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**A CRITICAL ANALYSIS OF THE SENTENCING POLICY OF COURTS**  
**WITH SPECIAL REFERENCE TO THE OFFENSE OF THEFT.**

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***Abstract:***

In India, the courts are given wide discretionary powers in the determination of the punishment which must be given to an accused convicted of any crime. The Indian Penal Code enlists the range of punishment which must be given for a particular offense however the exact numbers are determined by the courts. The offense of theft is one such offense under the Indian Penal Code elaborated under section 379 which provides for punishment of imprisonment which may range up to 3 years with or without a fine. The courts must look into the facts and circumstances of the case and determine the exact period of imprisonment and the amount of fine which must be imposed. The court looks into the facts of the case, the gender of the offender, the possibility of reformation, and a few other factors before coming to a final decision. In this paper, I will analyze through various cases the factors responsible for the varying degrees of punishment and how the courts come to this conclusion.

***Introduction:***

<sup>2</sup>Sentencing is that stage of the criminal justice system where the actual punishment of the convict is decided by the judge. It follows the stage of conviction and the pronouncement of this penalty imposed on the convict is the ultimate goal of any justice delivery system. It is a method to determine the punishment which must be given to an individual for the wrong done by him/her and a way to grant justice to the victim. Sentencing policies adopted by a court are a means to rehabilitate and reform an individual so that it deters them from committing any further crimes and rehabilitates them back into society. The different <sup>3</sup>kinds of punishments given by the Indian Courts are:

1. Death
2. Imprisonment for life
3. Imprisonment:

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<sup>2</sup> R. Niruphama Saptarshi Mandal Shrittha K. Vasudevan, Three Studies on Law, and The Shifting Social Spaces of Justice, Mahanirban Calcutta Research Group, 5, 2008.

<sup>3</sup> Indian Penal Code, 1860, Act No 45, Acts of Parliament (India), Sec. 53.

- a. Rigorous
  - b. Simple
4. Forfeiture of Property and
  5. Fine.

Though 2 persons might commit the same kind of offense, however, the way in which they commit the offense, their mental status, the circumstances leading to the offense, age, gender, and many more factors are looked into and different punishments are given to both of them. One of them might be given an imprisonment of 5 years however the other might be given a sentence of just 3 years. So even though the offense is the same, the quantum of punishment allotted differs from person to person. It is the duty of the courts to look into the facts and circumstances of the case and properly determine the quantum of punishment that must be given to a person.

The Indian Penal Code defines the offense and lays down the criteria that must be fulfilled for a particular act to fall under that category of offense. It also lays down the maximum punishment which can be given to a person with or without a fine, if he or she has committed that particular offense. However the exact duration of punishment is not given under any offense, the code leaves wide discretion to the courts to determine the exact period. Each person is different from the other and the situation in which they end up committing the crime also differs, and the lawmakers could not incorporate all these factors while drafting the act, thus they leave it to the courts to determine the same.

Just as the Indian Penal Code lays down the offenses and the quantum of punishment, the Code of Criminal Procedure, elaborates on the procedure as to how the Indian Penal Code should be enforced. It provides a detailed procedure for punishments and also helps the court in determining, the sentence which must be granted to an accused based on his/her circumstance. It provides for a detailed investigation procedure, collecting evidence, taking statements of everyone associated with the case, conducting a trial, etc... It also provides for reformatory and rehabilitative forms of punishment which can be given to the accused, if they fall under a certain category and if they have committed a trivial offense. It also contains provisions pertaining to victim compensation, so as to support the victims in their recovery and reduce their burden of medical expenses.

Thus with the aid of both these acts the courts determine the appropriate punishment that must be given to an individual after looking into all the aggravating and mitigating factors. The courts have

specific principles in their sentencing policy which helps them in arriving at a conclusion as to the factors that must be looked into for determining the punishment.

