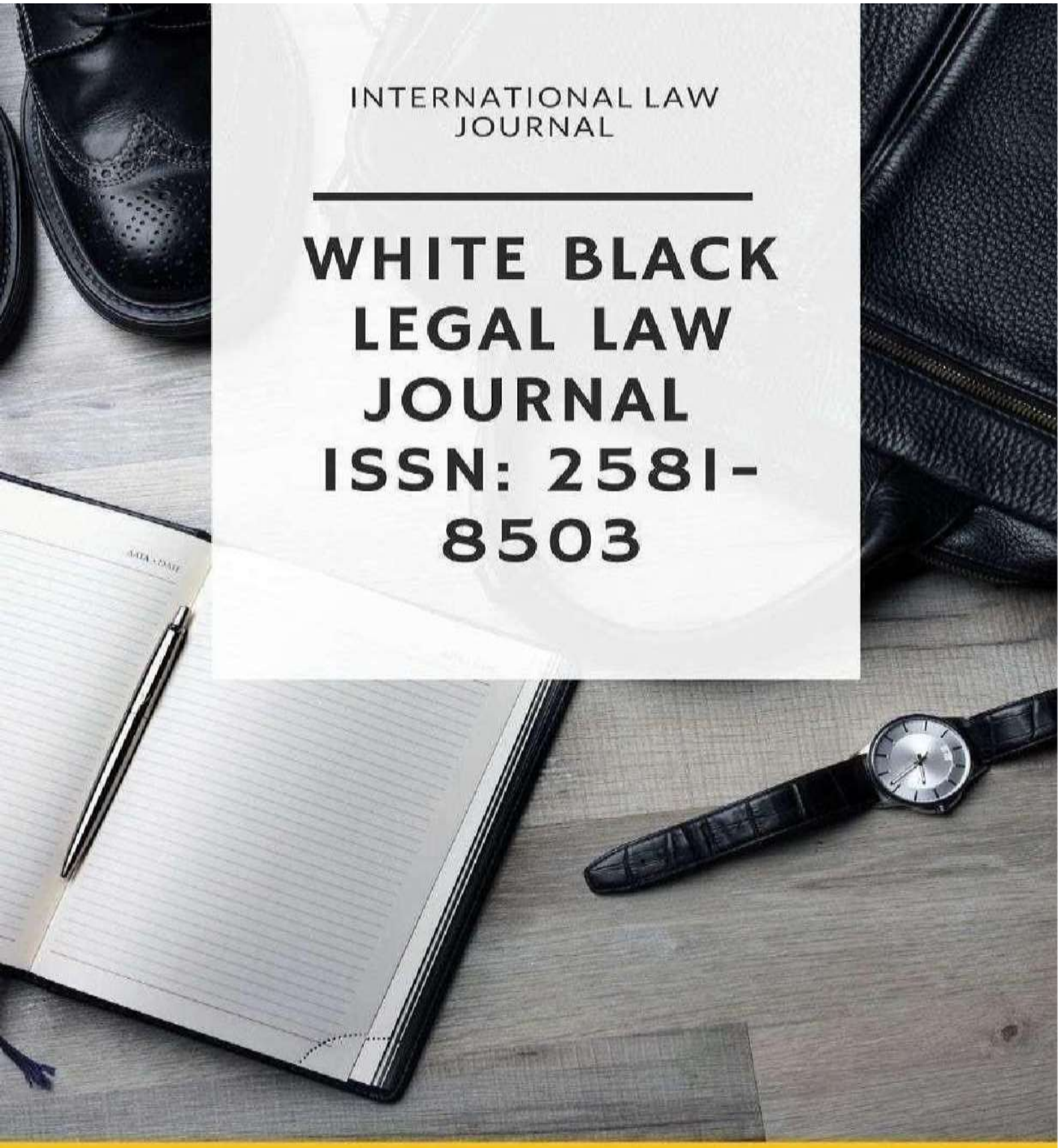

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EXAMINING JUDICIAL DISCRETION IN CRIMINAL JUSTICE ADMINISTRATION: THE INDIAN CONTEXT & JURISPRUDENCE

AUTHORED BY - MONIKA SHARMA

Abstract:

This research paper delves into the intricate realm of judicial discretion within the framework of criminal justice administration in India. The concept of judicial discretion, though fundamental to the legal system, often operates in a nebulous space, fraught with complexities and ambiguities. This study aims to provide a comprehensive analysis of the exercise of judicial discretion by Indian courts, particularly in criminal cases. Drawing from a synthesis of legal literature, case law analysis, and scholarly stances, this paper investigates the factors influencing judicial discretion, including statutory provisions, precedents, societal norms, and judicial philosophy. Special emphasis is placed on understanding how judicial discretion intersects with principles of equity, fairness, and legal certainty. Moreover, the research critically evaluates the impact of judicial discretion on the administration of criminal justice in India at important stages in a criminal trial. It examines the potential benefits and drawbacks of discretionary decision-making by judges, considering its implications for individual rights, legal consistency, and the overall efficacy of the justice system. In conclusion, this research contributes to a nuanced understanding of judicial discretion in the context of criminal justice administration in India. It underscores the importance of balancing judicial autonomy with the imperative of upholding the rule of law and ensuring justice for all stakeholders involved in the legal process.

