**ALL PAKISTAN LEGAL DECISIONS (PLD)**

# MITIGATING SENTENCING IN VARIOUS JURISDICTIONS: A CONSIDERATION FOR THE OFFENDER'S REHABILITATIVE POTENTIAL

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While facing punishment, every person has a right to know as to why and how a judge awarded him an increased or decreased sentence in view of the relevant aggravating or mitigating circumstances. It is pertinent to note that social scientists are generally more inclined to avoid severe punishments like death penalty of the offenders through mitigating sentencing instead of winning a freedom by disproving the guilt of the offender, in that, the overwhelming evidence of culpability against a criminal often establishes his guilt as an inevitable conclusion. To prioritise liberty of a defendant on invalid grounds instead of exploring rehabilitating potential of preventing even the death penalty is a long notorious practice.[2] It is a common phenomenon that since inception of the trial, the defence often does not stress on antecedents of the defendant involved in an offence so as to introduce dynamics of all encompassing strategy and fails to make the jurors and the court conversant with the ordinary course of his conduct in terms of his relationship with the family, friends, acquaintances and enemies. There are a wide range of mitigating factors which help a court to determine reasonable sentence depending upon the information as to the offence

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[2] Stephen B. Bright, 'Counsel for the Poor: The Death Sentence Not for the Worst Crime but for the Worst Lawyer' (1994) 103 Yale Law Journal 1835, and also Douglas W. Vick, 'Poorhouse Justice: Underfunded Indigent Defense Services and Arbitrary Death Sentences' (1995) 43 Buffalo Law Review 329.

and the offender. This article delineates the scope of mitigation which can be explored in various forms including even aggravating nature of serious crimes across every jurisdiction in cases proven beyond doubt. The aggravating factors may include a criminal act involving multiple victims or result of a promise for pecuniary gain, or atrocious conduct of the defendant while committing a pre-meditated criminal act, or a prior history of his involvement in the acts of felony etc. At present, the courts are ordinarily more inclined to consider all those rehabilitating factors which they believe, can reasonably be mitigating, whether specified by the statute or not.[3] The mitigating evidence is also characterised as the one involving substantially a lower burden of proof.[4]

There is no denying the fact that the majority of legal systems have evolved their sentencing policies which give the aggravating factors precedence over the mitigating ones. The statutory provisions and sentencing guidelines in those jurisdictions also underscore greater focus on the aggravating rather than mitigating aspects of the criminal cases.[5] During the twentieth century, a paradigm shift to focus on mitigating factors as a 'rehabilitative potential' constituted a paramount consideration for the courts while tailoring the sentence of each defendant. Conversely, there was also a rampant concern about the increased distrust in discretion of judicial sentencing. The afore-referred situation necessitated the structured reforms once again which, by and large, made the punishments more severe through legislative actions.[6] Hence, the divergent policy guidelines and statutory provisions had perforce to make the courts reluctant to exercise their judicial discretion for mitigation inasmuch as uncertain theoretical approach on the subject failed to furnish a firm derivation to mitigate the sentence and to justify the reduced punishments. For instance, a defendant with a diminished intellectual capacity may be awarded a sentence for a shorter term due to a lesser degree of blameworthiness, by a judge with retributive outlook; but a utilitarian judge may deem a longer sentence to be more appropriate for the same person in order to rule out repetition of an

[3] Eddings v. Oklahoma, 455 U.S. 104, (1982) 113–14.

[4] Walton v. Arizona, 497 U.S. 639 (1990).

[5] Carissa Byrne Hessick, 'Why Are Only Bad Acts Good Sentencing Factors*?*' (2008) 88 Boston University Law Review 1109, 96-99.

[6] Dauglas A. Berman, 'Distinguishing Offense Conduct and Offender Characteristics' (2005) 58 Stanford Law Reviews 277, 279-80.

offence due to the same diminished intellectual outlook. Given the proposition, one judge may regard one factor as mitigating and the other judge may also treat the same factor as aggravating one. Therefore, the majority of judges across the globe are often indifferent to choose aggravating or mitigating circumstances on the basis of their personal or whimsical philosophies and feel constrained to have recourse to the legislative guidelines.

