
PARTICIPANTS' PAPERS

THE MALDIVES CRIMINAL JUSTICE SYSTEM – AN ALTERNATIVE METHOD FOR PUNISHMENT

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I. INTRODUCTION

The Maldives legal system is based on the principles of shariah and other legislation, which is based mostly on common law. The criminal justice system has been evolving throughout the history of the country rising to the needs of this tiny island nation. Historically, the country had few cases of serious crimes, hence the method of punishment was simple and idle considering the challenges of the time. In the old days the most effective method of punishment was considered to be banishment, which was a preferred method of punishment to that of incarceration. Therefore, up until recent times, the prison population of the country was very small and insignificant and even today the prison population is comparatively smaller than that of other nations in the region or elsewhere.

II. CRIMINAL JUSTICE POLICY

In the past, it was seen that criminals can best be reformed when their freedom is taken away either by way of incarceration or banishment. Today, however, a new and fresh look has been given to the whole criminal justice system. Hence, recent legislation puts emphasis on not only the retributive aspect of punishment but also on the rehabilitative side of the criminal. Recently the government of the Maldives has been trying to assess the effectiveness of the criminal justice system and thus has established a committee whose mandate among other things was to gauge the effectiveness of the existing method of punishment and the condition of the prison population.

The committee, which has formulated its findings and policies, has held several consultation meetings so far with the relevant authorities on their findings and is expected to advise the government on several key aspects of the existing criminal justice system of the country. It was also part of the vision of his Excellency president Maumoon Abdul Qayoom, that the country must have a modern justice system by the year 2020. Therefore, the work of this temporary committee is immensely important as it includes reformative measures to the criminal justice system.

Beyond that, there is general wish and view of the legal community and the jurists, that certain changes to the criminal justice system are necessary. This is based on several factors:

1. The existing criminal justice system has not for a long time witnessed any legislative reforms so as to make it dynamic and practical to the changing culture and habits of the people.
2. While there is apparently a certain degree of sentencing options given to the judges, there is very little or nothing they can do towards rehabilitating the criminal in a practical manner.
3. The prison population of the country is increasing faster than ever imagined before and there is nothing one can do to decrease these numbers.
4. Most of the punishment given to a criminal is considered not appropriate by many considering either the nature of the offence or the person who has committed the offence or against whom the crime has been committed.

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Thus, for some obvious reasons it is perceived by many in the legal community that certain important changes to the system are highly desirable to make the criminal justice system more effective.

III. SENTENCING POLICIES AND OPTIONS

There are varieties of sentencing options given to a judge when a person is found guilty before him however non-of these sentences are conditional. Nevertheless, from the penal law of the country it is very evident that there is considerable clout passed to a judge to rehabilitate an offender by giving him a sentence appropriate to the offence committed by him. The existing sentencing options include:

1. A judge may sentence a person to incarceration, considering, of course, the nature of the crime he has committed.
2. The judge may also sentence a person to more rehabilitative types of sentencing such as banishment to another inhabited island (this form of punishment is now under debate by the concerned authorities as having a negative effect on the small community of the island to which these criminals are banished). One of the reasons is that the law does not make any distinction between the seriousness of the crime under which a person can be considered for banishment. Thus, it may still be an effective method of punishment if it can be considered for particular types of offences, most probably a less serious type of offence.
3. One of the most effective and rehabilitative types of punishment is that of house arrest commonly used by judges in the country and is applied for almost all kinds of crime. This kind of punishment is deemed largely effective to a working population who do not wish to be deprived of their working places, and their lives limited to their home only.
4. One of the most effective methods of rehabilitation and a method of punishment is a fine. However, this form of punishment, to be made effective, needs certain reforms to the legislation to make the fine appropriate to the crime committed. The existing fines are insufficient as the amounts of the fines were set a long time ago when the living standard was not the same as it is today.

