NATIONAL JUDICIAL ACADEMY

NATIONAL CONFERENCE ON SENTENCING, PROBATION AND VICTIMOLOGY [P-1459]

27TH&28THSeptember, 2025

PROGRAMME REPORT

PREPARED BY:

DR HUMAYUN RASHEED KHAN, HJS

PROFESSOR, NATIONAL JUDICIAL ACADEMY, BHOPAL

Overview of the Conference

The National Judicial Academy organized a two-day National Conference on Sentencing, Probation and Victimology on 27h& 28th September, 2025. The conference aimed to draw attention of judges from district judiciary towards issues and challenges in sentencing procedure, death sentence issues, mandatory pre-sentence report, individualized sentencing enquiry, sentencing policy under New Criminal Laws, rehabilitative and reformative justice, and artificial intelligence and sentencing justice. The conference involved discussion on approaches towards sentencing policy and practice while enhancing the skills of judges by providing theoretical perspectives and deliberating on pragmatic requirements in the context of latest judgements, particularly ***Manoj v. State of M.P., (2023) 2 SCC 353***, ***In Re: Policy Strategy for Grant of Bail, 2022 SCC Online SC 1487***, *and* ***State of Wisconsin v. Eric. L. Loomis, 2015 AP 157-CR***. The conference facilitated participant judges to comprehend the substantive and procedural aspects relating to probation of offenders in upholding the edifice of the administration of justice. The conference also aimed to acquaint participant judges with the legislative mandate of compounding of offences and the effective utilization of compounding in criminal cases. The evolving horizons and general principles of plea bargaining were also discussed. The scheme of victim compensation and application of mind while recording reasons for awarding or refusing compensation, and changing the role of the victim in the criminal justice system, also formed part of the discourse.

Session 1: Sentencing Procedure: Issues & Challenges

Speakers: Justice Girish Kathpalia and Justice Mridula R. Bhatkar

The session opened with a discussion on the Constitution's centrality to the Indian judiciary, especially at the district level. Emphasizing that the Constitution is the grundnorm from which all laws flow, the speakers highlighted fair trial as a constitutional mandate rooted in the Criminal Procedure Code and the Bharatiya Nagarik Suraksha Sanhita, 2023. Public confidence in courts and the fundamental right to be heard were underscored as cornerstones of justice, with fairness in procedure seen as vital to preventing wrongful convictions.

A major focus was on the absence of a comprehensive sentencing policy in India, contrasting with the United States. The Malimath Committee (2003) and the Madhava Menon Committee (2008) recommendations were recalled in this context. The Supreme Court's decision in ***Jagmohan Singh v. State of U.P.*** **(1973) 1 SCC 20** was cited to illustrate how wide judicial discretion in determining punishment often leads to disparities in sentencing. The need to balance societal expectations, victims' interests, and the accused's liberty was a recurring theme.

Key factors influencing sentencing were examined through ***Gurmukh Singh v. State of Haryana*** **(2009) 15 SCC 635**, highlighting the need to weigh aggravating and mitigating circumstances carefully. The discourse also covered various sentencing theories, with particular emphasis on the reformative approach and its alignment with restitutive justice. The session focused on the Supreme Court's observation in ***Chhannu Lal Verma v. State of Chhattisgarh*** **(2019) 12 SCC 438** that psychological and psychiatric assessments of offenders are rarely undertaken, even though such evaluations are crucial in assessing the possibility of rehabilitation. The State, therefore, bears a duty to provide evidence when claiming that an offender is beyond reform.

Uniformity and proportionality emerged as cardinal principles to ensure sentencing certainty and deter crime more effectively than merely imposing severe penalties. The court in ***Rajbala v. State of Haryana*** **(2016) 1 SCC 463** stressed that sentences must be adequate, just, and proportionate to the crime's nature and gravity. Similarly, ***Shyam Narain v. State (NCT of Delhi)*** **(2013) 7 SCC 77** reinforced the idea that just punishment protects the collective social fabric from recurring harm.

In essence, the session urged a structured sentencing framework guided by constitutional values, judicial discretion tempered by proportionality, and an emphasis on reformative justice to maintain public faith in the legal system.

