

# A Socio- Legal Analysis of Sentencing Inequality

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## **ABSTRACT:**

The core principle of the legal system is “equality before law”. It mandates that individuals who commit the same offence would undergo the same punishment. However, in reality this principle is not followed, there is often a judicial disparity; it produces different outcomes for the same crime. Through this research paper, the researcher explores the disparity in criminal sentencing- the sentencing gap between the legal rule book and actual punishments pronounced by the court.

This study basically enlists the facts that affect the quantum of punishment. Though, the rule book lists down the range of punishments, the final decision rests on judicial discretion. The decision of a judge can be influenced by mitigating factors as well as aggravating factors. The mitigating factor basically lays down the reasons to be lenient towards the culprit, while aggravating factors state the reasons to be more severe towards the culprit. Thus, these factors influence the quantum of punishment.

Further, this paper recognizes that how individual’s age, their social background, mental stage, income, family stigma, etc play a major role in deciding the outcome of any crime. This sentencing gap leads to misconceptions among the public. When people analyze that one receives harsher punishment and another receives lighter punishment for the same offence, it leads to a loss in public trust in government and the judiciary. This paper also suggests the solutions to narrow the sentencing gap. It also lists down the sentencing guidelines and training for legal professionals for consistency and equality in sentencing protocols.

**KEYWORDS:** Disparity, sentencing, equality, Quantum, family stigma

## **INTRODUCTION:**

The modern legal system revolves around the concept of “Equality before law”. It mandates that the scales of justice must weigh the crimes, not the identity of an individual. The legal outcome of the case depends on the nature of the crime. However, the most striking issue of the criminal justice system is the sentencing disparity.

The sentencing disparity occurs when two individuals convicted of the same offence, receive distinct punishments i.e. one defendant receives only a fine or probation, while the other one suffers 10 years of imprisonment for the same.<sup>1</sup> This judicial disparity raises questions on the integrity and dignity of the judicial system. While the statutory rule book lays the framework for punishment, it also lists down the discretionary power of the judge. The discretion of the judge states that the judge has the power to

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<sup>1</sup> Cass R. Sunstein et al., Noise- A flaw in judgment (Little Brown & Company), 2021

determine the outcome of the case on the basis of the details of the case.<sup>2</sup> Every case is different in its own way, and so does the quantum of the punishment vary. The discretion of the judge plays a deciding factor in every case. Discretion allows a judge to grant mercy or a chance for rehabilitation.

A judiciary is called into question when there seems to be a sentencing disparity. The moral legitimacy of justice system is carved with a question mark when punishment no longer fits the crime, rather it fits an individual. The deterrent effect of punishment weakens, when the public perceives that the legal system loses its power and fails to regulate society.<sup>3</sup> This judicial gap may lead to a total breakdown of trust between the state and citizens.

### **KEY FACTORS:**

Sentencing is the most important phase of the legal process. The trial phase of the justice system is driven by the evidence, facts, and arguments, etc while the sentencing phase of the justice system is driven by the interpretation and philosophy of the judicial officer. These key factors influence the court to give different verdicts for the same crime.

#### **1. JUDICIAL DISCRETION:**

Judicial discretion is basically the power of the judge to choose the quantum of punishment from the given range of punishments in the law book. It is the legally stated principle that “one size doesn’t fit all”, the same goes for the quantum of punishment. Though the offence committed is the same, there is a different range of punishment for individuals. This flexibility in punishment leads to disparity, thus breaking down the trust of the public in the justice system.

Judicial discretion varies with the philosophy of the judicial officer. Every judicial officer may bear different intellect and philosophy, thus there is variation in deciding the case. It might happen that one judicial officer may believe in retribution policy i.e. punishing the criminal, while another judicial officer might have a different believe of reformation and rehabilitation i.e. scope for improvement or fixing the criminal. Similarly, if a defendant presents before a “intellect- hard on ethics” judge, then there is a possibility that he will be granted the maximum punishment, but if he appears before a “reform-minded” judge for the same crime then there will be a chance of a mere fine or probation order.

Thus, the discretion of the judge plays an important role in deciding the sentence of the criminal. Sometimes, the external factors may also influence the sentencing phase. It includes the mood of the judge, the presentation of an advocate, etc. These factors are mere noise factors; they don’t decide the fate of the case but may affect the case in a certain way<sup>4</sup>.

#### **2. SOCIO- ECONOMIC FACTORS:**

Socio- economic causes play an important role in deciding the sentence of an individual. It may include within its ambit wealth, education, job prestige, etc. These are the visible factors that lead to disparity in sentencing of an individual.

Usually a person with high socio- economic status succeeds in hiring a private defense attorney. These lawyers dig deep into the case and present reasons before the judge to adjudge leniently. On the other hand, a person with low socio- economic status fails to afford a private defense attorney; they rely on a public prosecutor. These public prosecutors are already over burdened with cases, so they don’t have

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<sup>2</sup> Marvin E. Frankel, *Criminal Sentences: Law without order* (Hill & Wang), 1973

<sup>3</sup> Tom R. Tyler, *Why People Obey the law* (Princeton University Press), 2006

<sup>4</sup> Daniel Kahneman, Oliver Sibony, and Cass R. Sunstein, *Noise- A Flaw in Judgment* (Little, Brown), 2021

time to dive deeper into the case of the defendant and build up a story, thus it leads to a harsher punishment.