INTRODUCTION

"Variances come from the hearts of the judges rather than the facts of the case."[1]

India is a democratic country with three major branches of governance: the legislative branch, executive branch, and judicial branch. From time to time, each component of the democratic system performs a range of duties, all while keeping the public and societal interests in mind. The legislative authority enacts the broad principles of society in the form of legislation,

[1] Jeff Atkinson, *Criteria for Deciding Child Custody in Trial and Appellate Courts*, 18 FAM. L.Q. 1, 39 (1984)

representing and proposing the State's will. The executive then has the task of enforcing such laws and directives, ensuring that they are adhered to by all parties and that no infractions occur. The Judiciary, the third branch, upholds laws and ensures that individuals are treated fairly by reviewing, interpreting, and adjudicating disputes. The Judiciary, commonly called as the judicial arm of government, is the most significant of the three parts of government. It is an essential part of the government system and is critical to the proper operation of our country. We have had a well-established legal system, as well as comprehensive and codified substantive and procedural laws, from Britishers for about seven decades. The majority of these legislations have weathered the test of time. As a result, we implemented them with appropriate modifications where necessary. We have fine-tuned the judicial administration throughout time to fit the demands of changing times and modern India's ambitions. The art of judicial decision-making is the bedrock of the Indian justice system; few other public authorities have the authority and clout that a sitting judge has. Nonetheless, for ages, legal experts, attorneys, and litigants have been perplexed and interested by the method by which judges arrive at their rulings. The political executive's unrestricted discretion is subject to judicial scrutiny, but when the court exercises its discretionary powers in the guise of doing justice, undoing the wrong done in the name of law becomes a mammoth effort. In either case, abuse of discretion is detrimental to the legal system. The endeavour of judging has been defined as "the art or science of making discrete choices among competing courses of action.' [2]Judges are considered to have the discretion to follow any legitimate route since they are charged with the obligation to administer justice fairly and equally. [3] The use of discretion is a basic judicial duty in both criminal and civil proceedings, and in situations both serious and minor. [4] But the most pertinent question that needs an answer is whether judges and other arbiters of disputes between individuals and groups should be required to follow strict and well-defined rules, announced in advance of contentious events, in order to ensure consistency and predictability of adjudication, or whether they should be given a wide range of decisional liberation in order to accomplish a just result that meets the needs of the particular case. According to legal academics Sylvia A. Law and Patricia Hennessey, law gives a considerable degree of discretion in Judges, giving the judge the freedom to assess each one according to his or her own personal

[2]H.L.A. Hart , THE CONCEPT OF LAW (1961) (explaining judge's discretion to choose how closely, and in what manner, to follow authoritative precedent)
[3]Aharon Barak, *Judicial Discretion*, 10 (Yadin Kaufmann trans.) (1989) ("The legal question to which discretion is applied does not have one lawful solution, but rather several lawful solutions.")
[4] D. J. Galligan, *Discretionary Powers: A legal Study of Official Discretion* 1 (Max Knight trans.)(1967) (claiming that judicial discretion rivals in significance "the core of settled rules in terms of which legal order is characterized").

morals. What one judge considers to be correct or incorrect under the circumstances is likely to differ significantly from what another judge or lawyer considers to be proper. This "unencumbered discretion enables judges to include their own personal background, insight, and prejudices in delivering depth to the ' decisions" [5] Justice VR Krishna Iyer in 1978 said, recalling Benjamin Cardozo's comments.

“"The judge, even when he is free, is still not entirely free," he said, recalling Benjamin Cardozo's comments. He is not to invent for the sake of it. He is not a free-roaming knight in search of his own ideal of beauty or goodness. Consecrated principles are to be his source of motivation. He is not to be swayed by sporadic feelings, by compassion that is hazy and uncontrolled. He must use judgement informed by tradition, methodized by analogy, disciplined by system, and subjugated to the social life's primal need for order. "[6]

The above quote by Justice Iyer clearly depicts the importance that a judge holds in dispensation of justice owing to the discretion envisaged in the institution of judiciary. It also deciphers the fact that it is actually the element of judicial discretion present in the judicial decision making in India in every kind of case at certain points which makes judicial decision making a very subjective process. A judge's view is only a manifestation for his or her own wishes. This finding, made by Theodore Schroeder in his influential study, 'The Psychologic Study of Judicial Opinion[7],' speaks a lot about the relevance of study of judicial discretion which is often called a vague term . The authority or right to make official choices using reason and judgement to pick among acceptable options is known as discretion. Because of the many types of judgments made by judges within the same set of conditions, judicial discretion is a fairly broad notion. In judicial procedures, a judge's exercise of discretionary authority is omnipotent. Bail, penalty, and the ability to obtain an injunction in civil cases are not always legal problems. Judges invoking Hindu Rashtra (Meghalaya High Court), skin-to-skin touch test of sexual assault in a POCSO case (Bombay High Court), or telling the rape accused to get a rakhi tied by the victim (MP High Court) are all essentially matters of invoking the individual judges' attitudinal or behavioural moorings. Factors such as a judge's previous and current professional and personal experience, as well as life circumstances, have a significant impact on numerous aspects of the judicial process, including what is ultimately deemed a judicial

[5]Law & Patricia Hennessey, Is *the Law Male?: The Case of Family Law*, 69 CHI.-KENT L. REV. 345, 351 (1993)
[6]*Gudikanti Narsimmhulu v. Public Prosecutor , High Court of Andhra Pradesh* , 1978 SCR (2) 371
[7]Schroeder Theodore , *'The Psychologic Study of Judicial Opinion* , Vol VI , No. 2 California Law Review p 89-113 (1918),

conclusion. With the jobs that have been entrusted upon the courts of our land the element of subjectivity and discretion always revolves around in one way or the other, starting from statutory interpretation, the power to issue writs in cases of public interest litigations, judicial review of administrative discretion to power to grant bail, sentencing, issue injunctions, initiate contempt proceedings, special leave to appeal, etc one thing that remains common to these proceedings is the judicial discretion that the courts have been bestowed upon by the letter of the law. This discretion is so important and wide that one opinion in the mind of a judge who happens to be human himself can make a lot of difference in what justice could have been. As it has been rightly stated by Dr. Aharon Barak[8]