Session 2: Death Sentence: Changing Contours

Speakers: Justice Girish Kathpalia and Justice Mridula R. Bhatkar

The session commenced with an open-ended question: Is death penalty a deterrent? It was said that we have increased the death penalty under BNS, 2023 as it now stands for eighteen offences as compared to the erstwhile IPC, 1860, under which only twelve offences attracted death penalty. The major issue is whether this increase in the number of offences for the death penalty is supported by any empirical research. The trial courts need to focus on the balancing test, where due importance should be accorded to aggravating and mitigating factors in making final determination on quantum of sentence in death penalty cases.

Then the sentencing parameters in death sentence cases were examined, referring to the 'triple tests' of aggravating circumstances, mitigating circumstances, and the rarest of rare doctrine. The guidelines in death sentence cases were discussed, referring to the judgments in ***Bachan Singh v. State of Punjab*** **(1980) 2 SCC 684** and ***Machhi Singh v. State of Punjab(1983)3 SCC 470***. It was also said that *Machhi Singh's case* diluted the *Bachan Singh* judgement. The Supreme Court of India in order to regulate the enormous discretion available to trial judges, evolved the doctrine of 'rarest of rare' case in *Bachan Singh judgement* more than four decades ago so that the most severe punishment of the death penalty may not be awarded casually. Ever since then, the question of what constitutes 'rarest of rare' cases has been examined and explored by the Apex Court on several occasions.

The judicial exploration and examination of the 'rarest of rare' doctrine was extensively covered by the resource persons. It was highlighted that since the death penalty is inseparably connected to life and awarding capital punishment irretrievably takes away the most precious fundamental right of the convict, it may be taken away only when the elimination of the convict from society becomes necessary and the other option is completely foreclosed. The deliberations covered the areas of enormous discretion of trial judges in the context of capital punishment offences, persistent disparities concerns, crime test, criminal test, rarest of rare test in the light of the leading judgements of the Apex Court during the preceding four decades.

The discussion in the session also extended to cover the law laid down in ***Sangeet v. State of Haryana, AIR 2013 SC 447, Mofil Khan v. State of Jharkhand, (2015) 1 SCC 67, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, Pappu***

v. State of U.P., (2022) 10 SCC 321, Swamy Shraddananda (2) v. State of Karnataka, AIR 2008 SC 3040, Santa Singh v. State of Maharashtra, (2019) 7 SCC 1 *etc.* The case of ***Gopal Singh v. State of Uttarakhand (2013)7SCC545*** was highlighted, wherein it was observed that "just punishment is the collective cry of the society. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence."

The session concluded on the note that the goal of reformative punishment requires that trial courts must inquire and explore the reasons for reformation and rehabilitation in analyzing the mitigating factors.

Session 3: Individualized Sentencing in Death Penalty Cases

Speakers: Justice O. P. Shukla & Prof. (Dr) Humayun Rasheed Khan

The session commenced with the discussion on the obligation of the sentencing court to hear the accused on the question of sentence, which is imposed by Section 235 (2) of the Criminal Procedure Code and Section 258(2) of Bharatiya Nagarik Suraksha Sanhita, 2023. It was pointed out that the obligation is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The judge must make a genuine effort to elicit from the accused all information that will eventually bear on the question of sentence. All admissible evidence is before the judge, but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of the criminal.

It is the bounden duty of the judge to cast aside the formalities of the court scene and approach the question of sentence from a broad, sociological point of view. The occasion to apply the provisions of Section 235(2) or Section 258(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 arises only after the conviction is recorded. What remains is the question of the sentence in which not merely the accused but the whole society has a stake. Questions which the judge can put to the accused under Section 235 (2) or Section 258 (2), and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The court, while on the question of sentence, is in an altogether different domain in which facts and factors that operate are of an entirely different order than those that come into play on the question of conviction.

Then the discourse turned towards ***Santa Singh v. State of Punjab, (1976) 4 SCC 190*** in which the Supreme Court had held that a separate stage should be provided after conviction when the court can hear the accused in regard to the factors bearing on sentence and then pass proper sentence on the accused—the nature of the offence, the circumstances of the offence (extenuating or aggravating), the prior criminal record of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence.

The court had also noted that care would have to be taken by the court to see that the hearing on the question of sentence is not abused and turned into an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be harmonized with the requirement of expeditious disposal of proceedings.

