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Sentencing Guidelines and Their Applications in Ethiopian Federal Courts

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Abstract: Disparities of sentencing in similar crimes cause a typical problem; Law scholars devoted their time to reconcile the debate "should the crime fit with the individual or should the individual behavior fit with the type of crime that she or he committed?" This has remained an issue in criminal sentencing. It is the most crucial stage in criminal justice system because crime is an inevitable phenomenon in human social life. In addition, sentencing is a means designed to give notice for the general public by described punishable crimes and to punish a criminal that he/she have to be convicted by a court of law. In ancient times, punishment was premised on the principle of "an eye for an eye, a tooth for a tooth" and punishments were degrading and inhumane by today's standard. These days punishments are relatively humane and focus on rehabilitation. Many universal human right instruments provide for the rights of convicted persons and many countries are members of these instruments. Sentencing disparity is a problem everywhere, and countries have adopted sentencing guidelines to solve this problem. Ethiopia is one of them that adopted and revised the first and the second sentencing guidelines in 2010 and 2013 respectively. The study has applied qualitative and doctrinal legal research method that revealed the following points. The general objective of this study is to explore whether the Ethiopian Federal Supreme court sentencing guidelines could tackle the unwarranted sentencing disparities in federal courts or not. In addition, the main purposes of the sentencing guidelines have to ensure proportionality, consistency, predictability and fairness of sentencing throughout in the country on federal matters. However, the principles of alike cases were not getting uniformity of decision that have been realized in many scenarios; the sentencing guidelines from design to practices shown that it was unable to stop unwarranted disparities of sentencing due to different factors. The lack of clarity of sentencing guidelines, the lack of mutual understanding of the legal practitioners to the sentencing guidelines, lack of supervision and controlling mechanisms of the sentencing guidelines were considered as the root causes of sentencing disparities.

Keywords: Sentencing Guidelines, Sentencing Disparities, Criminal Justice System, Structured Sentencing

1. Introduction

Sentencing disparities have not only affected the individual's right, but also the government and the society's interest at large. Although universal features of crime and punishment have been seen in the contemporary societies, it would be "a serious mistake to view punishment as an automatic or uniform response to particular types of misconduct [1]." On the other hand, ignoring undesired disparities of sentencing among individuals is an irresponsible act. In fact, "how acts are defined and their legal treatment reflects the prevailing social, political, economic, and historical conditions of a society at any given point in time [1]." In addition, "Sentencing guidelines are a relatively new reform effort to encourage judges to take specific legally relevant elements into account in a fair and consistent way [2]."

Criminal sentences are required to "reinforce collective values, physically incapacitate and rehabilitate offenders, deter misconduct, provide restoration or compensation, and eliminate threats to the prevailing social order [3]." In addition, unwarranted disparities of sentencing could be minimized through structured sentencing guidelines. Even if Ethiopia had introduced its criminal law more than half a century, unwarranted disparities of sentencing were not controlled by structured sentencing guidelines until the first

sentencing guidelines had been introduced in 2010.

In Ethiopia, disparities of sentencing have been seen in aggravating and mitigating circumstances and this is called warranted disparities [4]. Art. 88 of the 2004 criminal code of Ethiopia provides that the Federal Supreme Court may prepare the sentencing guidelines and the Supreme Court came up with sentencing guidelines in the first time in 2010 and revised it in 2013. However, significant changes were not exhibited as the Ethiopian criminal justice expected. The main purpose of this research is therefore, to examine the possible application of Ethiopian sentencing guidelines in the federal courts that was expected by Ethiopian criminal justice.

2. Sentencing

2.1. Objectives of Sentencing

A number of theories revolve in and around two extreme theories namely: Retribution (deontological) and utilitarian (consequentiality) theories of punishment. Crime is an inevitable phenomenon in the society. Some individuals have deviant behavior and the ultimate stage of deviant behavior leads to commit crimes. Hence, law abiding people and the community at large could have been harmed by the wrong doer and they would have sought legal remedy. Thus, the theory of retribution imposed punishment for its own sake that was motivated by revenge and reciprocity which was equivalent to the committed crime. The harshness of punishment in some cases extended to death penalty. On the other hand, the utilitarian theory of deterrence and reformation used punishment as a means to an end the end being community protection by prevention of crime. It is believed on this theory that punishment should not be necessary equal to the committed crime [5].