"*As a judge, I do not have a political platform. I am not a political person. Right and left, religious and secular, rich and poor, man and woman, disabled and nondisabled, all are equal in my eyes. All are human beings, created in the image of the Creator. I will protect the human dignity of each. I do not aspire to power. I do not seek to rule. I am aware of the chains that bind me as a judge and as the president of the Supreme Court. I have repeatedly emphasized the rule of law and not of the judge. I am aware of the importance of the other branches of government – legislative and executive – which give expression to democracy. Between those two branches are connecting bridges and checks and balances. I view my office as a mission. Judging is not a job. It is a way of life. Whenever I enter the courtroom, I do so with the deep sense that, as I sit at trial, I stand on trial*."

JUDICIAL DISCRETION IN CRIMINAL PROCEEDINGS:

Adjudication of criminal Matters is one of the most important features of the judiciary in a democratic system. Crime is often termed as an offence not against an individual but an offence against the state. In the democratic state, the major goal of criminal justice system is to reduce crime in society and to punish offenders who commit crimes that disrupt society's social stability, hence avoiding upheaval. It is the responsibility of the sovereign countries to protect the rule of law and maintain peace & order and simultaneously let people exercise their Human Rights. [9] Executive, Judicial & Legislative measures can help in achieving this but these measures may not be fruitful because of non inclusion of proper punitive and preventive steps to curb crime. Crime has the potential to have a detrimental effect on the society. Hence, it

[8] *Supra, Note* 4

[9] MoHA, DR. JUSTICE V.S. MALIMATH, COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, REPORT Volume I, 23, March 2003, *available at* http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system (Last Visited 10.09.2024)

becomes important for the authorities to detain the criminal and after a fair trial, lawfully punish him.

The criminal laws in India provide for a great amount of judicial discretion in crucial aspects of criminal justice administration, this is the reason why judicial discretion is a very important concept in the area of criminal laws. Criminal law uniformity implies that it is applied uniformly throughout the country without prejudice, providing equal justice to all. The goal is to remove judicial discretion in criminal law administration. It should be emphasised, however, that current legislations are allowing for increased judicial discretion through judicial equity in order to achieve offender transformation, which is the ultimate purpose of criminal justice.

It cannot be denied, that, notwithstanding the legal limitations imposed by the law, the judicial authorities' personal judgement plays a considerable role in shaping their judgement on the accused's guilt and the penalty imposed on him. Thus, within the defined legal boundaries, the penalty issued for a particular offence may differ from Judge to Judge, based on his own perceptions, beliefs, religion, temperament, mental attitude, likes and dislikes, and life experiences. One Judge may take the situation seriously and impose the maximum sentence authorised for the offence, while the other may be more lenient and impose the minimum term prescribed for the offense.[10]During the course of the trial, the presiding Judge establishes a firm opinion about the accused's guilt or innocence, and then delivers his judgement, which is nothing more than a declaration of his personal opinion spoken within the confines of the law. Apart from that, public opinion and socio-cultural aspects also have an impact on legal thought, which finally manifests itself in court decisions. Even the most strict criminal justice systems throughout the world have found it necessary to adopt ideas like mitigating circumstances and suspended sentences in order to minimise discretion and inequities in judicial decision-making in the criminal justice system.

In India, both the substantive and procedural criminal Laws like Criminal Procedure Code 1973, The Indian Penal Code 1860 and The Evidence act provide for numerous major provisions where Judicial discretion is the eventual decision maker and it is the Magistrate or the judge who gets unfettered discretion to decide the matter on his own volition. Following are the heads under which I shall be further analysing the role of judicial discretion in criminal

[10] *Rajendra Prasad's V. State*, AIR 1979 SC 916.

proceedings

1. Cognizance
2. Remand
3. Bail
4. Sentencing

COGNIZANCE OF OFFENCES: A CASE OF JUDICIAL DISCRETION

In a criminal trial the first and the most important step is when the court takes cognizance of a matter and at this very step the law of the land provides courts with a great amount of judicial discretion . In general, the word "cognizance" is defined as "knowledge" or "notice," and the phrase "taking cognizance of offences" refers to taking cognizance of the alleged conduct of an offence. The definition of "cognizance" according to the dictionary is "judicial hearing of a subject." Before beginning to conduct the trial, the judicial officer must take notice of the offence. A magistrate as such applies his thoughts to the alleged conduct of an offence for the purpose of legal procedures, and thus results in taking cognizance, which does not require any formal action. Therefore, taking awareness is referred to as applying the judicial mind. Taking cognizance of the offence is the first stage in every criminal proceeding. It is intended to take judicial notice of an offence by taking cognisance. The judiciary enters the scene only after taking offences into consideration. If we use the definition from the dictionary, it merely refers to learning about any such offences.[11]

