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Title of the Ph. D. : Sentencing Policy in Murder Cases in India:
A Co-relation between Crime and Punishment

ABSTRACT

In judicial process, codified statutes are an important source of law, to arrive at final decision making by judges. Criminal law codes, defining offences and prescribing punishments are an important tool for sentencing. The most enveloping and intricate quandary is not the determination of guilt, but how to triumph over the discrepancy and incongruity in the sentencing system, which otherwise ought to be just and equitable. A sentence is a judgment on conviction of a crime; resorted to after a person has been convicted of the offence; and is the ultimate goal of any justice delivery system. This is particularly because a haphazard method of sentencing adversely affects the interests of the individual as well as the society. The sentencing Judge, in deciding the ambit, orbit and severity of the sentence should take into consideration various factors, for instance, the nature of the crime, the prior criminal record of the offender, the age, the possibility of treatment and other aggravating or mitigating factors, etc. The stage of sentence hearing as stipulated under section 235(2) of the CrPC, 1973 is a crucial stage wherein both the accused as well as the prosecution should be given an opportunity to put forward their viewpoints on the question of sentence. The term ‘Sentencing Policy’ defined by the Apex Court in the case of *State of U.P. v. Sanjay Kumar* (2012) is a guide to judicial discretion in accomplishing particular sentencing. In sentencing process, the two criteria taken into consideration in prescribing punishment are the seriousness of the crime and the criminal history of the accused. The objective of introducing more uniformity and consistency into the sentencing process is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts.

A large number of inconsistencies arose in following the principle of rarest of rare, which emanated from the decision of *Bachan Singh v. State of Punjab* (1980), and it was not serving the objective for which it was created— that of laying down a guideline for sentencing in murder cases, because of being so over-encompassing. The lack of a uniform policy being

followed by the Supreme Court can be attributed to the lack of legislative guidelines and also because the Apex Court is not bound by its own decisions. Yet, the distressing uneasiness that the fate of life or death penalty is invariably dependent on the Coram of the bench, and a different set of judges may have ended in a different punishment is one which cannot be shaken off the conscience of the criminal justice system. However, it is submitted that in all matters concerning punishment, the sentencing discretion must continue to remain with the judiciary because sentencing does and forever shall, depend upon the individual facts and circumstance of each case. In this light, it would be unjust and also contrary to the principles and spirit of law to develop a straight jacket policy on sentencing. However, there are certain suggestions which could remedy the above discussed malady. Firstly, affording protection under the procedural law and an accurate adherence to the pre-sentence hearing stage of trial in the case of murder is a possible safeguard against inconsistencies in the sentencing pattern. Secondly, the incorporation of a provision whereby every High Court of the country shall mandatorily refer all cases of the offence of murder, where the sentence of death is either confirmed by the High Courts or is awarded by the High Courts, to the Registrar of the Supreme Court, who shall further place every such case before a Standing Committee, duly constituted by the Chief Justice of India for the purpose of scrutinizing all factors and issues pertaining to the sentence of death so awarded by the subordinate Court. It is suggested that, the Chairperson of the Committee may conduct a discussion with the members present, provided such number be not less than 2/3rd of total number of members of the Committee. Thirdly, unanimous decisions of the judges would be another procedural safeguard in homogenising the sentencing pattern, where each judge has the right to exercise a kind of 'veto' power and the capital sentence cannot be awarded in the case at hand. A fourth suggestion is that, standard principles of sentencing must be strictly adhered to by the Apex Court as it will lead to strengthening and fortifying the doctrine of *stare decisis*, and also have a meaningful and substantial impact on the sentencing policy. It is further suggested that, judicial training, in this regard, shall prove indispensable and it is submitted that judicial members undergo extensive training on the new amendments made to the penal and procedural legislations as proposed by the present research. It is also suggested that this task may be undertaken by the State Judicial Academia to include all members of respective State Judiciary. It may be summarised that although there is a need to continue retaining the death penalty in the Indian criminal justice system, the time is ripe to initiate programmes that prevent the occurrence of heinous crimes, so that the usage of death penalty is minimised.