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THE CONVICT MUST SERVE ITS MINIMUM SENTENCE IN LAW. THE SUPREME COURT HAD RECENTLY SAID THAT "NO HARD AND FAST RULES SHOULD BE THERE THAT THE CONVICT MUST SERVE THE MINIMUM SENTENCE."

Abstract

The minimum sentence is the lowest term of imprisonment or the amount of fine that is prescribed by law for a certain offence. The purpose of the minimum sentence is to deter offenders from committing serious crimes and to protect society from their harm. However, the minimum sentence may also have some negative consequences, such as violating the principle of proportionality, infringing judicial discretion, and undermining the rehabilitation of offenders. Therefore, the Supreme Court of India has recently held that less than a minimum sentence can be given to under-21 convicts under the Probation of Offenders Act, 1958, if the court is satisfied that it would not be desirable to sentence them to imprisonment. The court has also observed that there are no hard and fast rules that the convict must serve the minimum sentence, and the court may take into account various factors, such as the nature and circumstances of the offence, the character and antecedents of the offender, the possibility of reform and social reintegration, and the interest of justice while imposing a sentence higher than the minimum term. This paper examines the rationale and implications of the Supreme Court's judgment and argues that it is a progressive and humane approach that balances the need for deterrence and reformation in criminal justice.

Introduction

The sentencing of offenders is one of the most important and controversial aspects of the criminal justice system. The sentencing process involves the determination of the type and

duration of the punishment that should be imposed on the offenders for their crimes. The sentencing process aims to achieve various objectives, such as deterrence, retribution, prevention, and rehabilitation. However, the sentencing process also faces various challenges, such as balancing the rights and interests of the offenders, the victims, and the society, ensuring the proportionality and consistency of the punishment, and respecting the constitutional and human rights principles. One of the key issues in the sentencing process is the concept and practice of the minimum sentence. The minimum sentence is a legal provision that prescribes the lowest term of imprisonment or amount of fine that can be imposed for a certain offence. The minimum sentence is intended to serve as a deterrent for serious crimes and to protect the public from the harm caused by the offenders. However, the minimum sentence may also have some adverse effects, such as violating the principle of proportionality, infringing the judicial discretion, and undermining the rehabilitation of offenders. The concept and practice of the minimum sentence vary across different countries and legal systems. In India, the minimum sentence is not mandatory, but rather a guideline for the courts to follow. The courts have the power to impose a sentence higher or lower than the minimum term, depending on the facts and circumstances of the case. However, the courts have to give reasons for deviating from the minimum sentence, and such deviation is subject to the appellate review. The Supreme Court of India has recently held that there are no hard and fast rules that the convict must serve the minimum sentence, and the court may take into account various factors, such as the nature and circumstances of the offence, the character and antecedents of the offender, the possibility of reform and social reintegration, and the interest of justice, while imposing a sentence higher than the minimum term.¹

Some examples of minimum sentences in India are:

- The Indian Penal Code, 1860, prescribes a minimum sentence of seven years for rape (Section 376), ten years for gang rape (Section 376D), and twenty years for rape of a minor under 16 years (Section 376AB).
- The Prevention of Corruption Act, 1988, prescribes a minimum sentence of three years for taking or offering a bribe (Section 7), five years for criminal misconduct by a public servant (Section 13), and seven years for habitual offenders (Section 14).
- The Narcotic Drugs and Psychotropic Substances Act, 1985, prescribes a minimum sentence of ten years for the cultivation, production, manufacture, possession, sale,

¹ <https://www.livelaw.in/top-stories/no-hard-fast-rule-that-convict-must-undergo-particular-period-of-sentence-before-seeking-its-suspension-supreme-court-241720>

purchase, transport, import, export, or use of any narcotic drug or psychotropic substance (Section 15 to 23), and twenty years for financing or abetting such activities (Section 24 to 27A).

- The Terrorist and Disruptive Activities (Prevention) Act, 1987, prescribes a minimum sentence of five years for committing or conspiring to commit any terrorist or disruptive activity (Section 3), and ten years for possessing or using any arms, ammunition, or explosive for such purposes (Section 4).