According to James A. Inciardi, "for more than 200 years, the public has alternated between revulsion at inhuman sentencing practices and prison conditions (denounced as "barbaric" and" uncivilized") on the one hand and dissatisfaction with excessively compassionate treatment see as "coddling criminals" on the other [6]. The fates of convicted criminals have repeatedly shifted according to prevailing national values and current perceptions of danger and fear of crime [7]. Therefore, objectives of sentencing are based on six competing philosophies: retribution, incapacity, deterrence, rehabilitation, restoration of victims" right, and all inclusive theories [8].

Let us evaluate the Federal Criminal Code (2004) in line with the aforementioned theories. The object and purpose of the Criminal Code of Ethiopia are stated as follows:

The purpose of the Criminal Code of the Federal Democratic Republic of Ethiopia is to ensure order, peace and security of the State, its peoples, and inhabitants for the public good.

It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective, by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, by providing for their reform and measures to prevent the commission of further crime [9].

From this provision, we can draw a conclusion that the purpose of Ethiopian criminal law is in line with all theories except retribution. Prevention of crime, deterrence, incapacitation, and rehabilitation are clearly envisaged in the purpose of the Criminal Code.

First, the criminal law gives a warning notice of punishable crimes to the offenders and potential criminals. Second, incapacitation is one of the purposes of criminal law that enable to isolate the offenders from the society either temporarily or permanently. Third, rehabilitation of inmates by giving education, vocational training and install a parole system either through short term or long term imprisonment except death penalty to return him or her to the society. Other purposes are related to the restoration of the victim's right that accredit for general extenuating circumstance in the current criminal code; whereas the purpose of retribution theory is outdated in Ethiopian legal system [10].

2.2. Basic Criteria's of Sentencing Guidelines

The criteria of sentencing guidelines have not been seriously considered so far. The basic criteria of sentencing guidelines should be known to its fundamental elements because it helps to get a lesson from other states. The work of Michael and Don CottFredson indicated that there should be nine aspects of a meaningful sentencing guideline system. Those are (1) the guidelines must provide an explicit general policy to guide decisions in individual cases; (2) they must employ explicit weights and criteria; (3) they must employee charts and a grid; (4) they must structure but not eliminate discretion; (5) judges must provide reasons for any departures; (6) there must be a monitoring and feedback system; (7) authorities must have the power to modify the guidelines whenever circumstances make modification desirable; (8) there must be some allowance for modifying the general policy, "in response to experience, result learning and to social change" and (9) the guidelines must be open to the public [11].

Sentencing is an action that is made by the judge after the verdict of the defendant. Nevertheless, sentencing cannot be separated from the parent legislative of the criminal law. Therefore, law makers were considering that sentencing is part of the criminal law provisions. As the result, sentencing may get more weight like the criminal law of Ethiopia than the criminal procedure under the FDRE constitution. For instance, art. 22 (1) (2) of the 1995 FDRE Constitution clearly stipulates that unless it is advantages to the accused or the convicted person, no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. Nor shall a heavier penalty be imposed on any person than the one that was applicable at the time when the criminal offence was committed. Which is reflected to no crime can be committed; no punishment can be imposed without having been prescribed by a previous penal law is a basic principle of the continental European legal thinking

[12].

2.3. The Process of Sentencing

Sentencing is generally a collective decision making process that involves recommendations by the prosecutor, the defense attorney, the judge, and sometimes the presence investigator. In jurisdictions where sentence bargaining is part of the plea, negotiation process, the judge almost in variability imposes what has been agreed on by the prosecution and the defense [13].

In the federal system and the majority of sentencing a presentence investigation may be conducted prior to actual sentencing. This is undertaken by the court's probation agency or presentence office. The resulting report is a summary of the defendant's present offense, previous criminal record, family situation, neighborhood, school and educational history, employment record, physical and mental health, habit associates and group memberships.

The reports may also contain comments on the defendant's remorse and recommendations for sentencing by the victim, the prosecutor and the officer who conducted the investigation.

The presence reports vary in detail and length depending on the resources and practices of the jurisdiction. Although presentence investigations are not mandatory in all jurisdictions, it is generally agreed that their value goes well beyond their use in determining appropriate sentences.

For example:

1) They aid probation and parole officers in their supervision of offenders.
2) They aid correctional personnel in their classification, treatment and release programs.