In every criminal trial, the prosecution is invariably under obligation to prove the guilt of the defendant beyond doubt. There has also been a procedural bifurcation in all the jurisdictions having capital punishment in their penal laws with a view to concede a scope for weighing the mitigating evidence against aggravating incriminating material.[7] The aggravating pieces of evidence consist of those factors which may tend to enhance the gravity of offence i.e. the desperate and hardened character of the offender already involved in cases of identical nature. The Jurors and judges must also be keen to become familiar with the mitigating circumstances in evidence adduced before them which may help rehabilitation through a reduced sentence. If any of the jurors finds a mitigating factor, he is entitled to appraise its value in juxta position with other available incriminating evidence.[8] Each and every juror has to ponder over all those aggravating factors which stand established and then also take all the mitigating evidence into consideration in order to reach a definitive conclusion as to whether the former adequately outweighs the latter or vice versa. It is a celebrated principle that the quality of incriminating evidence of the aggravating or mitigating circumstances always prevails and not the quantity thereof. Meaning thereby, the only qualitative evidentiary value, and not numerical quantum thereof, will find favour with a court of law. The inclusive policy of a lesser sentence emanates from the very concept that the punishment should be an exception and not the rule. Such notion can be derived from a salutary principle and rationale underlying the theories of punishment which do not legitimise the sentence if it is not sufficiently justified. This concept of justifying mitigating circumstances

[7] Russell Dean Covey, 'Exorcizing Wechsler's Ghost: The Influence of the Model Penal Code on Death Penalty Sentencing Jurisprudence, (2004) 31 Hastings Constitutional Law Quarterly 189.

[8] Mills v. Maryland, 486 U.S. 367 (1988).

as rehabilitating factors flows from the same commitment.[9] The inherent principles to guide the sentencing decisions across various jurisdictions have become virtually identical and a sentence is ordinarily imposed for one or more of the settled principles; *inter alia* for holding an offender to the account for the harm he caused to the individual victim and the society, inculcating responsibility and acknowledgement of the harm in such an offender by denouncing his abominable conduct, safeguarding the interest of the victim by remedying harm so caused to him by the offender, and deterring the offender as well as other people from committing the similar offences. The court has to consider the character as well as the capacity of the defendant and attending circumstances of the case leading to the criminal activity despite asymmetrical concentration of the prosecution to demonstrate the nature of the act or omission which may constitute an offence. The prosecution always focuses on one brief and vivid incident but the defence opens up entire life of the defendant[10] so as to enable the court analyse mitigating situation in the broader perspective.

The death sentence in a particular case, for example, can only be viable when the defendant turns out to be "less than human".[11] It was pertinently argued by Haney that the society can tolerate only to eliminate those from the human social order who, by their very nature, stand outside its boundaries".[12] Therefore, the state always builds up a perception about shocking consequences of a gruesome activity to demonstrate instinctive perversity and wickedness of the criminal. On the other hand, after having failed the argument of not guilty, the thrust of the defence brings home the humanising perspective of rehabilitation by referring to a complete range of credentials of the life of the defendant. The bifurcation of the two-fold defence for nullifying the evidence of guilt in the first place and then to convince the jurors or the court as regards value of the life of the defendant in the second, by default, mutually undermines each other and often becomes somewhat

[9] Alice Ristroph, 'Proportionality as a Principle of Limited Government' (2005) 55 Duke Law Journal 263, 285-86.

[10] James M. Doyle, 'The Lawyers' Art: "Representation" in Capital Cases' (1996) 8 Yale Journal of Law and Humanities. 417, 425.

[11] Graig Hane, 'The Social Context of Capital murder: Social Histories and the Logic of Mitigation' (1955) 35 Santa Clara Law Review. 547,548.

[12] Ibid p. 549.

self-contradictory. The imposition of a penalty is more an issue of legislative complexity than any other legal exploration, in that; the courts are obliged under the law to award a prescribed punishment. However, we also need to examine this phenomenon as an academic issue for mitigation as a rehabilitation potential regardless of political will in various jurisdictions for the capital sentence. Justice Blackmun, in the Edwin's case[13] had observed that despite lapse of more than two decades, the thrust of the State and Courts for outlining legal and procedural rules remains elusive. He had further held that even the capital sentence has become a daunting challenge as the judgements are often fraught with human mistakes; and at times, also turn out to be arbitrary, capricious and discriminatory. He added that only one percent approximately, of convicted offenders are actually awarded the death sentence and followed by execution thereof. The concurring judgement of Justice Stevens in Ralph Baze's;[14] had also rejected three-fold societal purposes of incapacitation, deterrence and retribution for warranting capital punishment. He urged that life imprisonment without parole can equally incapacitate the offender and no empirical research could generate statistical data to demonstrate that the capital punishment deterred potential offenders. The enormous majority of criminologists expound that the death penalty is not even a greater deterrence than long term imprisonment for reforming the behaviour of the potential offenders.[15] The theory of retribution also emanates from the thirst of emotional vengeance of the victim's family. The punishment based on such an irrational outlook instead of rehabilitating potential is ostensibly in conflict with a paradigm shift of global society for calm and rationale decisions with humane punishments.