These are some of the laws that prescribe minimum sentences for certain offences in India. However, the courts have the power to impose a sentence lower than the minimum term, if they find that the minimum sentence would be unjust or disproportionate, in light of the facts and circumstances of the case. The courts have to give reasons for deviating from the minimum sentence, and such deviation is subject to the appellate review.²

History and Legal Framework

The minimum sentence in India has its roots in the colonial era, when the British government enacted various laws and regulations to impose harsh punishments for offences against the state and public order. Some of these laws, such as the Indian Penal Code, 1860, the Arms Act, 1878, and the Explosive Substances Act, 1908, prescribed minimum sentences for certain offences, such as sedition, waging war, possession of arms, and causing explosions. These laws were aimed at suppressing the nationalist and revolutionary movements, and maintaining the colonial rule and authority. After independence, the Indian government retained and amended some of these laws, and also enacted new laws, such as the Prevention of Corruption Act, 1988, the Narcotic Drugs and Psychotropic Substances Act, 1985, and the Terrorist and Disruptive Activities (Prevention) Act, 1987, to deal with the emerging challenges of corruption, drug trafficking, and terrorism. These laws also prescribed minimum sentences for certain offences, such as bribery, possession of drugs, and involvement in terrorist activities. These laws were intended to curb the menace of these crimes, and to ensure the security and integrity of the nation. However, the minimum sentence in India is not mandatory, but rather a guideline for the courts to follow. The courts have the power to impose a sentence higher or lower than the minimum term, depending on the facts and circumstances of the case. However, the courts have to give reasons for deviating from the minimum sentence, and such deviation is subject to the

² <https://www.indiatimes.com/explainers/news/explained-what-are-mandatory-minimum-sentencing-591506.html>

appellate review. The courts have also invoked the constitutional principles of equality, justice, and human dignity, to justify their discretion in sentencing, and to safeguard the rights and interests of the offenders. The courts have also considered the social and economic factors, such as the age, education, background, and family situation of the offenders, and the possibility of their reform and rehabilitation, while imposing a sentence lower than the minimum term. The courts have also taken into account the nature and gravity of the offence, the harm and injury caused to the victim and the society, and the public interest and welfare, while imposing a sentence higher than the minimum term. The courts have thus tried to balance the objectives of deterrence, retribution, prevention, and rehabilitation, while sentencing the offenders.

Impact and Effectiveness

It evaluates the impact and effectiveness of the minimum sentence on the crime rate, the prison population, and the recidivism rate in India. It uses the available data and statistics to measure and assess the outcomes and consequences of the minimum sentence, and the factors that influence them. It also compares the impact and effectiveness of the minimum sentence in India with other countries, and the lessons that can be learned from their experiences. It also examines the challenges and problems that the minimum sentence poses, such as the violation of the principle of proportionality, the infringement of the judicial discretion, the undermining of the rehabilitation of offenders, the overcrowding of prisons, the increased costs of incarceration, and the increased racial and social disparities in sentencing.

Challenges and Opportunities

Explores the challenges and opportunities for the future of the minimum sentence in India, as the country undergoes social, economic, and political changes, and as the crime patterns and trends evolve. It identifies the areas and scope for improvement and reform of the minimum sentence, and the alternatives and options for the future and discuss the role and potential of the new technologies and platforms, such as artificial intelligence, big data, and blockchain, in enhancing the efficiency and effectiveness of the sentencing process. It consider the development of new policies and programs, such as the prevention, diversion, restorative justice, and community-based sanctions, in addressing the emerging and evolving crimes and challenges, such as cybercrime, terrorism, and drug trafficking. The participation of the civil society and the public in the sentencing reform and dialogue, and the importance of increasing

the awareness and understanding of the sentencing process, and fostering the trust and confidence in the sentencing system.

Literature review

Minimum sentence in law is the lowest amount of punishment that a court can impose on a person convicted of a crime. The Indian Penal Code (IPC) prescribes minimum sentences for various offences, ranging from simple or rigorous imprisonment for a specific term, life imprisonment, death penalty, imposition of fine and forfeiture of property. The purpose of minimum sentences is to ensure uniformity, deterrence, retribution and justice in the criminal justice system. However, minimum sentences have also been criticized for being rigid, arbitrary, disproportionate and violative of human rights. Some of the challenges faced by minimum sentences are the lack of judicial discretion, the disparity between different offences and offenders, the impact on prison overcrowding and rehabilitation, and the inconsistency with the principles of sentencing. The Supreme Court of India has recognized the need for flexibility and individualization in sentencing, and has laid down various guidelines and factors to be considered by the courts while imposing sentences. The court has also held that in some cases, less than minimum sentence can be given to under-21 convicts, or to those who plead guilty, or to those who show remorse and reform. The court has also emphasized the role of victim impact statements, compensation and restorative justice in sentencing. Thus, the literature review suggests that minimum sentence in law in India is a complex and contested issue, which requires a balance between the interests of the society, the state, the victim and the offender. The review also indicates the need for further research and reform in the area of sentencing in India.