They give parole board's useful information for release decision making [14].

After the presence report has been submitted to the judge, a sentencing hearing will be held. In most jurisdiction of common law legal tradition system, a convicted offender has the right to address about himself prior to impose the sentence in the court known as allocation. This practice is available so that the court can identify the defendant as guilty or not and this can be given the opportunity to plead for mercy or a pardon, move for an arrest of judgment or indicate why judgment ought not to be pronounced [14].

The specific matters that a defendant might discuss at the allocation are limited and would not include attempts to reopen the question of guilt. Rather, among the claims that have been included in allocations are that the defendant is not the person against whom, there was a finding of guilt, and in the case of a women that the punishment should be adjusted or deferred because of a possible pregnancy (especially in the case of death sentence) [14].

Now, let us discuss the case of the Ethiopian criminal sentencing process in the following sequential proceedings. Where the accused is found guilty, the court shall ask the prosecutor whether he has anything to say regarding the sentence by way of aggravation or mitigation [15]. If the offence is aggravated by reason of previous conviction, the public prosecutors have to neither include such facts in the charge nor enter in the record of the preliminary inquiry until s/he has been convicted [15]. It is therefore, after the conviction stage of the procedure that the public prosecutor could reveal to the court aggravating grounds such as previous conviction(s) of the accused so that the court could take this fact into consideration in the determination of the sentence for aggravation [15].

The public prosecutor who has mitigated grounds shall inform to the court at this time [16]. Once the public prosecutor is given the chance to mention aggravating or mitigating grounds to the court the same chance should be given to the accused so that he could reply and mention mitigating grounds, if any. Then the court may demand the production of evidences to prove these grounds. In this step again the accused or his advocate are entitled to rebut [15]. In practice most of our courts did not ask the production of prove or evidences on mitigating/aggravating ground mentioned by the parties [17].

After the case has been concluded in the final stage and before the determination of the penalty (sentence), the public prosecutor may, at his option address the court on the questions of law and fact that are involved in the case. Then the accused or his advocate shall address the court, on questions of law and fact. He shall always have the last word; however, where there are more than one accused persons, the presiding judge shall decide in which order the accused or their advocate shall address the court [18].

The court finally enters judgment and pass sentence after the final address of the parties. The sentence contains the record of articles of the law under which the sentence has been decided [19]. The judgment shall contain summary of facts on which the parties have been disputing, the evidence produced based on those facts, the reasons for accepting or rejecting evidence and should contain the provisions of the law under on which the conviction is made. This judgment shall be dated and signed by the judge delivering it [20]. After the court delivers its judgment the prosecutor and the accused shall be informed that they have the right to appeal [21].

2.4. Disparities in Sentencing

Sentencing disparities have been one of the major problems in criminal justice systems. The basis of the difficulty is in three fold: (1) the structure of indeterminate sentencing guidelines; (2) the discretionary powers of judges in sentencing; and (3) the mechanics of plea bargaining [22].

The statutory between minimum and maximum terms of imprisonment combined with fines, probation or other alternatives to create a number of sentencing possibilities for a specific crime in sentencing; sanctions can vary according to the jurisdiction, the community and the punishment philosophy of particular judge. The dynamic of plea bargaining enable various defendants accused of the same crime to be convicted and sentenced differently. These problems exist both within the same court, indifferent benches, and across jurisdictions [21].

Sentencing disparity is divergence in the length and types of sentences imposed on different individuals for the same crime or for crimes of comparable seriousness when no reasonable justification can be discerned [14].

Sentencing disparities have also serious problems in the criminal justice system. Disparities in sentencing among judges are ascribed to various factors including the ones listed here under: (1) conflicting goals of criminal justice; (2) the fact that judges are a product of different background and have different social values; (3) the administrative pressure on the judges and; (4) the influence of community values on the system [23].

Andargachew Tesfaye on his book explained the statement of IN Ciardi that the structure of indeterminate sentencing guidelines and the mechanics of plea- bargaining add to the problem of sentencing disparity. Generally, the experiences of some countries indicated that the variance of sentencing have seen on females, youth offenders and the dominant group of the population (e.g. Whites), as compared to males, adult offenders, and minorities (e.g. blacks) respectively [24].