The most intense and extensive discussion in this session was on the subject of 'individualized sentencing inquiry.' The Supreme Court of India has recently emphasized the 'element of flexibility' in considering the case-specific factors relating to crime and criminal. It has been said that sentencing is not a mathematical equation and ought not to be seen as one, and the trial court must focus on equally considering the aggravating and mitigating circumstances and arrive at an individualized sentencing outcome on a case-by-case basis. The court has, therefore, introduced a mandatory Pre-Sentence Report (PSR) in capital offences ***(Manoj and others v. State of Madhya Pradesh, (2023) 2 SCC 353).***

The Supreme Court said that there is an urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in the majority of cases reaching the appellate stage. It is, therefore, necessary that the trial court should elicit information from the accused and the State both. The State must produce at the appropriate stage, material which is preferably collected beforehand, disclosing psychiatric and psychological evaluation of the accused in offences carrying a capital sentence. This will help establish proximity to the accused person's frame of mind at the time of committing the crime vis-à-vis mental state at the time of sentencing to evaluate the progress of accused towards reformation achieved during the incarceration period.

It was pointed out that now the State, must for an offence carrying capital punishment at the appropriate stage, produce material before the trial court on psychiatric and psychological evaluation of the accused on age, early family background (siblings, protection of parents, any history of violence or neglect)**,** present family background (surviving family members, whether married, has children, etc.), type and level of education, socio-economic background (including conditions of poverty or deprivation, if any), criminal antecedents (details of offence and whether convicted, sentence served, if any), income and the kind of employment (whether none, or temporary or permanent, etc.), other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any), etc.

The Supreme Court further said that the above information should mandatorily be available to the trial court, at the sentencing stage. The accused should also be given the same opportunity to produce evidence in rebuttal towards establishing all mitigating circumstances. The information regarding conduct and behaviour of accused in jail, work done or the activities performed by him and other related details should be called from the jail authorities (Probation and Welfare Officer, Superintendent of Jail, etc.). If the appeal is heard by the High Court after a long time from the date of conviction or confirmation by the High Court, a fresh report is recommended from the jail authority.

The jail authorities must include a fresh psychiatric and psychological report, which will further evidence the reformative progress, and reveal post-conviction mental illness, if any. The session concluded with the note that all the trial courts in death penalty cases must mandatorily seek a report from prison authorities, probation officers, and health professionals before awarding the sentence.

Session 4: Reformation, Probation, and Victim-centric Justice

Speakers: Justice Anoop Chitkara & Justice Ved Prakash Sharma

This session examined critical developments and persisting gaps in India's criminal justice system, focusing on plea bargaining, the introduction of community service as a punishment, the stringency of the new *Bharatiya Nyaya Sanhita* (BNS) 2023, and the evolving recognition of victims' rights. Participants began by reviewing the under-utilization of plea bargaining under Section 229 of the Criminal Procedure Code (Cr.P.C.). Key Supreme Court precedents—including ***State of Maharashtra v. Sukhdeo Singh*** **(1992),** ***Madanlal Ramchandra Daga v. State of Maharashtra*** **(1968), and** ***State of U.P. v. Chandrika*** **(2000**)—were discussed alongside the recent ***In Re Policy Strategy for Grant of Bail*** **(2022)** ruling. The Supreme Court has urged trial courts to inform accused persons and their counsel about plea-bargaining possibilities, especially for under-trial prisoners, to reduce delay and backlog. The session stressed that to make plea bargaining effective, systemic causes of its limited success must be identified and remedied.

The next aspect analyzed was the innovative provision of community service, introduced under Section 4 of the BNS as a reformatory measure for certain minor offences. Examples include unlawful trade by public servants (S. 202), non-appearance after proclamation (S. 209), coercive suicide attempts (S. 226), petty theft with restitution (proviso to S. 303), public drunkenness (S. 355), and defamation [S. 356(2)]. Section 23 of the *Bharatiya Nagarik Suraksha Sanhita* (BNSS) defines community service as unpaid work that benefits the community, as ordered by the court.

However, the concept remains vague: neither the nature of acceptable service nor its duration is specified, leaving wide discretion to magistrates. Comparative practices abroad were highlighted: in the U.S., U.K., France, Spain, and Australia, community service typically ranges from one to thirty days for petty offences and up to 180 days for more serious ones. The need for clearer statutory guidance and structured implementation was emphasized.