Judicial officers also look upon the social capital of an individual before deciding the sentence. The person with a high paying job and education is often seen as a good person who made a mistake, while an unemployed or uneducated person is seen as a risk to society who is more likely to commit the crime again. Thus, it leads to sentencing disparity.

Moreover, the poverty trap is another socio economic factor that leads to judicial breakdown of the sentencing system. The wealthy criminal often resolves their case by simply paying money, but the poor one can't afford to pay even for the lenient punishment, thus the judicial officer has no option, instead of sending them in a prison cell.

### **3. JURISDICTION VARIATION:**

Jurisdictional variation is another important factor that influences the outcome of the case. The outcome of the case also varies when the criminal crosses the border. Laws are applied differently in specific states, cities or regions. The punishment for the same offence varies with the change in the province.

In the community that has strict legal order, the judges develop a habit of pronouncing an upper range judgment to maintain their reputation, while in the community that prefers rehabilitation or reformation, the judges develop a habit of giving low range judgments i.e. community service, or a fine. Thus the fate of the defendant is more likely affected by the change in environment.<sup>5</sup> Moreover, some matters are directly governed by the local government. In some states, a first time drunk driver leads to the suspension of the offender's driving license, while in some states it leads to the way to jail time for a week or for some days for every single offender.

Thus, laws are written differently for every state, so people find different punishments for the same offence in different states.

Resource variation also pushes the judge to adjudge differently. The wealthy judicial districts have abundant resources and tax based funds to establish problem solving courts i.e. Drug courts, mental health courts, etc. These specialized courts allow offenders to undergo special treatment rather than prison. But, the poor judicial district courts lack funding, thus they are unable to establish special courts, thus leaving behind one and only option for a judge i.e. to send the offender to prison.<sup>6</sup>

### **4. AGGRAVATING FACTORS:**

The aggravating and mitigating factors influence the scales of justice. Aggravating factors are the factors that increase the scales of punishment. It turns the nature of crime into serious, cruel and more dangerous to the community. While dealing with any case, if a judge finds any of the factors that are harmful to society then he is likely to move towards the high range of punishment.

The aggravating factors can be analyzed by recognizing the following things as follows:

The weapon used in crime by the criminal is one of the factors that outweigh the intensity of the crime. If a criminal uses a harmful weapon to commit a crime, then the law views it as a reason to increase the range of punishment.

Another factor is the severity of the crime. The crime committed against children, elderly people, disabled persons, or women needs more strict punishment as compared to other crimes.

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<sup>5</sup> James Eisenstein & Herbert Jacob, "An Organizational Analysis of Criminal Courts (Little, Brown), 1977

<sup>6</sup> National Institute of Justice, Geography of Justice: How Location affects the case, 2022

The history of the criminal also plays a major role in deciding the range of punishment. A repeat offender always receives a harsher punishment than that of a first time offender. The one time offender is considered as innocent and mistaken while the repeat offender is the expert criminal in terms of law. Thus, these factors enhance the level of punishment.

#### **5. MITIGATING FACTORS:**

Mitigating factors are the factors that decrease the range of punishment. It provides a reason for a judge to show mercy on the culprit. These factors include the assessing of the defendant's character, role in the offence, provocation, personal circumstances, or the chance of reformation.

These factors help the judge to lower the bar of punishment and make justice more humane.

#### **IMPACT ON SOCIETY**

The differentiation in imposing a sentence creates a ripple effect. The citizens lose trust in the judiciary. When people observe that wealthy people receive only a minimal punishment for the offence for which poor people suffer imprisonment for years, then it leads to legal cynicism. Thus, the poor people lose faith in the judicial system and stop respecting legal boundaries and start punishing culprits themselves, therefore leading to an increase in offence against the human body.

Unequal sentencing leads to unemployment and generational poverty. A harsh prison system not only punishes the offender, but it also punishes their family as well. The long term punishments make it impossible for individuals to find a job, thus leading to an increase in the crime rate.<sup>7</sup> Moreover, it also affects the rehabilitation of the offender. This sense of judicial disparity makes them harden by the system rather than undergo reformation.

#### **SUGGESTIONS**

To resolve the issue of unequal sentencing, the legal system needs to undergo a shift to a transparent approach. The judicial officers need to provide a standardized framework where severity of crime and defendant's criminal history must be balanced. If a judge wants to impose a higher range of punishment then he needs to provide justification for the same in a written form.

Every state should ensure that every defendant has equal representation irrespective of his socio-economic background. Judicial officers must undergo training on mandatory implicit standards of sentencing. Courts should provide judicial officers the sentencing reports every year that show their own verdict patterns.

#### **CONCLUSION**

The legal system relies on the principle of same crime, same punishment. The path of conviction must be redirected by the mitigating as well as aggravating factors. The modern justice system is viewed from socio-economic status, jurisdictional variation, etc that creates the imbalance in scales of justice.

Thus, sentencing disparity is not only a technical issue; it is a social issue that fuels social inequality. The legal system must adopt clear sentencing guidelines that must justify the legal principle of "justice is not only done, but is seen to be done equally for all".

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<sup>7</sup> Robert J. Sampson, "Legal Cynicism", Law & Society Review, 1998