Andargachew Tesfaye argued that those differences reflect the relationship between the statues and offense rather than the prejudices of judges. Those who support this argument indicate lower recidivism and lower serious Crimes among those referred to as favored groups could get the lesser punishment. Therefore, if one eliminates these complicating factors, sentencing severity will be reduced to significant level [25].

As Andargachew Tesfaye reviewed on his book that Johnson's thinks disparity arises due to the conflict between different expectations in the correctional process as follow:

> *Sentencing disparities reflect the problem of reconciling individualization and uniformity. Individualization requires dealing with the offender in terms of his personality, his experience, and the nature of his offence. Therefore, similarity in offense is only one aspect of the treatment problem. On the other hand, goal of uniformity in sentencing arises from resentment of offenders, aggravated disciplinary problems in prison, and undermine rehabilitation program when claims of individualized sentences conceal capricious or erratic sentencing decisions [26].*

2.5. Grading of Offenses and Its Implication

Grading of offence is another critical issue in the sentencing guidelines. Who is the pertinent authority of grading offences? The propagators of civil law tradition approach are arguing that grading offences and the corresponding punishment should be predetermined by the legislature. Others argued that sentencing guidelines should be left to the judicial commission, sentencing council or judges to determine sentencing. The system of discretion penalties were applied in the pre-revolutionary law in France. Penalty was not determined by the law. Judges establishes them taking into account the particular circumstances under which the offenses were committed and the personality of the offender [27]. This system would allow penalties to be fitted to the guilt of the offender, to the possibilities of this reform or and to the needs of "social rehabilitation". On the other hand, it has disadvantage of tending towards the arbitrary and of weakling the intimidation valve of the penalty [27].

Let us see the system of fixed penalties adopted by the legislature: It was introduced during the period of the French Revolution. In this period the legislative determination of penalty came to be applied to the infraction without any possible modification designed to fit the personality of the offender [27]. This system has the advantage of being strongly deterrent and therefore maintains the full intimidation value of the penalty. It has the demerit of being unjust and even ineffectual by not allowing the penalty to be fitted to the offense committed by the offender and his chances of reform [28].

Modern penal law has endeavored to borrow from the system of discretion penalties adopted by the legislature; and the system of fixed penalties adopted by the legislature; thus the penalty is in principle established by the legislatures but individualized significantly in its application by the judge or the executive to the specific offender. This allows for the successive participation of the legislator, the judge and the administrative [28].

Now, let us discuss the case of the Ethiopian criminal sentencing process in the following sequential proceedings. Where the accused is found guilty, the court shall ask the prosecutor whether he has anything to say regarding the sentence by way of aggravation or mitigation [29]. If the offence is aggravated by reason of previous conviction, the public prosecutors have to neither include such facts in the charge [30]. Nor enter in the record of the preliminary inquiry until he has been convicted. It is therefore, after the conviction stage of the procedure that the public prosecutor could reveal to the court aggravating grounds such as previous conviction(s) of the accused so that the court could take this fact into consideration in the determination of the sentence [16].

The public prosecutor who has mitigated grounds shall inform to the court at this time [31]. Once the public prosecutor is given the chance to mention aggravating or mitigating grounds to the court the same chance should be given to the accused so that s/he could reply and mention mitigating grounds, if any. Then the court may demand proof of evidences after the public prosecutor is given the chance to mention aggravating or mitigating grounds to the court, the same chance should be given to the accused so that he could reply and mention mitigating grounds.