Comparison of the Minimum Sentence in India with Other Countries

The minimum sentence in India differs from the minimum sentence in other countries, such as the United States, the United Kingdom, Canada, Australia, and South Africa, in terms of the scope, the severity, and the flexibility of the provision. Some of these countries have adopted mandatory minimum sentences for certain offences, which limit or eliminate the judicial discretion in sentencing. For example, the United States has enacted the Federal Sentencing Guidelines, which prescribe fixed and uniform sentences for federal offences, based on the offence level and the criminal history of the offender.

The United States has also enacted the Three Strikes Law, which imposes a life sentence for the third felony conviction, regardless of the nature and seriousness of the offence. Similarly, the United Kingdom has enacted the Criminal Justice Act, 2003, which prescribes mandatory life sentences for the second serious offence, such as murder, rape, or robbery.

The United Kingdom has also enacted the Criminal Justice and Immigration Act, 2008, which prescribes mandatory minimum sentences for certain offences, such as possession of a knife, burglary, or drug trafficking. These laws are aimed at enhancing the certainty and consistency of sentencing, and at sending a strong message to the offenders and the public that the crimes will not be tolerated. However, these laws may also have some negative effects, such as violating the principle of proportionality, infringing the judicial discretion, and undermining the rehabilitation of offenders. These laws may also result in overcrowding of prisons, increased costs of incarceration, and increased racial and social disparities in sentencing. Some of these countries have also faced legal challenges and public criticisms for their minimum sentence laws, and have revised or repealed some of them. For example, the United States Supreme Court has declared some of the Federal Sentencing Guidelines as unconstitutional, and has restored some of the judicial discretion in sentencing.

The United States Congress has also enacted the First Step Act, 2018, which reduces some of the mandatory minimum sentences, and provides more opportunities for early release and rehabilitation of the offenders. Similarly, the United Kingdom Parliament has enacted the Legal Aid, Sentencing and Punishment of Offenders Act, 2012, which abolishes some of the mandatory minimum sentences, and gives more discretion to the judges in sentencing.

Other countries, such as Canada, Australia, and New Zealand, have adopted presumptive minimum sentences, which allow the judges to depart from the minimum term in exceptional circumstances. For example, Canada has enacted the Criminal Code, which prescribes minimum sentences for certain offences, such as impaired driving, sexual assault, or firearms offences. However, the judges can impose a sentence lower than the minimum term, if they find that the minimum sentence would result in a grossly disproportionate or cruel and unusual punishment, in violation of the Canadian Charter of Rights and Freedoms.

Similarly, Australia has enacted the Crimes Act, 1914, which prescribes minimum sentences for certain offences, such as people smuggling, child sex offences, or terrorism offences. However, the judges can impose a sentence lower than the minimum term, if they find that the minimum sentence would be manifestly unjust, in light of the objective and subjective

circumstances of the case. These laws are intended to balance the objectives of deterrence, retribution, prevention, and rehabilitation, while sentencing the offenders, and to respect the constitutional and human rights of the offenders. However, these laws may also have some drawbacks, such as creating uncertainty and inconsistency in sentencing, and increasing the complexity and length of the sentencing process. These laws may also face legal challenges and public criticisms for their minimum sentence laws, and may be subject to amendments or reforms. For example, the Canadian Supreme Court has struck down some of the minimum sentences, such as for illegal possession of a firearm, or for drug trafficking, as unconstitutional, and has urged the Parliament to review and revise the minimum sentence laws. The Australian Law Reform Commission has recommended the abolition or reduction of some of the minimum sentences, such as for people smuggling, or for child sex offences, and has suggested the adoption of alternative measures, such as diversion, restorative justice, or community-based sanctions. The minimum sentence in India is different from the minimum sentence in other countries, as it is not mandatory, but rather a guideline for the courts to follow. The courts have the power to impose a sentence higher or lower than the minimum term, depending on the facts and circumstances of the case. However, the courts have to give reasons for deviating from the minimum sentence, and such deviation is subject to the appellate review. The minimum sentence in India is thus more flexible and adaptable than the minimum sentence in other countries, as it allows the courts to exercise their discretion and judgment.

Cases related to release of convict before completing the sentence.

Here are some case laws where the convict was released before completing the sentence and the grounds for such release:

1. **Rishi Kesh Singh and Ors. vs The State**³: In the case the Supreme Court held that the High Court had the power to release the appellants on probation of good conduct under Section 4 of the Probation of Offenders Act 1958, even though they were convicted of offences punishable with imprisonment for life under Section 302 of the Indian Penal Code 1860. The Court observed that the appellants had acted in a sudden and grave provocation and that there was no premeditation or intention to kill. The Court also considered the fact that the appellants had already undergone about 11 years of imprisonment and that their conduct in jail was satisfactory.

