

Need for India's Sentencing Council

Mains: GSII – Polity

Why in News?

In Sunita Devi vs State of Bihar (2024), the Supreme Court urged the Centre to examine a national sentencing policy, observing that sentencing should not be a “mere lottery.”

What is Sentencing?

- **Sentencing** – It is the process through which courts determine the appropriate punishment for a convicted person, within the limits prescribed by law.
- Its objectives include deterrence, retribution, rehabilitation, reformation and protection of society.

*As of October 2026, the **pending court cases** across all levels of the Indian judiciary has crossed **5.90 crore cases**, as per the National Judicial Data Grid and parliamentary updates.*

What are the Major Issues with India's Sentencing System?

- **Arbitrary sentencing** – Broad judicial discretion without a common framework results in inconsistent punishments for similar offences.
- **Discriminatory considerations** – Research on rape sentencing has identified instances where legally irrelevant factors, such as the complainant's supposed chastity or subsequent marriage, influenced punishment.
- **Constitutional concerns** – Unjustified sentencing disparities raise concerns under Articles 14 and 21, which guarantee equality before law and protection of life.
- **Inadequate consideration of alternatives** – Courts lack a general framework for balancing imprisonment with probation, rehabilitation and other non-custodial measures.
- **Increased appellate burden** – Higher courts spend considerable time correcting excessively harsh or lenient sentences on a case-by-case basis.
- **Weak empirical foundation** – Sentencing decisions are not adequately supported by systematic research on deterrence, rehabilitation, prison capacity and actual outcomes.

What is the Existing Legal Framework for Sentencing in India?

- **Bharatiya Nagarik Suraksha Sanhita (BNSS)** – Section 258(2) provides for a separate hearing on sentence after conviction by a Sessions Court.
- **Sections 401 and 402 of the BNSS** – Provide for release of certain offenders on probation or after admonition, subject to statutory conditions.
- **Probation of Offenders Act, 1958** – Sections 3, 4 and 6 provide for admonition, probation and special safeguards for eligible offenders.
- **Soman vs State of Kerala (2012)** – The Supreme Court recognised the competing objectives of sentencing and highlighted weaknesses in sentencing practices.
- **Law Commission of India** – Its 47th Report had raised concerns regarding sentencing disparities more than five decades ago.

How Can a Sentencing Council Function in India?

*A **Sentencing Council** is an independent statutory body that develops evidence-based sentencing guidelines to promote consistency, transparency while preserving judicial discretion.*

- **Offence-specific guidelines** – Classify offences according to culpability and harm, considering factors such as planning, violence, weapon use, victim vulnerability and physical or psychological injury.
- **Indicative sentencing ranges** – Establish a starting point and a permissible sentencing range within the limits prescribed by law.
- **Individualised punishment** – Adjust the sentence based on relevant aggravating and mitigating circumstances, including rehabilitation prospects and the offender's circumstances.
- **National sentencing database** – Use the National Judicial Data Grid's infrastructure to maintain anonymised data on offences, relevant factors and final sentences.
- **Accountable judicial discretion** – Require courts to consider the guidelines and provide reasons for departing from them, while allowing judges to decide individual cases.
- **Parliamentary oversight** – Establish the Council through legislation and subject its guidelines to parliamentary scrutiny.

Lessons India Can Learn from England and Wales

- The Sentencing Council was established under the Coroners and Justice Act, 2009, alongside a consolidated Sentencing Code.
- Its guidelines classify offences according to culpability and harm, prescribe starting points and sentencing ranges, and permit adjustments for aggravating and mitigating factors.
- India can adapt this model to structure judicial discretion without mandating identical punishments for every similar offence.

What are the Challenges in Establishing a Sentencing Council?

- **Penal populism** – Public pressure, particularly in cases involving sexual offences, may

encourage disproportionately harsh punishments without sufficient evidence of deterrence.

- **Judicial independence** – Overly rigid guidelines could undermine judicial discretion and individualised justice.
- **Federal concerns** – Uniform guidelines may overlook differences in prison capacity and criminal justice administration across States.
- **Mechanical compliance** – Judges may follow checklists formally without improving the quality of sentencing decisions.
- **Lack of reliable data** – Developing effective guidelines requires comprehensive empirical research on sentencing practices and outcomes.

What is the Way Forward?

- Establish an independent, multidisciplinary Sentencing Council through legislation.
- **Develop evidence-based guidelines** following consultation with judges, prosecutors, defence lawyers, criminologists and prison administrators.
- **Ensure that punishments are proportionate** to the offence while preventing discrimination based on social or economic status.
- **Strengthen probation, rehabilitation** and other non-custodial alternatives for eligible offenders.
- **Periodically review guidelines** using sentencing data, prison capacity and evidence on deterrence and recidivism.
- **Preserve judicial independence** by making guidelines strongly presumptive rather than inflexible, with reasoned departures permitted.

What lies Ahead?

- A national sentencing framework can strengthen equality before law, judicial accountability and proportionality in punishment.
- India needs a system that ensures similar cases are treated according to consistent principles while allowing justified differences based on individual circumstances.

Reference

[The Indian Express| Pendency and punishment](#)