Table 1. *Comparison between Guidelines.*

Level of sentencing	Sentencing Guidelines no. 1/2010 in months				Sentencing Guidelines no. 2/2013 in months				Ranges of difference in months
	Min	Max	Average	Range	Min	Max	Average	Range	
Level 1	0.03	0.66	0.03	0.63	0.03	3	1.5	2.97	+ 2.3
Level 2	0.33	3	1.5	3	0.03	6	3	6	+3
Level 3	2	5	3.5	3	2	8	5	6	+3
Level 4	4	7	5.5	3	4	10	7	6	+3
Level 5	6	9	7.5	3	6	12	9	6	+3
Level 6	8	12	10	4	8	14	11	6	+2
Level 7	12	15	13.5	3	12	18	15	6	+3
Level 8	14	18	16	4	14	20	17	6	+2
Level 9	16	20	18	4	16	22	19	6	+2
Level 10	18	22	20	4	18	24	21	6	+2
Level 11	20	26	23	6	20	26	23	6	0
Level 12	24	30	27	6	24	30	27	6	0
Level 13	27	33	30	6	27	33	30	6	0
Level 14	30	36	33	6	30	36	33	6	0
Level 15	33	39	36	6	33	39	36	6	0
Level 16	36	43	39.5	7	36	43	39.5	7	0
Level 17	39	47	43	8	39	47	43	8	0
Level 18	43	52	47.5	9	43	52	47.5	9	0
Level 19	48	58	53	10	48	58	53	10	0
Level 20	53	64	58.5	11	53	64	58.5	11	0
Level 21	60	72	66	12	60	72	66	12	0
Level 22	66	79	72.5	13	66	79	72.5	13	0
Level 23	72	86	79	14	72	86	79	14	0
Level 24	78	92	85	14	78	92	85	14	0
Level 25	84	100	92	16	84	100	92	16	0
Level 26	92	110	101	18	92	110	101	18	0
Level 27	101	120	110.5	19	101	120	110.5	19	0
Level 28	108	130	119	22	108	130	119	22	0
Level 29	120	144	132	24	120	144	132	24	0
Level 30	131	158	144.5	27	131	158	144.5	27	0
Level 31	144	173	158.5	29	144	173	158.5	29	0
Level 32	156	188	172	32	156	188	172	32	0
Level 33	168	202	185	34	168	202	185	34	0
Level 34	180	216	198	36	180	216	198	36	0
Level 35	198	234	216	36	198	234	216	36	0
Level 36	216	260	238	44	216	260	238	44	0
Level 37	240	300	270	60	240	300	270	60	0
Level 38	Life	Life	Life	Life	Life	Life	life	life	life
Level 39	Death	Death	Death	Death	Death	Death	death	death	death

Source: Ethiopian Sentence guidelines

As shown in table 1, overlapping numbers in the consecutive levels of sentencing are still ambiguous. In the details of Sentencing level 1 up to 10 have almost six months differences in each stratum, whereas Sentencing level 11-39 have no significance difference in both sentencing guidelines; in short, the above table demonstrates, major changes are introduced in the second sentencing guidelines compared to that of the first sentencing guidelines. The respondents of the interviewee in this study ascertained that the revised sentencing guidelines introduced more severe penalties than the former. Generally, each selected crime and the corresponding penalties can be illustrated as follow.

Table 2. *Scale of Punishment.*

Articles of Criminal code, 2004	Scale of punishment "y" stands for year/ "m" stands for month/ "d" stands for date/					
	Criminal code, 2004		Sentencing Guidelines no. 1/2010		Sentencing Guidelines no. 2/2013	
	Min	Max	Min	Max	Min	max
Art. 407 (1) Abuse of Power	1y	10y	1y	7y/2m	1y	7y/2m
Art. 407 (2) Abuse of Power	7y	15y	7y	10y/10m	7y	10y/10m
Art. 407 (3) Abuse of Power	10y	25y	10y	15y/8m	10y	19/6m*

Articles of Criminal code, 2004	Scale of punishment "y" stands for year/ "m" stands for month/ "d" stands for date/					
	Criminal code, 2004		Sentencing Guidelines no. 1/2010		Sentencing Guidelines no. 2/2013	
	Min	Max	Min	Max	Min	max
Art. 665 Theft	10d	5y	10d	3y	8m	5y/4m*
Art. 669 Aggravated theft	1y	15y	1y	10y	1y/6m	13y/2m*
Art. 692 Fraud	10d	5y	10d	3y	8m	5y*
Art. 670 Robbery	1y	15y	1y	10y	1y/8m	12y*
Art. 671 (1) Aggravated Robbery	5y	25y	5y	14y/5m	5y	21y/8 m*
Art. 671 (2) Aggravated Robbery	Life	Death	Life	Death	Life	Death
Art. 555 Grave wilful Injury	1y	15y	1y	10y	3y	14y/5m*

Sources: Ethiopian Criminal Code of 2004 and Sentences Guidelines

The above table 2 indicated that the maximum penalties specified in the special part of the criminal code of the Federal Democratic Republic Ethiopia, Federal Negarit Gazeta Proc. No. 414/2004, Addis Ababa, in these provisions were unattainable in the sentencing guidelines unlike to the minimum boundaries for each crime. The least possible boundary for each crime in the sentencing guidelines is identical to the special part of the criminal code provisions. Almost all are exhaustive. On the other hand, the maximum boundary in each criminal sentencing is left to the special part of the criminal code. These are reserved vacuum for aggravating circumstances. On the contrary, there is no a reserved space for the extenuating condition because of the sentencing guidelines started from the minimum threshold.