***Scope and Objective:***

The scope of this paper is to gain an understanding of the sentencing policy of the Indian Courts in determining punishments that must be given to an accused. To understand the various factors which a court considers before coming to a conclusion. With respect to the practical aspect, this paper will focus on the offenses of theft under the Indian Penal Code, and with the aid of various cases determine the applicability of these sentencing principles in real life. Every case, though similar in facts might receive a different punishment, thus after analyzing various case laws, this paper would aid in receiving an understanding of the ideology behind these differences.

***Content Analysis:***

<sup>4</sup>The main aim of a criminal trial is to determine whether the accused is guilty or not. After this is determined the courts have to determine the suitable action to be taken on the basis of substantive and procedural criminal law. The determination of the second issue, is of an enormous consequence, both to the accused and the society at large. His life, liberty, property, and his entire future hinge on the outcome of the sentencing process. The sentencing process involves the determination of the appropriate action both in quantitative and qualitative terms. The concept of Individualisation is followed by the Indian Courts. It means that instead of fitting the offence the punishment should fit the offender.

**Primary and Secondary Decisions:**

The court should first decide if they want to use the approach of individualization or penal sanctions. The term individualization includes both preventive and rehabilitative kinds of punishment. This concept differs from the traditional theories of deterrence and retribution. If the courts choose individualization as a method, then the next step is to determine between probation and suspended sentences. Suppose the courts determine that punitive methods of punishment must be given. In that case, they have to determine between the different kinds of punishment, ranging from fine, imprisonment, or even the death penalty in rarest of rare cases. These decisions made by the courts about the kind of punishment and the quantum of punishment are known as primary and secondary decisions. While determining the sentence the court should focus on the interest of

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<sup>4</sup> S.M.A Qadri, Ahmad Siddique's Criminology and Penology, 377, Eastern Book Company 2009.

the society and look into other factors like the different factors responsible for the commission of crime.

<sup>5</sup>*“It is the duty of the court to award proper sentence having regard to nature of offense and manner in which it was committed. The court shall have to balance the aggravating and mitigating factors and circumstances in which crimes are committed. The court should keep in mind not only the rights of the accused but the rights of the victim and society as well. In operating the sentencing system, the law should adopt the corrective machinery or deterrence on the factual matter”.*

<sup>6</sup>General guidelines that courts could follow while determining the sentence include:

1. Personality of the offender and the gravity of offense should be guiding factors for a judge instead of focusing on uniformity of punishment.
2. Humanity, consciousness about societal values, and frugality are some of the limiting factors. Disparities can be due to disparities between judges, offenders convicted for the same offense, locational comparisons, and racial or class prejudices.
3. The judges have the discretion to choose between the minimum and maximum punishment for a particular offense, however, certain offenses provide for mandatory penalties which must be followed by the courts.
4. In the case of professional criminals or political terrorists an extended period of preventive detention must be given after serving the penal sentence, in the view of public safety and security against such hardened offenders.
5. Offenses committed by public servants should be dealt with severity.
6. While determining a judicial sentence it should be the sole decision of the judge and there should be no outer intrusion in reaching a decision.
7. Political elements should not be allowed to enter into the powers of appointment of judges.
8. Miscarriage of justice is usually due to distortion or manipulation of evidence by the investigating authorities or the witness turning hostile due to pressure or threat created by the offender.
9. To eliminate such chances of injustice, the provision for appeal is given.

<sup>7</sup>In this case, the court held that the imposition of appropriate punishment is the manner in which courts respond to society’s cry for justice against crime. Justice demands that courts should impose

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<sup>5</sup> Shailesh Jesvant Bhai vs State of Gujarat, (2006) 2 SCC 359.

<sup>6</sup> Prof. N.V. Paranjape, Criminology & Penology (including victimology), 348-351, Central law publications 2021.