In terms of the process involved in taking cognizance, first and foremost, the materials—oral and documentary—as well as other information given and apprised of—must be examined with a judicial mind. The litmus test for taking cognizance is evaluating the allegations thoroughly by grasping the relevant facts, bringing the relevant law into focus, applying the facts to the law, and coming to a conclusion by a process of reasoning and demonstrating that all relevant facts have been taken into account, whether it be in relation to an offence on a complaint, a police report, or upon information from a person other than a police officer. Since informed thinking lies at the core of the issue, a condensed and formulaic replication of the facts to the exclusion of pertinent factors involved from the focus of mind would surely result in a judgement without application of mind. Courts must carefully decide and cautiously examine if the complaint filed is the result of a personal vendetta or outburst of animosity/enmity or

[11] *R.R.Chari v. State of U.P* 1951 AIR SC 207

originated from evil impact of fickle mind in order to wreak vengeance against the opponent. Otherwise, malicious prosecutions would be rampant. In criminal law or process, the term "cognizance" has no mystical or magical meaning. Simply put, it means "become aware of," and when referring to a court or judge, it implies "to take note judicially."[12] And cognizance involves a careful application of judicial discretion since cognizance is not only about justice being served , cognizance is about whether a case would go to trial and whether the victim would even get a chance to present his side of the story or not .

COGNIZANCE BY THE MAGISTRATE:

The word "cognizance" is used in Chapter XIV of the Code under the heading "Conditions requisite for initiation of proceedings," and Section 190, the first Section in the said Chapter, describes how a magistrate will take cognizance of an offence on a complaint, a police report, or upon information from a person other than a police officer. Section 191 gives the Chief Judicial Magistrate the authority to transfer a matter that has been filed suo motu by a Judicial Magistrate since there may be grounds for establishing bias or malice given that the Magistrate is the complainant. In accordance with Section 192, a Chief Judicial Magistrate who recognises a crime may, by administrative order, transfer the matter to any other Magistrate who reports to him for investigation or trial.

Except in circumstances where the legislation expressly grants authority, Section 193 forbids a court of sessions from taking cognizance of any offence whereas Section 194 gives sessions courts the authority to send matters to the docket of Additional and Assistant Sessions Judges. Section 195 addresses the punishment of public officials for violating the people's right to justice and for offences involving documents used as evidence. Section 196 deals with crimes against the State and criminal conspiracies to perpetrate the crime, while Sections 197, 198, 198-A, and 199 deal with the prosecution of judges and public workers, crimes against marriage, crimes under Section 498-A of the Indian Penal Code, and other offences. The four sections 200 to 203 of Chapter XV, titled "Complaints to Magistrates," deal with the complainant's examination, a magistrate's procedure when he or she is ineligible to hear the matter, delaying the issuance of process, and dismissing the complaint.

[12] *Ajit Kumar Palit v. State of W.B.,* (AIR 1963 SC 765).

According to Section 190, any magistrate of the first and second classes may declare an offence to have occurred if:

1. Upon learning of information pertaining to offences in a complaint.
2. According to police report.
3. Based on information gleaned from sources other than police or his own expertise.

If the circumstances asserted in the complaint reveal the commission of an offence, the Magistrate is not required to take cognizance. In this situation, the Magistrate has discretion. The Magistrate will be justified in taking that course as opposed to taking cognizance of the offence itself if, after reading the complaint, he determines that the allegations therein reveal a cognizable offence and that forwarding the complaint to the police for investigation under Section 156 (3) will be conducive to justice and prevent the Magistrate from wasting valuable time by enquiring into a matter that was primarily the responsibility of the police to investigate.[13] However, the decision to use the judicial discretion granted to the senior magistrate pursuant to Section 156(3) of the Criminal Procedure Code at the pre-cognizance stage rests entirely in his hands after careful consideration of the allegations made in the petition and any pertinent supporting documentation. There is no room for such discretion to be used in an arbitrary manner without the use of a judicial mind. The term "may" in Section 156(3) Cr.P.C. is quite important. The magistrate is given the option of ordering or not ordering an inquiry into the cognizable offence detailed in the petition. This discretionary power should only have been used for legitimate purposes and not at random.

In the case V. Narayana Reddy v. Devarapally Lakshminarayana Reddy[14] (three Judges Bench) - The appellants cited the aforementioned judgement in their argument that when a magistrate applies his mind after receiving a complaint in order to proceed under Section 200 and the following sections of Chapter XV of the Code of 1973, he is considered to have taken cognizance of the offence within the meaning of Section 190(1). (a). He cannot be considered to have taken cognizance of any offence if, in the exercise of his judicial authority, he took action of a different sort, such as ordering a police inquiry under Section 156(3) or issuing a search warrant for the purpose of investigation.

[13] *Madhao v. State of Maharashtra,* (2013) 5 SCC 615
[14] 1976 AIR 1672

The term "to take cognizance" has not been defined in the code, nor does it provide a particular method of doing so. But under the statute, the term "cognizance" refers to the moment a magistrate or court takes judicial notice of an offence. It is a term with countless applications, but perhaps not necessarily in the same context. When used with respect for a court or judge, the word cognizance simply means "become aware of" and denotes "to take notice judicially." It denotes the moment when a court or magistrate takes judicial notice of an offence with the intention of starting legal action against the alleged perpetrator of the offence. The term taking udicial notice of a matter is where all the judicial discretion lies and the absolute fate of a particular matter is handed over to the discretion one man that is the magistrate , this often has been notes that this unfettered discretion sometimes closes doors of justice for many victims of crimes.

