact answer on whether locking up these nonviolent drug offenders has made any difference in the crime records.¹³⁰

Background of mandatory minimum sentencing

The process of mandatory minimum sentencing has been specific in federal courts since the day the U.S. has been formed into a nation. The president nominates the judges, and the confirmation of the bench will be done by the senate. The courts operated in this way to ensure a system of checks and balances. The judges were entrusted with making the decision. It can affect the life of the person and his family

¹²⁸THE INDIAN EXPRESS,
<https://indianexpress.com/article/explained/>, [LAST VISITED ON 24TH March 2023]

¹²⁹ Sonia Balhara, *The history of punishment in India*, I PLEADERS BLOG, [19TH March 2023, 11:15am] <https://blog.ipleaders.in/the-history-of-punishment-i>.

¹³⁰ 3 Erin Fuchs, 10 People Who Received Outrageous Sentences for Drug Convictions, BUSINESS INSIDER [24th March 2023, 10:00am] <https://www.businessinsider.com/10-most-outrageous-mandatory-minimum-2013-4>



as well. As the famous quote says "Justice can be delayed but not denied. For **justice**, to be ensured it is important to interpret the facts in each unique circumstance.

The sentencing reform act 1984 made a monumental decision and took out the powers of the judge in handing over the punishment according to the merits of the case. A new sentencing called mandatory sentencing was imposed. A minimum sentence cannot be interpreted. For example, if a person is found guilty of a particular crime such as the distribution of drugs, then the judges should hand down a minimum sentence. It simply didn't matter whether the offender had a history of any criminal activity.¹³¹

A 12-month mandatory sentencing law around the third offense of home burglary was introduced by Western Australia. There are two mandatory sentences currently in New South Wales. A mandatory life sentence was introduced without parole by the crime amendment bill 2011. Apart from Australia, Denmark has mandatory minimum sentencing for murder, regicide, deadly arson and illegally loaded gun. The countries Ireland and Cannada impose mandatory minimum sentencing for murder in New Zealand. Murder for pleasure, sexual gratification, greed, or other motives is mandatorily punished by life imprisonment in Germany.¹³²

What is a mandatory death sentence?

Some countries impose the death sentence mandatorily as punishment for certain crimes. The judges won't be having any discretion in it. In Malaysia cabinet has recently decided to abolish Malaysia's cabinet has recently decided to abolish mandatory death sentencing. Amnesty international applauded at government's decision to abolish the

mandatory death penalty and give discretion to the judges. Amnesty also pointed out that the government should make the necessary amendments without any delay. They also have the view that the use of the mandatory death penalty has always disproportionately harmed the marginalized sections of society. The death penalty itself is cruel, and violent and violates the right to life. There are currently 11 offenses in Malaysia including drug-related offenses which carry the mandatory death penalty. There are currently 1341 people on death row in Malaysia with 905 cases involving the mandatory death penalty for drug trafficking. as per the parliamentary written reply in February 2022. **Death penalty** in all cases is opposed by Amnesty international without any exceptions and regardless of the nature of that crime.¹³³

Three strikes law

The three strikes law was passed in California in 1994. In the three strikes law, if a person has two convictions that fall within the category of serious crimes, he will face imprisonment for life on his third violent crime. This law was first implemented in Washington in 1993. The first person punished under the three strikes law is Michael Elton Johnson. Another interesting fact about three strikes is that they can be referred to as the strike in a baseball game. The battler against whom the strikes are recorded Stikes out. The category of crimes should always be recorded as serious crimes such as murder, rape, kidnapping, **sexual assault**, and robbery. It also requires two previous convictions.

Massachusetts 2012 became the 27th state to implement the three-strikes law. It has made notable improvements in discouraging offenders from committing more crimes. Through this law, communities are more developed and crime rates are reduced in cities and states. This law also protects the victim from most violent crimes. As a coin has two sides three strikes law is also criticized based on

¹³¹ REHABILITATION ENABLES DREAMS, [HTTPS://stopprecidivism.org > blog > the-history-behind-ma](https://stopprecidivism.org/blog/the-history-behind-ma), [last visited on 20th March 2023] 5 WIKIPEDIA, https://en.wikipedia.org/wiki/Mandatory_sentencing [last visited on 24th March 2023]

¹³² WIKIPEDIA, https://en.wikipedia.org/wiki/Capital_punishment [last visited on 25th March 2023]

¹³³ AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/latest/news/2022/06/malaysia-mandatory-death-penalty-abolition/> [last visited on 25th March]



many grounds. Rehabilitation will not work under this law. In most cases, these repeat offenders suffer from mental issues. They are again sentenced to life imprisonment instead of going for therapy or consulting a doctor. Prison expenses will increase, which in turn increases the tax paid by the citizens. People are again convicted when there are the best alternative options available.