<sup>7</sup> Mukesh vs State (NCT of Delhi), (2017) 6 SCC 1.

punishment befitting the crime so that it reflects public abhorrence of the crime. <sup>8</sup>In Gurumukh Singh's case, the court enumerated a number of factors that should be taken into account while determining the sentence of an accused:

- Motive or previous enmity.
- Did the incident occur in the spur of the moment
- Intention or knowledge of the accused while inflicting injury
- Gravity, dimension, or nature of injury caused
- The age and general health of the accused
- Whether the injury was caused without pre-mediation or in a sudden fight
- Nature and size of weapon used
- Force used in committing the offense.
- Criminal background or adverse history of the accused
- Was death caused due to shock
- Number of other criminal cases pending against the accused
- Did the incident occur within the family or close relatives
- Conduct and behavior of accused after the incident
- Did the accused take the injured/deceased to hospital for immediate medical treatment.

**Aggravating and mitigating factors while determining a punishment:**

*Aggravating factors:* a) If a person is convicted of a previous offense and has still committed a crime then that should be treated as an aggravating factor in determining the punishment.

b) If the accused has committed a crime against a child or an elderly then that vulnerability might be treated as an aggravating factor.

c) If the accused played a major role in the commission of the crime, like if he was the leader of the whole group or if he was the person who originally gave the idea of committing the crime, then that could be treated as an aggravating factor.

d) If the crime was committed out of hatred towards a certain class, group, race, color, community, etc...

e) If the accused has deliberately or with intention caused larger harm than is needed then that could be an aggravating factor in determining the sentence.

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<sup>8</sup> Gurumukh Singh vs State of Haryana, 2009 (11) SCALE 688.

*Mitigating factors:* a) No previous case or conviction against the accused.

b) The accused played a small role in the offense which did not play a major impact on the crime.

c) Past circumstances, mental trauma, or any childhood experiences which have resulted in the crime.

d) Other triggering circumstances which led to the commission of the offense, like a fight, stress, or any other mental and emotional situations.

e) Any mental or physical illness which led to the commission of the crime.

f) Age or sex of the offender might sometimes be a mitigating factor in determining the sentence.

**Applicability of these factors and other factors while determining the sentence for offenses of theft:**

Offenses of theft are given under chapter XVII of the Indian Penal Code. Sections 378 to 382 deal with the same. According to section 379, any person who is guilty of committing an offense of theft shall be punished with imprisonment which may extend up to three years with or without a fine. This section just gives the maximum limit which could be imposed upon an accused if he commits the offense of theft, however, it is nowhere mentioned in any of the criminal laws as to what is the exact punishment that can be imposed or the exact amount of fine which can be levied. Thus it is left up to the discretion of the judges to determine the exact quantum based on the facts and circumstances of the case and also after considering the other factors which might aid them in this process.

In case of theft usually, the accused is left with a smaller term of imprisonment or just a fine. However, sometimes determining the term of imprisonment could be a difficult task for the judges. There might be situations where the accused is a first-time offender or has committed the crime due to any external pressure and giving imprisonment to such a person, where he would be kept with other criminals could be a risk factor as the accused might be exposed to other dangerous criminals and there are chances that he might adopt the method of committing even more serious crimes after being released from prison. However, the judges can't always think about this and just resort to giving fines as a punishment, because even doing that has its negative effects. If a person is left to pay just a minimum fine after committing a crime then he might resort to being a habitual offender and always try to get excused just by paying the fine.

Thus the judges play a vital role in reducing crime in our country by determining the appropriate sentence according to the situation and the person convicted of the offense.

**Application with regard to offenses of theft: (different sentencing used in different cases by the courts)**

Now let's analyze the applicability of these factors in real life, where the judges use them to determine the punishment for the offenders convicted of the offense of theft.

<sup>9</sup>In this case a 19-year-old student belonging to a middle-class family was sentenced to two years imprisonment and a fine of Rs. 2000 by the trial court for committing the offense of scooter theft. He was also six-month imprisonment and a fine of Rs. 500 for car lifting. Both these sentences were to run concurrently. On appeal, the Supreme Court reduced the period of imprisonment to just six months, which the accused had already undergone. The case came up before the Supreme Court after nine years, and the accused had married and also had children, his uncle also guaranteed his good behavior. The court also said that when the accused committed the crime he was young.