"Taking cognizance" refers to acknowledging an offence rather than an offender. Once the magistrate declares an offence to have occurred. It is his responsibility to identify the true perpetrator, and after he has determined that someone else is involved in the crime in addition to the individual the police have put up, it is his responsibility to take action against them. Therefore, it is regrettable to say that the Magistrates, who have repeatedly been advised and guided by the Hon. Supreme Court to exercise great caution in taking cognizance, have abruptly failed to adhere to such guidance, as reflected in the statistics provided. As a result, the involvement of civil disputes with criminal charges is greatly increasing with each passing day

THE LAW ON REMAND & JUDICIAL DISCRETION

When the accused is initially brought before the magistrate, remand is a crucial stage in a criminal case. The Criminal Procedure Code of 1973 has no definitions for the word "remand." However, remand often refers to sending something back. Police remand and judicial remand are the two types of remand. The officer in charge of a police station or the investigating officer can only request remand when there are reasons to believe that the accusation or information is true and it appears that the investigation will take longer than the twenty-four hours allotted under Section 57. This is made clear by a perusal of S.167(1), CrPC, 1963.

Fundamentally, ordering the remand of an accused is a court duty. While directing the custody of an accused, the magistrate is not acting in an executive role. The Magistrate must determine whether the evidence provided before him justifies the remand, or, to put it another way, if

there are good reasons to commit the accused to detention and extend his remand, before performing this judicial function. According to Section 167, remand is used when an inquiry cannot be finished in 24 hours. It allows the magistrate to determine if the remand is indeed required. It is firmly established that Section 167 of the Criminal Procedure Code is an addition to Section 57 of the Criminal Procedure Code. S. 57 makes it plain that the inquiry must be finished in the first instance within 24 hours, and if it cannot, the police must take the arrested individual before a magistrate as required by S. 167. In other words, this provision serves two purposes: first, to clarify that the law does not favour detention in police custody except in exceptional circumstances and then only for justifications that the Magistrate shall set forth in writing; and second, to permit the person in question to present a defence before a Magistrate.

The magistrate who approves the accused's detention under this section is completely free to place the accused in any type of custody he sees fit or to decline remand if it is not necessary. When determining a remand application under this clause, the court must focus on Just passing an order is insufficient; a reasoned order for the same is necessary. The content created before it. When determining whether or not the accused should be held in any type of custody, the magistrate must utilise his or her judicial judgement. Before approving detention, the magistrate shall take into account all pertinent information, including the case diary copy.

The ability of a magistrate to grant remand is not automatic; in order to use this power, there must be good cause. For a maximum of 15 days, and only within the first 15 days following the arrest, the magistrate may remand the accused to police custody. and that the accused must be present for the remand order to be made. Police remand should only be granted in cases of genuine necessity, when it is demonstrated that there is reason to believe that the accused can lead to the recovery of incriminating material or otherwise assist the police, and the Magistrate must record reasons for allowing police remand as provided by section 167(3) of criminal procedure. The magistrate has the discretion to grant either judicial or police remand when granting remand. The decision regarding the remand application is entirely up to the magistrate. The accused may be held either in police custody or judicial custody at the magistrate's discretion. If the magistrate is dissatisfied with the justifications supplied by the police for requesting remand, he has the option of releasing the accused on bail.

The magistrate has unfettered and broad authority to commit an accused person to police custody. They are not constrained or hindered by any legal restrictions while issuing the order

or when making the order of remand. However, because a court of law has been given this power, it must be used judiciously in accordance with accepted standards. The party that has been wronged always has the option of seeking redress in the higher courts if the discretion has been used arbitrarily or without due process. Remand is an essential aspect of the magistrate's job as a judge, according to the Hon'ble Apex Court in the case of Manubhai Ratilal Patel v. State of Gujarat and others.[15]The Magistrate must be satisfied that there are sufficient grounds and that the evidence put in front of him supports the accused's continued detention while carrying out this judicial duty. When remanding an accused person, the magistrate is required to utilise his judgement and not just give the decision mechanically or routinely.

A remand order cannot be issued mindlessly, and it cannot be done in a robotic or mechanical way. However, it is not necessary for the order sheet to appear exactly like a judgement that has been handed down after a thorough trial. In Mantoo Majumdar and Dasdev Singh v. State of Bihar, 1980 [16]noted that where the relevant magistrate effectively authorises repeated detentions while being unaware of the laws requiring them to oversee the processes that underlie such detentions. It was determined that all potential violations that could arise from delays between the time that prosecutors find enough evidence to proceed against an accused person and the time that those proceedings are launched are to be prevented by the courts. . Although, the magistrate is bound to have reasons backing the order of remand, the element of subjectivity and judicial discretion always leaves room for abuse of this discretion. Since, matter of remand is that of putting the alleged accused behind bars, its exquisitely prone to being abused due to numerous reasons.

THE LAW ON BAIL & JUDICIAL DISCRETION

According to Krishna Iyer J., "...bail falls to the grey area of the criminal justice system and mostly depends on the bench's judgement, sometimes known as judicial discretion. The Code is ambiguous on this subject, and whether the order is custodial or not, the court prefers to remain silent. However, the problem is one of liberty, justice, public safety, and the financial load on the public coffers, all of which require that a developed bail law is essential to a socially sensitive legal system.[17] In our shastras, the administration of justice has been compared to God. Therefore, the demands placed on individuals charged with this noble job go above and

[15] (2013) 1 SCC 314.
[16] 425 Cri.LJ 1980
[17]*Supra Note 7*

above the call of duty. These expectations result from the belief that the judge or arbitrator will execute the task of fairly weighing the opposing allegations. Similar to a double-edged blade, the delicate balance between punishment and exoneration can be used improperly without fail to have negative effects. It is crucial to strike a balance between the two extremes. Because of this, the Lady Justice statue carries the scales in her right hand, which stand for qualities like fair judgement, equality before the law, and objectivity.