Whenever a particular statute provides for variable options of the nature and quantum of punishment for one or more of the offences, some kind of method may be required to determine the punishment. The court has to decide about the magnitude of penalty while exercising its

[13] Bruce Edwin Callings v. James A. Collins, Director, Texas Department of Criminal Justice, 510 U.S 1141, S.Ct. 1127 (1994) 114.

[14] Ralph Baze and Thomas C. Bowling, Petitioners v. John D. REES, Commissioner, Kentucky, Department of Corrections, et al. 553 U.S. 35, 128 S.Ct. 1520 (2008).

[15] Voctor L. Streib, *Sentencing Juvenile Murderers* (3rd ed. Indiana University Press, 2008) 768.

judicial discretion following the conviction of a defendant for the commission of a particular crime. The discretionary sentencing policy is often a blending of the judicial as well as legislative innovations. For instance, Section 8 (1) of the *Sentencing Act 2002* in the New Zealand enjoins upon the courts to take into account the gravity of the offence, degree of the culpability, and magnitude of the damage in terms of the seriousness of the criminal conduct as such. Earlier, in many countries like America, statutes readily specified a definite amount of punishment for many crimes and the same sentence was liable to be imposed on all the defendants who were convicts of those crimes. In the event of conviction, the role of a judge used to be very narrow and that of ministerial nature. He would not include any opinion for aggravating or mitigating factors in order to handing down a severe punishment on the upper limit. Nor was he required to dilate upon the extenuating or mitigating factors with a view to be flexible for a punishment at the lower end. Nonetheless, even in those days, the courts were obligated to exercise their discretion to allow reduction of the fixed sentence to the benefit of the clergy and those using executive clemency authorities.[16] Over a period of time, the process of sentencing has become focused primarily on mitigation. The defence attorneys have recognized introduction of mitigating evidence for more than two decades, as was pointed out by White.[17] He also pointed out that such introduction explaining the defendant's social background and life history is generally the best way for dissuading the jury from imposing the severe penalty of an extreme nature.[18] However, there are no two opinions that presence of a particular range of punishment for a crime shall mandate the court, while determining a sentence after taking all those mitigating factors into account including a rehabilitating potential of the offender, for pronouncing punishment on the lower side of the prescribed range in exercising its judicial discretion in a befitting manner. The option for a life sentence even in the cases of capital sentence with overwhelming evidence of undeniable character cannot be ruled out by any stretch of

[16] Stephanous Bibas, *The Machinery Of Criminal Justice* (1st ed. Oxford University Press, 2012) 3-6.

[17] Welsh S. White, 'A Deadly Dilemma: Choices by Attorneys Representing "Innocent" Capital Defendants' (2004) 102 Michigan Law Review.

[18] Ibid.

imagination.[19] The defendant admitting the guilt may even disarm the strategy of the prosecution for death penalty provided that the accused furnishes some explanation to form a mitigating factor in his favour. The situation may be equated with a play; and trial as one of its many acts. But the defence needs to be more cautious as the presentation of the play must be consistent with its production.[20] The mitigating factors must essentially comprise convincing and tangible evidence, compatible with the connecting incriminating material, for facilitating the court to record cogent reasoning in consonance with the dynamics of its rehabilitating potential. Mitigation is a focal point for sentencing process as it is conceptually organised for "rehabilitative ideal".[21] The role of court assumes overriding significance to examine rehabilitative prospects in view of the circumstances surrounding early release of the defendant from custody. Hence the trial judge has to be conscious of broad discretion afforded to him while imposing sentencing terms.[22] The structured sentencing was cast aside by the U.S. Supreme Court in a litany of judgements since the year 2000 owing to collapsing the rehabilitative ideal. For instance, the diminished mental capacity and youthful age of the defendant may operate as mitigating as well as aggravating factors,[23] and had sparked difference of opinion viz-a-viz constitutionality of enhancements in statutory sentencing.[24] Hence, a sentencing court may exceed narrow range of discretion on the basis of facts reflected in the jury verdict or admitted by the defendant. But its findings must be substantiated through reasoning proven beyond doubt.[25] Otherwise, it can be violative of the sentencing guidelines in derogation to the rehabilitating ideal and will not legitimise the punishment so imposed.