<sup>10</sup>The court also observed that the present criminal conditions might brutalize the boy and blunt his finer abilities so that the end product could be more criminal than the one at the point of entry.

<sup>11</sup>In this case the petitioner is accused of stealing electricity. However when the case came up before the Delhi High Court, all the amount due was paid by the parties and there was no due left. The court quashed the FIR and held that as the amount has already been paid and it was a petty crime, the accused was also a first-time offender and thus he was given an opportunity to rectify his mistake instead of sentencing him to prison. <sup>12</sup>A similar judgment was also given by the Punjab and Haryana High Court.

<sup>13</sup>In this case before Kerala High Court, the accused was given a sentence of rigorous imprisonment of 2 years by the Trial Court, however when the case came before the Kerala High Court, through a revision petition, the court held that the accused is a first-time offender, the court reduced the sentence from 2 years to 1 year of rigorous imprisonment.

<sup>14</sup>In this case, the accused was held guilty for committing theft of a tree worth Rs. 5000 from the property of the Irrigation Department. When the crime was committed the revision petitioner was aged 48 years, however when it came before the court he was aged 63. There was also no previous conviction against the accused. Thus the Kerala High Court after looking into these circumstances,

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<sup>9</sup> Ashok Kumar vs State ( Delhi Admn) (1980) 2 SCC 282.

<sup>10</sup> S.M.A Qadri, Ahmad Siddique's Criminology and Penology, 418, Eastern Book Company 2009.

<sup>11</sup> Umashankar vs The State (NCT of Delhi) & Another CrI. M.C. No. 510/2007.

<sup>12</sup> Ram Narain vs State of Haryana CrI. Misc. No. 25357 of 1999.

<sup>13</sup> Abdul Latheef vs State of Kerala CrI. R.P. No. 3512 of 2009.

<sup>14</sup> Appu vs State of Kerala CrI. R.P. No. 4004 of 2006.



reduced the term of imprisonment till the rising of the court and a fine of Rs. 10000. The court also stated that on failure to pay the fine, the accused would undergo simple imprisonment for a period of 1 year. The term “rising of the court” means detaining the accused till the end of the proceedings in the courtroom. It is usually for a few hours or minutes.

<sup>15</sup>In this case the accused was a habitual offender who was guilty of committing the offense of theft. He was sentenced to three previous convictions of two months imprisonment and one conviction of simple imprisonment of one year. However, when the case came up again the court sentenced him to a rigorous imprisonment of one year. The learned judge of the High Court of Rajasthan upheld this conviction and held that the accused did not correct his behavior even after being convicted so many times.

<sup>16</sup>In this case, before the Supreme Court, the accused was convicted of 12 different offenses of theft. The accused asked for a reduction of sentence. According to section 427 of IPC, it is held that if a person is sentenced for an offense and is again sentenced for another offense then the next sentence would commence after the first one is over. He was sentenced to a total period of 12 years, 3 months, and 8 days in prison. He earned a remission of 3 years and 10 months already. He has to pay a total fine of Rs. 18000. The Supreme Court clubbed the offenses under 3 different categories and decided to allow a few sentences to run concurrently with each other and also held that in default in paying the fine the accused might be sentenced to imprisonment consecutively and would not be given a chance of concurrent running of sentences. <sup>17</sup>A similar case came up before the High Court of Andhra Pradesh where the accused were habitual offenders convicted various times for stealing redwood. The court upheld all the sentences allotted to them during different times and did not allow for a reduction in sentence.

<sup>18</sup>In this case, the 2 accused were asked to pay a fine of Rs. 500 and Rs. 200 respectively. The offenders did not intend to commit the crime of theft. They just took the documents for a temporary time and intended to put them back later. However according to the ingredients of this section even if a temporary deprivation of property is done it amounts to theft, but as the intention was not present here the accused were left with just a fine.

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<sup>15</sup> Paras Paras Ram vs State of Rajasthan S.B. Cr. Revision No. 24 of 1984.