The session devoted significant attention to the growing recognition of victims' rights in Indian jurisprudence. Courts increasingly acknowledge that victims deserve a meaningful opportunity to be heard, particularly in heinous offences. A victim's right to appeal against an acquittal would be hollow if they were excluded from bail hearings or other key stages. The discussion cited the 154th Law Commission Report and the 2003 Committee on Reforms of the Criminal Justice System, both of which recommended a cohesive compensatory framework and stronger victim participation. Legislative progress came with the Cr.P.C. (Amendment) Act, 2008, which introduced Section 2(wa) defining "victim" and granting procedural rights at various trial stages.

Recent Supreme Court decisions reinforced these principles. In ***Rekha Murarka v. State of West Bengal*** **(2020) 2 SCC 474**, the Court emphasized victims' procedural rights. ***Jaswinder Singh (Dead) through Legal Representative v. Navjot Singh Sidhu*** **(2022)** ***AIR 2022 SC 2441*** warned that undue leniency in sentencing erodes public confidence and may prompt private vengeance.

Jagjeet Singh v. Ashish Mishra* (2022) *AIR 2022 SC 1918 highlighted that victims must not remain "mute spectators" and should be heard during investigation, bail, and trial. Rights discussed included the right to appeal, obtain medical treatment, protect identity, seek restitution, and receive compensation, considering factors like loss of livelihood, age of deceased, dependents, medical costs, and continuing impact. The other significant issues covered were as under;

- **Effective plea bargaining** mechanisms to reduce case pendency.
- **Clear guidelines on community service** to ensure fairness and uniformity.
- **Balanced implementation of stricter penalties** to protect society without sacrificing proportionality.
- **Robust victim-centric justice**, guaranteeing participation, compensation, and protection.

Together, these discussions reflect a criminal justice system in transition—striving to be swifter, more reformatory, and more victim-oriented while maintaining public confidence and the rule of law.

Session 5: Interface of Technology & Sentencing

Speakers: Justice Anoop Chitkara & Justice Ved Prakash Sharma

The last session was focused on the growing role of technology—particularly artificial intelligence (AI)—in law and the global justice system. It highlighted how AI is increasingly integrated into judicial processes, offering both exciting possibilities and significant concerns. AI tools and machine-learning algorithms can assist judges in conducting faster and more comprehensive legal research, improving the efficiency and quality of judgments.

A central point of discussion was the application of AI in the criminal justice system, with emphasis on its use in sentencing. The landmark U.S. case ***State of Wisconsin v. Eric L. Loomis, 2015 AP 157-CR,*** served as a key example. In this case, the COMPAS risk-assessment algorithm predicted a high likelihood of reoffending for the defendant, influencing the judge's sentencing decision. This raised widespread debate over the fairness, accuracy, and ethical implications of relying on AI for determining sentences. Critics argued that such algorithms may perpetuate or even amplify biases present in the data on which they are trained, potentially resulting in discriminatory, racially skewed, or otherwise unjust outcomes.

While AI can aid in legal research and expedite judicial decision-making—as seen in jurisdictions like the United States and Malaysia—it also poses risks. Because machine-learning systems rely on historical data, any embedded discriminatory practices or societal biases can shape the algorithm's predictions. The ***Loomis case*** is viewed as a warning that algorithmic judgments can produce unreasonable or biased assessments, exemplified by its contested prediction of high recidivism risk.

The session stressed the importance of careful verification when using AI in sentencing and highlighted the need for robust regulatory frameworks before such tools are adopted in India. Without clear oversight, AI could undermine transparency and fairness rather than enhance justice.

Participants called for the creation of comprehensive guidelines for developers of sentence-determination algorithms, ensuring that these systems are transparent, accountable, and free from entrenched biases. Only with such safeguards can AI's potential to support fair and efficient criminal sentencing be responsibly realized.

The session underscored the dual nature of AI in the legal sphere: a powerful aid for research and judgment, but also a source of ethical and procedural challenges. The discussion concluded with a call for cautious, well-regulated adoption of AI in criminal justice to protect fairness and public trust in the judicial system in the future.

****