The CrPC contains no definition of the word "bail." It must thus be possible to determine its origins from other sources. It derives from the word bail, which meaning to give or deliver in old French. In a criminal case where the court has not yet rendered a decision, the term "bail" refers to the accused's temporary release. The responsible use of this discretion during a criminal trial guarantees that everyone, including the accused, has access to their fundamental right to personal liberty. The Hon'ble Supreme Court and High Courts have repeatedly expressed concern about the significance of documenting persuasive arguments for exercising this discretion in favour of, or against, an accused, and have referred to these arguments as essential for upholding the virtues of the justice delivery system in numerous instances throughout the legal history.

In legalese, it is described as "procuring the release of a person from legal custody by undertaking that he/she shall appear at the time and place indicated and subject himself/herself to the authority and judgement of the court." This is according to Black's Law Dictionary. [18]The bail is the security provided by the defendant; it serves as a promise or assurance that they will appear in court when required at a later time. The Criminal Procedure Code's Sections 436 to 450, which include the provisions for the granting of bail, deal with the procedures relating to bail in India. The court has been given considerable discretion in this case about the amount of security, which allows it to restrict the bond's value. The Hon'ble Supreme Court of India held in Babua Tazmul Hossain v. the State of Orissa [19]that pre-trial detention should not be reinstated as a form of punishment. If bail is a legal requirement and jails are an exception, the accused should be granted the privilege of bail to better present his case unless the courts have reason to suspect that the accused will not stand trial or that granting release is not in the best interests of society[20].

[18]Bail , BLACK'S LAW DICTIONARY, (2012) .
[19] *Babua Tazmul Hossain v. the State of Orissa*, MANU/SC/0752/2001.
[20] *State of Rajasthan, Jaipur vs. Balchand* MANU/SC/0152/1977

A straightforward interpretation of the laws on bail makes it clear that, in the case of an offence for which bail is not permitted, the court in question has the authority to grant or deny bail. Therefore, the accused cannot automatically request bail for such offences. The second topic that naturally follows is what standards should be followed for a consistent and wise use of the aforementioned discretion by the Judges having various thought processes while dealing with various case types. These standards have been established in several legal rulings, some of which are helpfully reprinted below. The two categories of offences are bailable and non-bailable offences. In the first scenario, the accused has a legal right to ask for bail. In the latter scenario, bail is established at the judge's discretion. Judges must consider issues including the possibility of evidence tampering or the accused escaping. They must take into account both the nature of the evidence and how severe the allegations are. The Constitution Bench of the Hon. Supreme Court noted in Gurbaksh Singh Sibbia Vs. State of Punjab[21] that the Legislature had given the High Court and the Court of Session broad discretion to grant anticipatory bail because, first, it would be challenging to list all the circumstances in which such bail should or should not be granted and, second, because the intention was to allow the higher courts to be somewhat free in deciding bail matters. The Bench also established several rules that must be followed while considering a request for anticipatory bail.

In the case of Dataram Singh v. State of Uttar Pradesh[22], the court's discretion over bail was deemed to exist, but it had to be "executed prudently, in a humane, and compassionate manner." Bail is a judicial decision, not a governmental one. The authority cannot be used arbitrarily. In a case from the year 2020, Sushila Aggarwal v. State[23], the court ruled that the idea that anticipatory bail shouldn't typically be granted in cases involving economic offences, among others, is unjustified and overturned the idea that "economic offences should be exonerated from the grant of anticipatory bail." Having said that, a five-judge constitution bench issued an 8-point guideline in the case of Gurbaksh Singh Sibbia v. State of Punjab that serves as a guide for using discretion under Section 438, Cr.P.C. until it is overturned by a bigger constitution court. This eight-point guideline, as has already been established, disproves the notion of enclosing or limiting judicial discretion inside a rigid framework.

The use of judicial discretion is an unflattering aspect of bail rules in India, but as Abhinav

[21] 1980 SCR (3) 383
[22] CRIMINAL APPEAL NO.227 /2018
[23] SPECIAL LEAVE PETITION (CRIMINAL) NOS.72817282/2017

Sikri [24]points out, unrestricted judicial discretion has evolved into unconstrained discretion in bail over time. A normative standard is required when granting bail in order to reduce the possibility of judicial prejudice on the part of the judge, which is not improbable in situations of unchecked discretion, and to ensure fairness, which is a fundamental component of natural justice, both on paper and in practise. Additionally, every legal proceeding is governed by Article 21 and the "method established by law," which is now interpreted broadly, because bail is considered to be a fundamental right in its own right. Even after making every effort and taking the law and specific rules that must be followed for its application into consideration, the Indian criminal justice system still has flaws when seen from a wider angle. Considering the socioeconomic status of the bulk of our population, there is also a need for a revolution in the current bail system. In order to prevent the accused from eluding the legal system and restoring people' basic and other rights, the courts should constantly take into account the accused's socioeconomic situation, have a sympathetic attitude, and ensure background checks. Given that the purpose of bail is to enable a speedy trial, the granting of bail is plainly a matter of judicial discretion, and issues regarding a person's individual liberty as well as the greater social and public interest must be taken into account. According to the ruling in the case of Om Prakash v. State of Rajasthan[25], the constitutional obligations owed to Indian citizens must remain supreme. Furthermore, The Hon'ble Supreme Court said in Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Anr.[26] that "The court granting bail should utilise its discretion in a thoughtful way and not as a matter of course. Even though a thorough investigation of the evidence and extensive documentation of the case's merit are not required at the time of granting bail, the orders must state the reasons why bail was granted based on prima facie evidence, especially in cases where the accused is accused of committing a serious crime. Any order lacking these justifications would suffer from lack of consideration.