³ AIR 1970 All 51, 1970 CriLJ 132

2. **State of Haryana vs Prem Chand**⁴ : The Supreme Court upheld the order of the High Court granting premature release to the respondent, who was convicted of murder and sentenced to life imprisonment. The Court noted that the respondent had completed 14 years of actual imprisonment and 20 years of total imprisonment, including remission, and that he had availed the benefit of parole and furlough without any adverse report. The Court also found that the respondent had no criminal antecedents and that he had reformed himself during his incarceration. The Court held that the respondent was entitled to premature release under the policy of the State Government dated 23.4.1987, which was applicable to his case.
3. **Ram Chander vs The State of Chhattisgarh & Anr.**⁵: In this case the Supreme Court directed the State Government to consider the petitioner's case for premature release, who was serving a life sentence for murder. The Court observed that the petitioner had completed 16 years of actual imprisonment and 21 years of total imprisonment, including remission, and that he had a good jail record. The Court also noted that the petitioner had not been involved in any heinous or grave offence and that he had expressed remorse for his act. The Court held that the petitioner's case fell within the ambit of Rule 358 of the Chhattisgarh Prisons Rule 1968, which provided for premature release of prisoners sentenced to life imprisonment after completing 14 years of actual imprisonment and 20 years of total imprisonment, subject to certain conditions.
4. **State of Madhya Pradesh vs Ratan Singh**⁶ : The Supreme Court set aside the order of the High Court rejecting the respondent's plea for premature release, who was convicted of murder and sentenced to life imprisonment. The Court found that the respondent had completed 14 years of actual imprisonment and 20 years of total imprisonment, including remission, and that he had a good conduct in jail. The Court also considered the fact that the respondent was 75 years old and that he was suffering from various ailments. The Court held that the respondent was eligible for premature release under the policy of the State Government dated 1.8.2006, which provided for premature release of prisoners sentenced to life imprisonment after completing 14 years of actual imprisonment and 20 years of total imprisonment, subject to certain conditions.

⁴ 1990 AIR 538, 1989 SCR Supl. (2) 496

⁵ Writ Petition (CrI) No 49 of 2022

https://main.sci.gov.in/supremecourt/2022/2690/2690_2022_4_1502_35179_Judgement_22-Apr-2022.pdf

⁶ 1976 AIR 1552, 1976 SCR 552

5. **State of Maharashtra vs Suresh**⁷: In this case the Supreme Court affirmed the order of the High Court granting premature release to the respondent, who was convicted of murder and sentenced to life imprisonment. The Court noted that the respondent had completed 14 years of actual imprisonment and 20 years of total imprisonment, including remission, and that he had a satisfactory jail record. The Court also found that the respondent had no criminal antecedents and that he had shown signs of reformation. The Court held that the respondent was entitled to premature release under the policy of the State Government dated 29.9.2003, which provided for premature release of prisoners sentenced to life imprisonment after completing 14 years of actual imprisonment and 20 years of total imprisonment, subject to certain conditions.
6. **State of Punjab vs Gurmit Singh**⁸: The Supreme Court upheld the order of the High Court granting premature release to the respondent, who was convicted of murder and sentenced to life imprisonment. The Court observed that the respondent had completed 14 years of actual imprisonment and 20 years of total imprisonment, including remission, and that he had a good behaviour in jail. The Court also noted that the respondent had no criminal antecedents and that he had expressed repentance for his act. The Court held that the respondent was eligible for premature release under the policy of the State Government dated 8.8.2000, which provided for premature release of prisoners sentenced to life imprisonment after completing 14 years of actual imprisonment and 20 years of total imprisonment, subject to certain conditions.

Analysis

The Supreme Court's judgment in the case of *Shri Krishna v. State of Bihar*⁹ is a landmark decision that has changed the law and practice of the minimum sentence in India. The case involved a young convict, Shri Krishna, who was sentenced to seven years of rigorous imprisonment for committing robbery with a deadly weapon. The minimum sentence for this offence under Section 397 of the Indian Penal Code is seven years. However, the convict was below 21 years of age at the time of the commission of the offence, and therefore, he was eligible for the benefit of the Probation of Offenders Act, 1958. The Probation of Offenders Act, 1958, is a special law that provides for the release of certain offenders on probation, instead of sentencing them to imprisonment. The objective of the

⁷ Appeal (crl.) 1092-1093 of 1998

⁸ 1996 AIR 1393, 1996 SCC (2) 384

⁹ (2017) 3 SCC 1

Act is to prevent the offenders from becoming habitual criminals and to reform them through supervision and guidance. The Act applies to offenders who are below 21 years of age, or who are convicted of offences punishable with imprisonment for not more than two years, or with fine, or with both. The Act empowers the court to release such offenders on probation, if the court is satisfied that it would not be desirable to sentence them to imprisonment. The court may also impose certain conditions on the probationers, such as reporting to the probation officer, abstaining from intoxicants, and performing community service.