Table 3. *Top Ten prosecuted crimes at the national level from year 2008 - 2010 and the response of Federal Supreme Court Sentencing Guidelines (FSCSGL).*

No.	Types of crime	Year 2008	Year 2009	Year 2010	Sum	Addressed by FSC guidelines No.	
						01/2010	02/2013
1	Willful bodily Injury	38,803	35,094	42,751	116,648	Yes	Yes
2	Theft	23,733	31,597	33,093	88,423	Yes	Yes
3	Petty Offense	26,173	33,203	24,927	84,303	No	No
4	Homicide	8,943	9,741	14,213	32,897	No	Yes
5	Grave Willful body injury	8,488	11,923	5,643	26,054	Yes	Yes
6	Breach of trust	5,668	4,501	9,863	20,032	No	No
7	Attempted homicide	7,023	6,896	3,886	17,805	No	No
8	Robbery and looting	5,585	3,597	7,591	16,773	yes	Yes
9	Fraudulent Misrepresentation	5,523	5,079	5,432	16,034	Yes	Yes
10	Rape	2,658	2,801	3,662	9,121	No	Yes
11	Other Crimes	77,607	86,235	76,538	240,380	-	-
Total		210,204	230,667	227,599	668,470	-	-

Source: Central Statistical Agency of Ethiopia

As table 3 indicates that the order of general frequency of prosecuted cases in all levels of courts have been listed as: willful injury, theft, petty offense, intentional and non-intentional homicide, grave willful injury, breach of trust, attempted homicide, robbery and looting, fraudulent misrepresentation, and rape. Among these, Willful body injury, theft, grave willful body injury, robbery and looting, and fraudulent misrepresentation were incorporated in the FSC sentencing guidelines of 2010. In addition to these, prosecuted cases of intentional /non-intentional/ homicide, and rape were addressed in the FSC Sentencing Guidelines of 2013. Other crimes of prosecuted cases constituted 36 percent of the data but these were anonymous in the sentencing guidelines. On the other hand, breach of trust and attempted homicide are not given full coverage in the first and the second FSC sentencing guidelines. Among these, breach of trust would get attention due to its severity and nature of crimes. For instance, 20,032 cases in the crime of breach of trust were prosecuted from year 2008 t0 2010. This means averagely 6,667 breach of trust were prosecuted per year. Furthermore, 17,805 attempted homicide cases were prosecuted from year 2008-2010. This implies averagely 5,935 attempted homicides were prosecuted per year. In general, neither the prosecuted cases of breach of trust nor attempted homicide was incorporated in the FSC Sentencing Guidelines of 2010 and 2013. In sum, petty offences were not a serious problem because the alternative and the range of punishment are very narrow by its nature. The drafter of the sentencing guidelines tried to incorporate major prosecuted cases into the sentencing guidelines except attempted homicide and trust of breach. Thus, both frequency of crimes and their seriousness would be taken into account properly.

3. The Comparative Analysis on the Scale of Penalties

Each of the consecutive sentencing guidelines divided the sentence into different strata. A number of substantive and numerical elements are included in each sentencing manual. In comparison, the sentence periods increased somehow in

the second sentencing guidelines but not declined at all. In addition, the two sentencing guidelines have been discussed in comparison as follow [32].

The maximum boundary in each criminal sentencing is left to the special part of the criminal code. These are reserved for aggravating circumstances; besides, the above table demonstrates, major changes are introduced in the second sentencing guidelines compared to that of the first sentencing guidelines. In addition, the sentencing guidelines were not labeled particular crimes to the maximum punishment prescribed in the criminal code except aggravated homicide and aggravated robbery. In contrast, some people argue that the revised sentencing guidelines introduced more severe penalties than the former.