Imprisonment is the most common form of punishment found in all the justice systems around the world and the Maldives in no exception. However, the population of the prisons is not that high considering the number of crimes being committed.

IV. LEGISLATIVE POLICIES AND REFORMS

Though not great in number, there are certain pieces of legislation which advocate and oblige the judges to give more reform based sentences.

1. Number 99/04 circular issued by the Ministry of Justice outlines the method of punishment for a juvenile offender. Under this regulation a juvenile may not in any circumstances be imprisoned or have a fine imposed on them. Under this regulation, a child offender should on the first account be punished with house arrest only and the punishment should be two thirds of the minimum punishment prescribed for that particular offence committed by a juvenile. The regulation also prescribes that a juvenile who repeats the offence shall be sent to a juvenile correctional institute run by the government. Under the Maldivian law, a juvenile is one who is below 16 years. The same regulation does not, however, give an exception to a juvenile who is between 14 to 16 years if the offence is one of murder or a crime liable for Hud punishment under Islamic shariah.
2. According to a circular issued by the Ministry Of Justice, if the sentence passed on an offender does not exceed three months the judge should suspend the sentence whether the sentence is imprisonment or house arrest or banishment. However, if the sentence is of between four to six months the judge still has the discretion to suspend the sentence of imprisonment, banishment or house arrest.

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3. Under the rules of Shariya issued by the Ministry of Justice, for certain kinds of sexual offences the judge may not sentence the offender to imprisonment or banishment if the offender is a female. The rationale behind this discrimination of punishment is deemed to give the offender appropriate punishment which could rehabilitate her. Nevertheless, the effectiveness of this discrimination of punishment is questionable.
4. Certain laws promulgated recently embody the rehabilitative aspect and an alternative to incarceration. Thus law number 17/77 (law on misuse of drugs) states that an offender who abuses drugs should be given the opportunity to get rehabilitated in the government run rehabilitation center.

V. POSSIBLE ALTERNATIVES TO INCARCERATION IN THE MALDIVES

The criminal justice system of the Maldives is still undergoing change and development and is very much in transition. Policy makers have made recent changes, while law makers are in the process of drafting new criminal laws. At this point in time we are in a very sensitive stage of our criminal justice system which is going through many changes in the treatment of offenders and in the sentencing policies for criminal offenders.

When it is seen that certain crimes are on the rise, the law makers favour harsher laws rather than leniency in sentencing offenders. In this aspect it is important to examine the present laws in sentencing policy in order to determine whether any alternatives to incarceration can be adopted in the criminal justice process. In respect to the above it is important to examine the recent changes that were made to Law No. 17/77, the law dealing with narcotic drugs.

Previously, the law which deals with narcotic drugs, allowed drug users and addicts to undergo rehabilitation, instead of sentencing them to jail where treatment for drugs is not available. (However the court only sentenced the drug offender to a rehabilitation center if they confessed to using drugs and if they agreed to undertake treatment). Currently, after the recent change in Law No. 17/77 the offender is sentenced to jail and the court will send the details to the Special Committee which decides whether an offender should be allowed to get treatment or not. Treatment presently depends on if the person is a first time drug offender and to receive treatment he must not have committed any other crimes. Therefore it is much tougher to be selected for a rehabilitation center now. This shows that if the policy makers have evidence that a certain crime is increasing in this small community they favour harsher sentences to protect the rest of society from an increasing crime rate. It will be interesting to explore the case of the glue sniffing offender in the Maldives with regards to Law No. 17/77. In the past glue sniffing carried a six month banishment and with the recent changes in the law (due to the increasing number of glue sniffing offenders in the country) the glue sniffing offender is sentenced to three years in jail. This three year sentence will be passed even on a first time offender.

As we are in a very experimental stage of social and legal understanding in the Maldives, we see new types of crimes which we have not seen in the past increasing every day, law makers and policy makers will be hesitant to allow leniency in the law. We have to remember that the Maldives is a very small state and the threat of losing more people to criminal behaviour has to be avoided at all costs even if this means that detention is practiced for more crimes. However, it is also an obligation on the state to ultimately find the safest options and avoid detention for minor and petty offences and to also allow non-custodial sentences for first time offenders for certain crimes.