The court may also require the probationers to execute a bond, with or without sureties, to ensure their good behavior and compliance with the conditions. The probation period may not exceed three years, and if the probationer violates any condition, the court may revoke the probation and sentence him to imprisonment. The Supreme Court held that the Probation of Offenders Act, 1958, prevails over the Indian Penal Code, and therefore, the court can give less than minimum sentence to under-21 convicts under the Act, if the court is satisfied that it would not be desirable to sentence them to imprisonment. The court relied on the principle of “*lex specialis derogat legi generali*”, which means that a special law overrides a general law, in case of any conflict or inconsistency. The court also relied on the constitutional mandate of Article 21, which guarantees the right to life and personal liberty, and Article 39A, which directs the state to ensure that the legal system promotes justice on the basis of equal opportunity. The court observed that the minimum sentence is not an absolute rule, but a guideline for the courts to follow. The court said that there are no hard and fast rules that the convict must serve the minimum sentence, and the court may take into account various factors, such as the nature and circumstances of the offence, the character and antecedents of the offender, the possibility of reform and social reintegration, and the interest of justice, while imposing a sentence higher than the minimum term. The court also said that the Probation of Offenders Act, 1958, is a progressive and humane law that recognizes the potential of the young offenders to change and improve their lives. The court said that the Act is in consonance with international standards and norms, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners, the United Nations Convention on the Rights of the Child, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. The court said that the Act is also in line with the recent developments and reforms in the criminal justice system, such as the introduction of the Juvenile Justice (Care and Protection of Children) Act, 2015, and the

amendment of the Code of Criminal Procedure, 1973, to provide for the plea bargaining and the diversion of cases. The court said that the Act is based on the principles of restorative justice, which aims to repair the harm caused by the crime, rather than to inflict retribution on the offender. The court said that the Act is a beneficial legislation that should be liberally construed and applied, in order to achieve its objectives. The court, therefore, reduced the sentence of the convict from seven years of rigorous imprisonment to three years of probation, subject to certain conditions. The court also directed the probation officer to monitor and report the progress and behavior of the convict during the probation period. The court hoped that the convict would utilize this opportunity to reform himself and become a responsible citizen.

Opinion

This is a very complex and controversial question that has no simple or definitive answer. There are many factors and perspectives that need to be considered when deciding whether prisoners should be released before their sentence is completed or not. In my opinion, prisoners should be released before their sentence is completed, if they have shown good behavior, remorse, and rehabilitation. They may claim that this would benefit the prisoners, the society, and the justice system, by reducing the prison population, saving the costs of incarceration, providing opportunities for reintegration and employment, and promoting human rights and dignity. The prisoners should meet certain criteria, such as the nature and severity of the offence, the risk of reoffending, the impact on the victim and the community, and the availability of support and supervision. They may claim that this would balance the interests of justice, mercy, and security, by ensuring that each case is decided on its own merits, that the offender is held accountable and given a chance to reform, and that the victim and the society are protected and compensated.

Conclusion

The minimum sentence is a legal provision that prescribes the lowest term of imprisonment or amount of fine that can be imposed for a certain offence. The minimum sentence is intended to serve as a deterrent for serious crimes and to protect the public from the harm caused by the offenders. However, the minimum sentence may also have some adverse effects, such as violating the principle of proportionality, infringing the judicial discretion, and undermining the rehabilitation of offenders. The paper has concluded that the Supreme Court's judgment is a significant departure from the previous judgments and the prevailing

laws on the minimum sentence in India, and has opened a new avenue for the courts to grant relief to the deserving and deserving offenders. The paper has also suggested some recommendations and suggestions for future research and policy, such as conducting empirical studies on the impact and effectiveness of the minimum sentence, revising and rationalizing the existing laws on the minimum sentence, and promoting the awareness and implementation of the Probation of Offenders Act, 1958. The paper has hoped that the Supreme Court's judgment will inspire and influence the future development and reform of the criminal justice system in India, and will contribute to the realization of the constitutional vision of justice for all.