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[19] Michael Tonry, 'Obsolescence and Immanence in Penal Theory and Policy' (2005) 105 Columbia Law Review. 1233, 1240.

[20] Dennis N. Balske, 'New Strategies for the Defense of Capital Cases' (1979) 13 Akron Law Review. 331, 353.

[21] Francis A Allen, *The Decline Of The Rehabilitative Ideal: Penal Policy And Social Purpose* (Yale University Press, 1981) 5-7.

[22] Andrew Von Hirsch., *The Sentencing Commission And Its Guidelines* (Northeastern University Press, 1987).

[23] United States v. Portman, 599 F.3d 633, (7th Cir. 2010), 637-38.

[24] *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

[25] *Blakely v. Washington* 542 U.S. 296 (2004) 303.

The theories of punishment provide a framework for identifying those circumstances which may dictate the court for a short or long term of sentence. These theories put forth justifications for imposition of penalty on a particular individual.[26] Although, the commentators had proposed many theories of punishment but the fact remains that largely all those theories fall in two categories i.e. (1) utilitarianism; to thwart future crimes, and (2) retributivism; to impose punishment on the offender who deserves it. These theories of punishment have been evolved to distinguish the defendants for quantum of sentence they have to serve out. These theories, in essence, help ascertain mitigating and aggravating circumstance for the purposes of sentencing.[27] It is an obligation of a sentencing court to appropriately examine mitigating evidence potentially beneficial to the defendant with a view to advance utilitarian approach and realise the rehabilitative potential. The integrated theories articulate the standard of care and the value ought to be attached for reinforcement of both the guilt and the mitigation.[28] The of late guidelines on mitigating sentencing have become "well defined norms" which have long been referred to by the judges.[29] The mitigation theory has also become an overarching strategy of the defence to be presented at guilt and competent practitioners consistently resort to its thematic integration in their defence strategy. It is a matter of common knowledge that the prosecution is often more interested in securing conviction than a sentence even in the cases punishable with death but the prosecutor always brings the charge of capital sentence. Similarly, the death-qualified jurors are often inclined for death sentence too.[30] Therefore, the need for a court to prioritise a holistic outlook becomes all the more essential to mete out a rehabilitating treatment to the person so charged. The judges often measure the mitigating factors on the yardsticks of theories of punishment and couch their decisions primarily turning upon the principles of retributivism and utilitarianism. The

[26] *Compare Atkins v. Virginia*, 536 U.S. 304, (2002) 35–51 (Scalia, J., dissenting).

[27] Carissa Byrne Hessick, 'Why are Only Bad Acts Good Sentencing Factors?' (2008) 88 Boston University Law Review. 1109, 1127-29.

[28] ABA Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases (Rev. Ed. 2003), *In* 31 Hofstra Law Review 913.

[29] Ibid p.147-48

[30] J. Bowers William, 'Foreclosed Impartiality in Capital Sentencing: Jurors' Predispositions, Guilt-Trial Experience, and Premature Decision Making' (1998) 83 Cornell Law Review. 1476.

retributivism seeks to focus on two aspects i.e. blameworthiness of the culprit; and damage caused to the person or the property etc. However, the notion became disputed as some retributivists used the term narrowly while referring to the *mense rea* of the criminal while others referred to numerous other considerations such as the motive, cause and effect, and moral culpability etc.[31] Despite this disagreement of the retribitivists, they concur with the analysis for decreased sentencing on the basis of certain factors. For instance, most of them feel that a defendant attributed with lesser harm should receive lesser punishment. To illustrate, a defendant involved in embezzlement of 1000 GBP cannot be punished at par with another held guilty for committing embezzlement of one million GBP. The quantum of punishment ought to commensurate with the harm they caused. As a natural corollary, the one who caused lesser damage shall receive lesser sentence as compared to another who inflicted greater damage and found liable for his larger criminality under the same statute. Similarly, many retribitivists agree with the concept that commission of crime by a person of tender age or diminished mental capacity carries a lesser blameworthiness as against a person committing same crime with mature disposition and they describe the situation as extenuating one for rehabilitating the former who are more susceptible to negative external pressures. Consequently, it becomes abundantly clear that the retributivist principles vindicate mitigating factors to advance rehabilitating outlook and mitigation finds ample scope under retribitivism.