In a nutshell, it may be said that in order for courts of all levels to operate effectively, they must have the power to issue bail. The Hon'ble Supreme Court and the High Courts have occasionally laid down broad guidelines that undoubtedly broaden our horizons in order to understand the various nuances involved in handling bail matters and point us in the right direction. It is true that there cannot be a rigid formula that can ensure the exercise of such

[24]Inconsistency in Bail: Rethinking Court's Unfettered Discretion, *Available at* https://theanalysis.org.in/2021/02/28/inconsistency-in-bail-rethinking-courts-unfettered-discretion/(Last Visited 15.09.2024)
[25]1 996 Cri. LJ 819
[26] (2004 (7) SCC 528)

discretion in the most reasonable and prudent manner possible.

SENTENCING & JUDICIAL DISCRETION

The extremely important step in delivering criminal justice is sentencing. Sentencing is technically the confluence of exquisite perspectives and a step where discretion vested in the judiciary plays the main role. Undoubtedly, it is also the link between the criminal justice system and the general populous, as justice appears to have been 'served.[27] 'The judge's job in sentencing is to identify the type and amount of punishment that is suitable for the facts at hand, and this decision needs to be made in conformity with applicable legislative provisions and appellate standards.

Sir James Fitzjames Stephen, speaking about judicial sentencing, stated that while it is proper to punish criminals for the sake of public vengeance, they should not be sentenced outright in the name of reinforcing a society's values. There may be times when a Judge recognises that the values presented by the criminal law have already lost much of their credibility as a result of rapidly changing public opinion, and he would prefer to impose a sentence that is less severe than the one prescribed for that offence. [28] In contrast, a Judge may choose to give legitimate expression to his condemnation of an offender's act by imposing an exemplary harsh sentence.[29]

The problem was first noted by the Hon'ble Supreme Court of india more than 40 years ago, when it discovered that in two similar cases, a four-year sentence was awarded in one case and a three-month sentence was inflicted in the other. [30] Another example is a case in which the trial court sentenced for a single day & High Court straightway ordered a sentence of 7 long years. Eventually the Honourable Supreme Court of India ordered a 3 years term.[31] These examples explicitly showcase the ironical highs and lows that a criminal matter goes though only in the case of sentencing, the variety of sentences for same cases across the hierarchy of criminal cases signifies the role that subjectivity plays in sentencing process in India. Sentencing today is woefully not a procedural step in the life of a criminal case, it is in fact a step where the fate of a human probably already languishing in jail depends on the wide

[27] Austin Lovgrove, THE FRAMEWORK OF JUDICIAL SENTENCING 1-2 (1997).
[28] *Ediga Anamma v. State of Andhra Pradesh*, AIR 1974 SC 799
[29] *Kuljeet Singh @ Ranga vs Union Of India & Anr*, AIR 1981 SC 1572.
[30] *Rameshwar Dayal vs. State of U. P.*, (1971) 3 SCC924
[31] *Raju vs, Stae of Karnataka ,* (1994) 1 SCC453

discretion available to a human judge. The need of well-structured guidelines has been stressed countless times. In the March of 2003 The Home Ministry formed a committee called the " Malimath Committee" as per which an organised set of sentencing guidelines are necessary to curb the disparity prevailing in the sentencing system of our country. Similar findings were made by the Madhav Menon Committee in 2008 regarding the necessity for a strong protocol guiding sentences handed down by Trial Courts.[32]

In his book Discretion, Discrimination, and the Rule of Law, Dr. Mrinal Satish [33]examines cases of rape simpliciter, child rape, and gang rape, all of which are punishable under Section 376 of the Indian Penal Code, and which were appealed to and decided by several High Courts and the Supreme Court of India between 1984 and 2009. In more over half of the cases, the appeal courts disagreed with the decisions of the lower courts, according to the study. As per the study in cases of normal rape in 44 percent of matters, the High Courts overturned the trial court's conviction, while 16 percent had their sentences changed. High Courts reversed convictions in 37% of gang rape cases and changed sentences in 18% of cases, while convictions in child rape cases were overturned in 29% of cases and sentences were changed in 20% of instances. Surprisingly, the Supreme Court was more likely to disagree with the High Courts, with convictions overturned in 53% of instances and sentences changed in 21% of cases. In cases of gang rape, the Supreme Court overruled the High Court's determination of guilt in 48 percent of cases and changed the punishments in 11 percent of cases.

Judges frequently impose different punishments on offenders in comparable situations or equal sentences on offenders with different crimes and prior criminal histories. The detractors argue that unrestricted discretion leads to lawlessness in sentence.[34] The Supreme Court of India has stated a variety of criteria that should be considered when exercising discretion in sentencing, including proportionality, deterrent, seriousness, and rehabilitation, in a number of instances. In the case of Soman v. State of Kerala,[35] the Supreme Court also noted the lack of established guidelines:

[32]MoHA, PROF. NR MADHVA MENON , REPORT OF THE COMMITTEE ON DRAFT NATIONAL POLICY ON CRIMINAL JUSTICE (July 2007) , *Available at* https://www.mha.gov.in/sites/default/files/DraftPolicyPaperAug.pdf (Last Visited 16.09. 2024)
[33]Mrinal Satish, DISCRETION, DISCRIMINATION AND THE RULE OF LAW: REFORMING RAPE SENTENCING IN INDIA (2016).
[34]Lesley Oelsener , *The trouble with sentencing is that its Lawless* , New York Times (May 13 , 1973) , *Available at* https://www.nytimes.com/1973/05/13/archives/criminal-sentences-law-without-order-by-marvin-e-frankel-124-pp-new.html (Last Visited 22.09.2024)
[35] (2013)11 SCC382

'Punishment of wrongdoers is at the heart of criminal justice delivery, but it is the weakest aspect of our country's criminal justice administration. There are no legislative or judicially established criteria to help the trial court in imposing the appropriate sentence on an accused who is found guilty of the accusations before it.'

