

Challenging the Constitutionality of Mandatory Sentences: A South African Perspective

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Abstract : With mandatory minimum sentences, even with its qualification of “substantial and compelling circumstances”, the sentence severity for violent crimes has increased substantially to combat crime. Considering the upsurge in violent crime, the paper argues that minimum sentences failed to prevent or curb violent crime. These sentences deprive offenders more than what is reasonably necessary of their freedom to curb the offense and punish the offender. Minimum sentences amount to cruel, inhuman, and degrading punishment unjustified and vulnerable to constitutional challenge.

Keywords : constitutionality, deterrence, incapacitation, minimum sentencing legislation, prison overcrowding, rehabilitation, recidivism, retribution, violent crime

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