

## ABSTRACT

Law is a skeleton to which judges give flesh and blood and finally breath through interpretation and application of its provisions and rationales so that it becomes a living being who governs and protects the rights, liberties and properties of its subjects.

Similarly, the use of judicial discretion in sentencing is the creative interpretation of the facts and the law by the trial judge who had heard and decided the case in molding the final outcome which is the sentence. This creativity should be based on judicious and rational thinking and common sense, as in evaluating evidence prior to determining the guilt of the offender, and the final outcome of such thinking should be objective and not arbitrary and certainly not robed in the whims and fancies of the trial judge and his personal prejudices. Such personal prejudices and partial thinking will cloth the sentence imposed on the convicted thus appallingly undermining the immense confidence the general public places on the entire system of administration of justice.

Nevertheless, the Sri Lankan law is still silent as to what is this use of judicial discretion in sentencing? How to identify the appropriate cases which needs judicial discretion to be used in sentencing despite the minimum mandatory sentence prescribed by the legislature and how to appropriately and properly use judicial discretion in sentencing.

Hence a crying need has arisen to fill that lacuna in law and among the legal fraternities of both the official and the unofficial Bar as to how to prevent disparities in the use of judicial discretion by different trial Benches. Therefore the objective of this research is to recommend an unambiguous and a uniform sentencing policy in the use of judicial discretion in sentencing through comparison with other criminal jurisdictions to minimize such disparities and to promote the imposition of appropriate sentences in appropriate circumstances where justice will be properly served on the survivors of crime and the society at large.

Through this research the author had strived to introduce a non exhaustive list of sentencing guidelines to guide the judiciary in the exercise of judicial discretion through the experiences of Australia, South Africa and the United States.