As Michael M. O'Hear [36]argues, a difference must be made between the 'warranted' and 'unwarranted' discrepancies established in the sentencing standards in this instance. A person who is in a different position should be treated differently so that they can be brought up to speed with the rest of the group. The best way to ensure uniformity in sentencing in the Indian setting is to follow the legislature's sentencing standards. These rules will specify the considerations sentencing judges should and should not consider when deciding on a punishment. Because the criminal law is established by the legislature, and it is the legislative intent that will be given precedence in judicial interpretation of the law, it is critical to have these guidelines drafted by the legislature chosen by the people.

CONCLUSION

In conclusion, this research paper has meticulously examined the nuanced landscape of judicial discretion within the Indian legal framework. Through an exploration of judicial discretion in various stages of criminal proceedings - from remand and cognizance of offenses to bails and sentencing - several key insights have emerged. Firstly, judicial discretion in remand shed light on the delicate balance between safeguarding individual liberties and ensuring public safety, underscoring the need for judicious application of judicial discretion to prevent undue deprivation of liberty. Secondly, the analysis of judicial discretion in cognizance of offenses underscored the pivotal role of judicial oversight in upholding the principles of justice and fairness, while also highlighting the challenges posed by the subjective nature of judicial decision-making in this realm. Furthermore, the examination of judicial discretion in granting bail revealed the intricate interplay between legal principles, individual circumstances, and societal interests, emphasizing the imperative for courts to exercise discretion with prudence and empathy. Lastly, the exploration of judicial discretion in sentencing elucidated the multifaceted considerations that inform judicial decisions, encompassing factors such as the gravity of the offense, mitigating circumstances, and principles of rehabilitation and deterrence.

[36]O'Hear, Michael M., *The Original Intent of Uniformity in Federal Sentencing* Faculty Publications. Paper 104. (2006). *Available at* http://scholarship.law.marquette.edu/facpub/104 (Last Visited 17.09.2024)

Although judicial discretion is a necessary element, it can also be perceived at the same time that bringing in a sort of objectivity in judicial decision making is the need of the hour. Its said that every horse needs a direction to race in order to win, so is the case with judicial discretion, at present judicial discretion is an autonomy that the courts have in deciding the way they want by considering the facts that they want, taking on the approach that a particular judge wants and also decide according to one's mood in certain cases. As it can be inferred from the above examples in case of disparity in sentencing, it can certainly be said that judicial discretion is definitely not producing the results that we desire. With this the researcher is not trying to adopt realist approach and infer that judicial discretion means an unguided pursuit of a judge in deciding a particular matter , a judge is no doubt bound by the constitutional spirit, the rule of law and the precedents in force. As Dworkin states that *"discretion, like the hole in a doughnut, does not exist except as an area left open by a surrounding belt of restriction."* Also, the researcher is not concluding that we need to do away with judicial discretion and bring in some algorithm based AI system of judicial decision making as absence of judicial discretion would be a travesty , what the researcher is inferring from the above scrutiny of judicial discretion is that what we need to bring in is a system where there are explicit legislative guidelines there to show direction to judges where application of the discretionary powers doesn't produce bizarre results , but produce results that are backed by guidelines providing the judge with a system to take some sort of objective approach while deciding the matter at hand . What needs to be produced is a mechanism of judicial decision making where decisions are made based on a blend of both subjective and objective approach which ensures that there is minimum abuse of discretion and minimum disparity in judicial decision making

Imagine a justice delivery system where the judgements are so full proof that even in appeal when its challenged , it becomes a matter of utmost critical assessment to overturn the same . Undoubtedly, if such a system comes into action, our justice delivery system is going to be more reliable, fast, just and reasonable, What can be seen in contemporary times is that overturning of the lower court decisions has become some sort of fashion, How can there be excessive disparity in the judgements on same facts by two trained decision makers. The reason is in contemporary times judicial decision making is largely at the whim of the judges, a hard judge has got a hardened approach, a lenient judge has got a lenient approach while deciding a case, a frustrated judge decides a case differently, while an extremely happy judge decides a matter differently. Hence, judicial discretion is a necessity that needs to be structured and shaped in order to make judicial decision making a more certain and uniform model . I believe

that we would be left with an idea of adjudication that is both intellectually incoherent and ethically bankrupt if we went further and gave up on other efforts to find a satisfying answer to the issue of judicial discretion instead, as some people now propose we should. And it would be more than just an intellectual issue because it would go against our idea of professional ethics and the pride we have in our ability to practise our craf.

In synthesizing these findings, it becomes evident that while judicial discretion is indispensable for administering justice effectively, it must be wielded judiciously and with a keen awareness of its implications. Moreover, this research underscores the importance of ongoing discourse and scholarly inquiry into the exercise of judicial discretion, with the aim of fostering greater transparency, consistency, and accountability within the Indian legal system. Ultimately, by striving for a balanced and principled approach to judicial discretion, we can endeavour to uphold the fundamental principles of justice and equity upon which our legal system is founded.