Utilitarianism contemplates reduction of crime through punishment. Various punishment theories aim at achieving this objective of crime reduction through deterrence, rehabilitation and incapacitation. The deterrence theory discourages an individual to repeat offence and also others from perpetrating such offence.[32] Similarly, the incapacitation makes the offender incapable to repeat the commission of such crime. It seeks to impose a longer sentence in order to rule out any likelihood of reoffend by him. The rehabilitation theory urges to reform and amend behaviour of the offender by providing education and skill[33]

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[31] Doug Husak, 'Culpability and the Retributivist Dream' (2012) 9 Ohio State Journal of Criminal Law, 456-57.

[32] Andrew Ashworth, *Sentencing And Criminal Justice* (3rd ed. Cambridge University Press, 2000) 64.

[33] Ibid.

with a view to decrease the prospect of his future involvement in the criminal activity. The purpose of all the utilitarians is to reduce the crime and they would agree when a particular offence was committed under certain circumstances unlikely to happen again in order that the mitigating factors for a shorter sentence might generate greater scope for the rehabilitation potential. For instance, where a defendant had killed a person in the course of an occurrence in which the victim, in an attempt to commit burglary, gave a threat to grievous hurt or endangered life of the defendant and the defendant was extremely remorseful on a loss of such life, most of the utilitarians would urge for the mitigation of sentence because the recurrence of situation which entailed the incident is unlikely to recur and had the defendant not used a disproportionate force, he might had earned acquittal on account of self-defence. Therefore, rigorous punishment of his death penalty for deterrence or incapacitation will not serve a useful purpose. However, a utilitarian might inflict a lesser punishment so as to discourage the people having propensity to use excessive force for self-defence. There are numerous mitigating factors to suggest that a defendant shall not be inclined to reoffend and there was a high prospect of rehabilitation. Such mitigating considerations like no previous criminal history, advanced age, achievements of academic, professional and social character etc. call for mitigation principles for ample rehabilitative dynamics of the defendant.

The mitigation sentencing does not hinge upon any single theory of punishment. There are several facts and circumstances to necessitate mitigation consensus and constitute umpteen features of rehabilitative potential. Despite certain limitation, various mitigating factors, supported by all these sources, have evolved over a period of time through judicial interpretations and are generally applicable to the sentencing laws. Even the U.S. Sentencing Commission considered such mitigating grounds as appropriate for imposing a lesser sentence than the one ordinarily prescribed.[34] The imperfect defence i.e. duress, provocation and diminished capacity have been esteemed as valid defences for the mitigation and often find support for decreased

[34] U.S. Sentencing Commission, Results of Survey Of United States District Judges 2010 Through March 2010. Available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/surveys/201006

punishment.[35] Victim's provocation can be termed as his willing participation in the occurrence. The role contributed by others to induce and facilitate the crime, the defendant's role as accomplice only rather than actual perpetrator, consent to the commission of the crime by the victim or subjecting the defendant or his family to physical, psychological or sexual abuse amounting to induce the defendant to criminal conduct, warrant mitigation as a result of prospective greater rehabilitating potential of the offender. The sentencing guidelines will assign mitigating role to the offender for reduction of punishment in these situations.[36] The punishment can only deal with a few symptoms of the social problems and cannot remedy all the social pathologies.[37] Many treat compensation to the victim by the defendant or imprisonment interfering with ability of defendant to compensate; as mitigating consensus.[38] The role of the defendant to cause relatively lesser damage than the others also finds popular support for the lower penalty.[39] A physical or mental condition, age or diminished ability often refer to the *mens rea* question in terms of planning or anticipated harm by the defendant for reducing the culpability. When there appears no likely recurrence of an aberrant conduct of a criminal conduct or there is acceptance with sincere remorseful and apologetic overture on part of the defendant, the sentencing guidance will facilitate mitigation under rehabilitating scenario. The punishment resulting into serious hardship i.e. medical conditions to the defendant or the family can also be a factor for sentence reduction. The defendant's urge for care of her family tends to militate against any further persistence of culpability in him. For example, a woman, being the only bread winner of her children, convicted for stealing 1000 GBP in four months from place of her

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[35] Ibid.