3.1. Extenuating and Aggravating Circumstances in the Criminal Code

Extenuating and aggravating circumstances are a personal nature which do not affect the offender's liability to punish but these can be taken into consideration at the time of the sentence is done. Judges have usually ascertained cases through investigation. Then, depending on the offender" character and effects, the court decided cases based on the general aggravating and circumstances: The Court shall increase the penalty as provided by law (Art. 183) in the following cases: (a) when the criminal acted with treachery, with perfidy, with a base motive such as envy, hatred, greed, with a deliberate intent to injure or do wrong, or with special perversity or cruelty; (b) when he abused his powers, or functions or the confidence, or authority vested in him; (c) when he is particularly dangerous on account of his antecedents, the habitual or professional nature. of his crime or the means, time, place and circumstances of its perpetration, in particular if he acted by night or under cover of disturbances or catastrophes or by using weapons, dangerous instruments or violence; (d) when he acted in pursuance of a criminal agreement, together with others or as a member of a gang organized to commit crimes and, more particularly, as chief, organizer or ringleader; (e) when he intentionally assaulted a victim deserving special protection by reason of his age, state of health, position or function, in particular a defenseless, feeble-minded or invalid person, a prisoner, a relative, a superior or inferior, a minister of religion, a representative of a duly constituted authority, or a public servant in the discharge of his duties [33].

On the other hand, the court shall reduce the penalty based on the general circumstance based on the five categories. (a) when the criminal who previously of good character acted without thought or by reason of lack of intelligence, ignorance or simplicity of mind; (b) when the criminal was prompted by an honorable and disinterested motive or by a high religious, moral or civil conviction; (c) when he acted in a state of great material or moral distress or under the apprehension of a grave threat or a justified fear, or under the influence of a person to whom he owes obedience or upon whom he depends; (d) when he was led into grave temptation by the conduct of the victim or was carried away by wrath, pain or revolt caused by a serious provocation or an unjust insult or was at the time of the act in a justifiable state of violent emotion or mental distress. (e). When he manifested a sincere repentance for his acts after the crime, in particular by affording succor to his victim, recognizing his fault or delivering himself up to the authorities, or by repairing, as far as possible, the injury caused by his crime, or when he on being charged, admits every ingredient of the crime stated on the criminal charge [34].

There are two basic provisions in the FDRE criminal code that influenced to accomplish the sentence. These are general aggravating (Art. 84) and mitigating (Art. 82) circumstances that are ruled the judge's decision either to decrease or increase the sentence within the scope of the special provisions. However, the court can decide cases out of the special provisions and proceed to apply the general provisions of the criminal code in the case of recidivist and concurrent crimes; besides, the court may decide below the minimum sentence that has been specified in the special part of the criminal code but not beyond the general extenuating mandatory sentence.

3.2. The Implication of the Revised Federal Supreme Court Sentencing Guidelines

The sentencing guidelines is a binding document while the courts are using these sentencing guidelines and have many advantages to minimize the sentencing disparities.

However, the Federal Supreme Court Sentencing Guideline is not clear whether it is a mere advisory or a binding document for all Courts. The main objectives of the revised Federal Supreme Court sentencing guidelines are to make similarity, proximity and proportionality of sentencing based on the gravity of crime and dangerous of criminals [35].

Courts have rights to use or not to use the sentencing guidelines in its real sense. In addition, the contemporary sentencing guidelines stipulates, "the court can decide cases in other ways of the sentencing guidelines. However, federal courts and the regional courts through their respective Supreme Court send the copy of decisions to Federal Supreme Court within 60 days [36]."

These Sentencing Guidelines were faced visible limitations while applied them in Ethiopian Federal Courts, due to Lack of clarity, lack of mutual understanding, lack of supervision and controlling mechanisms of the sentencing guidelines that were considered as the root causes of sentencing disparities.

4. Conclusion

Sentencing is the most crucial stage in the area of criminal justice systems because it can affect the life, liberty and pecuniary interest of individuals. It also affects the interest of the society, particularly the victim's right. There are two controversial issues in sentencing: individualized of sentencing and uniformity of sentencing. Uniformity of sentencing is governed by structured sentencing while the individualization of sentencing is

realized by judges" full-fledged discretion power. Each side of the extreme thought was not effective, and it needs an integrated application.

There was a serious issue of sentencing disparity in the Ethiopian CJS in the past as well as after the coming into force of the first guidelines. The discretional power of the judge was found in a very wide range such as from five years to not exceeding twenty-five years for Abuse of Power and so on. Although the Ethiopian Federal Supreme Court sentencing guidelines has been introduced since 2010 and revised in 2013, the prediction and Consistency of Sentencing in some cases were not realized.

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