The case of Nirbhaya shook our country. It questioned the guarantee of freedom to citizens. Apart from that India has always seen a rise in criminal activities starting from independence. "Enhanced practicing" is followed by the Indian judiciary which restricts repeated crimes. These existing laws in India are not exactly like the three strikes law but are identical in the cases of a sexual offense. The three strikes law can be a hope for the country where the crime rates are rising at a huge rate. The reports state that most of the criminals have a background of previous crimes before. This law forces criminals to think 100 times before committing a crime.¹³⁴

POCSO ACT 2012

In India, mandatory sentencing is applicable only in offenses that come under the POCSO act. The Protection of children from sexual offenses act 2012 is an act to protect children from sexual offenses such as sexual assault, sexual harassment, and pornography. This act establishes a special court for the trial of such offenses. Article 15[3] of The Indian constitution empowers the state to make special provisions for children. Children protected under this act are those aged below 18 years and are gender neutral. POCSO act extends to the whole of India except the state of Jammu and Kashmir.

This act consists of nine chapters. The first chapter consists of a short title, extension, and commencement. The second chapter consists

of penetrative sexual assault and punishment. The third chapter is about the use of children in the making of pornographic films and the fourth chapter is about abetment. The fourth and fifth chapters are about the procedures for reporting cases and procedures for recording the statement of the child. Chapters seven and eight are about special courts and their procedure, powers, and recording of offenses. The last chapter is about miscellaneous subjects connected with this act. This act ensures the welfare of the child and protects their mental and physical health along with providing emotional support. It contributes to the overall growth and social development of a child.¹³⁵

Pros and cons of mandatory minimum sentencing

There are five theories of punishment, and these theories can be divided into two philosophical camps that are consequentialist and non-consequentialist. The former are forward-looking, and the latter is backward looking. When it comes to mandatory minimum sentencing the transition of theory into practice has huge consequences and the gravity of the offenses should be correctly measured. A retributive theory among the five theories is often referred to as an eye for an eye. The offender deserves to be punished for moral blameworthiness. Penalties under this theory must be based on the moral **corruption** of that act and not on the danger possessed by the wrongdoer. As per mandatory minimum sentencing people who have been convicted of heinous crimes shall be punished. Life sentences for these serious crimes should fall within the boundaries of the deserved punishment. Less serious crimes are not considered under this act. It completely cuts down on the discretion of the judges and often has the chance to cross the proportional boundaries of the punishment. The punishment can be too severe. Mandatory sentencing

¹³⁴ LEGAL SERVICE INDIA, [https://www.legalserviceindia.com/legal/article-8574-three-strikes-law-\[\]last](https://www.legalserviceindia.com/legal/article-8574-three-strikes-law-[]last) visited on 26th March 2023]
BRAD BRAILEY, [https://www.bradbaileylaw.com/legal-blog/2017/december/6-three-strikes-law-pros-and-cons/\[\]last](https://www.bradbaileylaw.com/legal-blog/2017/december/6-three-strikes-law-pros-and-cons/[]last) visited on 26th March 2023]

¹³⁵ *Protection of children from sexual offences POCSO ACT 2012*, The gazette of India, Ministry of law and justice, No. 34] NEW DELHI, WEDNESDAY, JUNE 20, 2012/ JYAIS STHA 30, 1934 (SAKA)



focuses on a specific group that is drug dealers. People who have drugs in possession, distribution, and other conduct related to these drug crimes. The extensive sentencing is targeted toward minimum groups. For example, 10 years imprisonment is handed out to a person having 1 gram of marijuana possession. The accuracy of information plays a major role when it comes to mandatory minimum sentencing. There will be coercion of information.

The deterrent theory which simply means to deter a person from committing a crime is associated with mandatory sentencing. The main aim behind this theory is to prevent people from committing the same crime by imposing severe punishments. Fear is created in the minds of these people from the severity of the punishments awarded. Mandatory sentencing will help to decrease violent crimes in the future. They stop unjust sentencing practices by many judges and avoid the personal bias of the judges by taking away their power. This process is straightforward and avoids further complications. They bring more peace to society¹³⁶.

Conclusion

None of these claims related to mandatory sentencing has received empirical support. There is no identical evidence to show the impact of this practice. Will this destroy the mental health of the convict? Are rehabilitation programs better than mandatory sentencing? In short, research has failed to analyze this, and some studies even show that there is generally an increase in crime rates due to this practice. We cannot reach a proper conclusion about mandatory minimum sentencing.

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