[36] Paul H. Robinson, Sean E. Jackowitz & Daniel M. Bartels, *'Extralegal Punishment Factors: A Study of Forgiveness, Hardship, Good Deeds, Apology, Remorse, and Other Such Discretionary Factors in Assessing Criminal Punishment'* (2012) 65 Vanderbilt Law Review. 737.

[37] Henrique Carvalho and Anastasia Chamberlen, 'Why punishment pleases: Punitive feelings in a world of hostile solidarity, Punishment & Society (2017) <sagepub.co.uk/journalsPermissions.navDOI:10.1177 /14624745 17699814 journals. sagepub.com/home/pun>

[38] Paul H. Robinson & John M. Darley, '*Justice, Liability, And Blame: Community Views And The Criminal Law* (Westview Press Bould Er • San Francisco • Oxford 1995).

[39] Paul H. Robinson & Robert Kurzban, 'Concordance and Conflict in Intuitions of Justice' (2007) 91 Minnesota Law Review. 1829, 1845-46.

employment in an accountancy firm, if sentenced for a longer period of prison, the sufferings of her family shall be exceptional and the family responsibility should be treated as mitigation. However, in the absence of such exceptional circumstances, the court may not be inclined to treat such family responsibility as a mitigating premise while the defendant faced such a charge of gross breach of trust. Likewise, a defendant accepting community service with a pledge to rehabilitate himself, may benefit from the mitigation theory with a treatable health problem stemming from drugs, and might be given a chance to become a responsible person. Any imprisonment may not tend to reform the conduct of a culprit but a fear of sentence may help him rehabilitate himself which will also be a favour to the society in general. Succinctly, the mitigating approach for rehabilitating potential is not the result of any single theory of punishment but is formulated on the basis of both the retributivism and utilitarianism.[40] However, some of the mitigating factors for rehabilitating potential have no relevance with such theories. A strong consensus for treating a useful example of compensation to the victim as mitigation has no bearing on retributivism or utilitarianism.[41] Similarly, lesser punishment on account of hardship to the defendant and her family or the premise of no recidivism prospect, have no nexus with these theories. The motivation for mitigating sentencing does not turn upon the goals of imposing penalty or preventing crime rather its lofty aim goes far beyond for minimising the adverse effects of such punishment on the defendant as well as the others, however, it has inextricable relevance with the criminal justice systems across the globe.

## Conclusion

The afore-referred observations inspire an unflinching and irresistible motivation that those responsible for initiating prosecutions, defending the criminal charges, formulating sentencing guidelines, administering justice, and enacting statutory provisions should not only be guided by the theories of punishment rather their focus must also extend beyond to the rehabilitating features of mitigating sentencing inasmuch as such a holistic approach to prioritize the need of mitigation

[40] Richard. S. Frase, *Just Sentencing: Principles and Procedures For A Workable System* (1st ed. Oxford University Press 2013) 10.

[41] Alexis M. Durham III, 'Justice in Sentencing: The Role of Prior Record in Criminal Involvement (1987) 78 Journal of Criminal Law and Criminology 614, 620.

strategies is as important as is imperative to release an innocent. Any scepticism to achieve the goal of analytical reduction of sentence with rehabilitating prospects may thwart the courts to allay the sufferings of others i.e. family and friends, and also may deprive the offender of an opportunity to reform himself for the well being of himself as well as those all he is concerned about. The restoration of sentencing discretion to the judges must also be accompanied by a new orientation for struggle to use their power in order to enforce the mitigation for its optimum rehabilitating potential. A decision to mitigate sentence not only serves the purposes of retributivism i.e. imposing punishment, but also that of utilitarianism i.e. preventing the crimes; in additions to minimising far reaching implications on the lives of third parties. The sentencing rules must set forth a fair and just criterion in order to achieve the purpose of explanatory mitigating sentencing in keeping with a rehabilitating potential and to do away with the divergent expositions of punishments in various global jurisdictions of the criminal justice system.

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*Compare Atkins v Virginia, (Scalia, J, dissenting)* [2002] 536 US 304
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