<sup>16</sup> Benson vs State of Kerala Criminal Appeal No 958 of 2016 with Nos. 957 of 2016, 959 of 2016, and 960 of 2016.

<sup>17</sup> Malikireddy Vijaya Bhaskar Reddy vs The District Collector and District... W.P. No. 7915 of 2012.

<sup>18</sup> Pyare Lal Bhargava vs State of Rajasthan 1963 AIR 1094.

<sup>19</sup>In this case, the accused were given a term of simple imprisonment of eighteen months and a fine of Rs. 750. In this case, the court found that the accused did not intend to take the flight to Pakistan and they also found that the training academy was also at fault as they did not follow all the procedures and the trainees were just able to take a flight without anyone noticing.

<sup>20</sup>In this case the court gave a reduced sentence as the accused were of a tender age and also considered the manner and nature in which the offense was committed.

<sup>21</sup>In this case the Patna High Court sentenced the accused to a rigorous imprisonment of three years along with a fine of Rs. 2000. The guiding factor in determining the sentence in this case was the manner in which the offense was committed. The accused in order to commit the offense of theft, gave some tea to the petitioner due to which she had to be hospitalized.

<sup>22</sup>In this case, the court considered mitigating factors like the age of the accused and the term already served by him in imprisonment and thus the Punjab and Haryana High Court, reduced the term of imprisonment to the term already been served by the accused and directed to release him.

### ***Conclusion:***

Thus through various cases presented before the courts, it is clear that the courts always look into the guidelines established and the different aggravating and mitigating factors before determining the term of the sentence or the quantum of fine which must be given to the accused. The courts are faced with huge responsibility while determining the appropriate amount of punishment that must be allocated to an individual. Thus the role of judges doesn't just get over after determining the guilt or innocence of the accused, they are still left with a huge responsibility of imposing punishment and ensuring that justice is properly served. No person should suffer more than what is needed and no more should suffer less than the suffering he has caused to the victim. Thus the judges have to make a perfect balance between both these concepts and determine an appropriate sentencing policy that must be used. It is left up to the discretion of judges to determine the sentence that must be given to an individual and many a time this leads to a disparity between two situations. Though the case might be of similar nature still the sentence given to the accused might differ from court to court and judge to judge. Every judge has their own opinion and they give a

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<sup>19</sup> K.N. Mehra vs State of Rajasthan 1957 AIR 369.

<sup>20</sup> State of Himachal Pradesh vs Sanjeev Kumar & Another Criminal Appeal No. 191 of 2008 and Cr. Appeal No.283 of 2008.

<sup>21</sup> Md. Mangala @ Mangla vs The State Of Bihar Criminal Appeal (SJ) No.418 of 2014.

<sup>22</sup> Kanti Alias Lucky vs State Of Haryana CRR-805-2021 (O&M).

sentence based on their understanding of the case and what they think is just and fair for the accused and the society.

<sup>23</sup>There might be two kinds of disparities involved while pronouncing judgments

1. Justified
2. Unjustified

A judge should minimize a disparity in sentencing and they should try and coordinate the sentencing policies. There is a need to frame proper sentencing guidelines which can be followed by the judges while determining the sentence. The legislature or the Supreme Court needs to take steps and come up with a properly structured guideline that would act as a basic law for all the courts and every judge could refer to it along with the facts and circumstances of the case before coming to a conclusion. This would have a twofold benefit, as it would give discretionary power to the judges, as well as act as a restricting mechanism from being discriminated against in framing a sentence. However, till the same is done, it is left to the judges to take proper precaution and care before determining a sentence and looking into all the possible consequences, merits, and demerits behind a particular sentence before allotting it to an individual. Because the consequence of an incorrect or harsh sentence might be seen both on the individual and the society, as the individual who is given a very harsh sentence that isn't justified for his crime, might become resilient and might tend to commit more crimes as a reaction to the injustice done to him.

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<sup>23</sup> Damayanti Bhattacharjee, Disparity in Sentencing Policy in India, Volume 3, IJLMH, 1103, 1107-1110, 2020.