Sentencing Options

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Mandatory sentences are statutes that bind judicial officers to deliver a fixed or minimum penalty upon the offender after guilt has been established. The imprisonment term or penalty applies equally to all offenders guilty of the particular crime regardless of the circumstances. Mandatory sentencing can overpower the judiciary’s discretion to make legal decisions or apply penalties at their own discretion with regards to the crime. Although the element of discretion is present throughout the criminal process, limiting abuse of discretion forms the essence of the system of rule of law. Mandatory sentencing encourages consistency in the courtroom, however, not every eventuality can be foreseen by the law and hence, every convicted person is treated in the same way.

Mandatory sentencing directly involves the executive and legislative branches of government into the criminal process by reducing the sentencing discretion of the judge and thus limiting their rule to handing out a pre-mandated punishment. Although it achieves a certain form of consistency in sentencing, the approach has led to significant increases in incarceration rates, created additional costs for the justice system, and tends to disproportionately affect certain marginalized groups in the society. Moreover, public opinion remains a key influencer of introducing mandatory sentencing statutes especially in the case of serious crimes. Yet, public opinion is prone to influence and can change based on the context of the information provided to them and is thus malleable (Warner, Spiranovic, Freiberg, & Davis, 2018). Consequently, these schemes create further uncertainty and delays in serving justice.

Judicial discretion, on the other hand, should remain a key part of criminal sentencing because each case is different from the other and requires a careful balancing between the severity of the offense, the facts of the case, and the personal circumstances of the offender or accused. Critics have frequently pointed out a lack of evidence of mandatory sentencing schemes deterring crime or improving public confidence (Ashworth, 2005). Furthermore, taking away the element of moral judgment when sentencing offenders based upon the individual facts and circumstances of the case can lead to unjust outcomes. It explains why a significant number of judges are supportive of judicial discretion since it is the judge who has the complete facts, context, circumstances of the crime, and the characteristics of the accused in front of him/her (Mackenzie, 2005). Mandating fixed sentences creates a mechanical sentencing process taking away the human element and the individual circumstances involved in the process. Thus, according to Judge Cooke, "the exercise of discretion in sentencing must remain in human hands. You cannot program a computer to register the ‘feel' of a case, or the impact that a defendant makes upon the sentence.” (Ashworth, 2005).

Although mandatory sentencing regimes allow the justice system to achieve better consistency and enable the parliament to become more directly involved with the criminal justice system, it eventually comes with a cost to individual justice. Offenders are sentenced based on associated societal costs, while the process itself remains marred by undue complexity and often the avoidance of certain provisions. Nevertheless, a complete absence of sentencing guidelines may blur the criteria to judge the appropriateness of a sentence. In this regard, Exum (2016) suggests that judges should rely on other data sources to inform them of the best ways to achieve sentencing purposes and goals. The development and use of sentencing resources such as data, studies, expert opinions, etc. will provide judges with information relevant to the available sentencing options and help them achieve greater focus on sentencing goals and purposes. Reliable data from studies can also help judges evaluate the impacts of the sentences on families, communities, individuals, and offenders as they exercise their discretion.

# References

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