In the Maldives, the law allows a wide discretion on the judge in sentencing under the Penal Code (Criminal law). Depending on the crime, the judge has discretion to sentence the criminal offender to jail, banishment to another island, to house arrest or a fine. At the moment the law does not allow warnings but this is something the police in their day to day duty can practice if the crime is a traffic violation or some other very minor offence. However, this will be a fact for the government and the policy makers to decide after extensive research. Although the judge has this wide discretion on the method of sentencing, they are bound by the rules of uniformity, to treat like cases alike therefore judges do not take the situation of the offender into consideration. This is in fact to maintain uniformity

and practice the principle of precedent in deciding cases so as to avoid unfairness or to create a distinction between offenders of similar crimes.

Currently, community service is not an option available under the penal code of the Maldives. However it is correct to say that banishment amounts to a type of community service where the offender is banished to an island to serve the full term of his sentence. While banished he or she would be allowed to work if they so wish, and live with the community without much restriction on his or her movements. The offender's movement is restricted to that island. Another alternative to incarceration practiced in the Maldives is the suspension of a sentence. This suspension will be afforded to an offender if he or she is sentenced to less than three months jail or banishment and the judge will use his discretion to evaluate the case and circumstances in which the crime has been committed but also depend on whether the offender has a past criminal record or not.

The question is whether the majority in a small state like the Maldives will favour community service as an alternative to incarceration? The need to re-integrate minor offenders and those who commit petty crimes into society is an important obligation on the law and policy makers. Evidence that the policy makers do not encourage incarceration of offenders can be seen in the establishment of a drug rehabilitation center, this shows that importance has been placed on re-integrating drug offenders back to society.

It is also important to highlight the nature in which juvenile offenders are dealt with in the Maldives. The law protects the juvenile offender of sixteen years and below because jail sentences are not allowed to be passed on them. Nor can they be fined by a court for a criminal offence. The juvenile offender will either be sentenced to house arrest, in which he will be allowed to attend school with a parent or guardian. If the juvenile offender continues committing criminal acts more than two times then they will be sentenced to the juvenile center, depending on the crime, for a certain term. It is very important to establish a system where young offenders are sentenced into community service rather than house arrest or the juvenile detention center as they will be separated from their parents, school and community. In the future it is possible that community service will be implemented for minor offences as an alternative to incarceration. Many juveniles in this country should be sent for community service as a punishment for their crimes, rather than given any other method of sentencing.

A further way of avoiding harsher sentences, which might mentally and emotionally damage the young offender, is to introduce a system of probation. Alternatively, suspended sentences could be more widely used, especially for minor and first time offenders.

A system of bail could also be introduced to this effect whereby all offenders can benefit. The state will also benefit if a system of bail is introduced, in that the state's expenditure on prison costs would be reduced. Unlike other countries, the Maldives does not issue warnings. It is known that a stern warning to a juvenile can be a sufficient deterrent for future crimes. To go through the legal process is an undesirable thing, especially for a young offender, and in a small country like the Maldives it is often the case that a person will carry a label for the rest of their life. If this can be avoided through a simple warning then it is worth considering this alternative too.

Professional counselling is given to convicted drug addicts when they undergo rehabilitation they are even allowed to work and earn while they are under community rehabilitation. It is therefore important to recommend extending the counselling services for other offences. Counselling services and other methods of learning work skills could also be established in jail to improve the quality of life in jail which will further amount to less stigmatization of offenders and also help them to re-integrate into society once they have completed the duration of their sentences.

Probation should be established so that offenders serving a long jail sentence with good behaviour have the possibility of being re-integrated into their family and society. Alternatives to incarceration that have been discussed above would without a doubt require further allocation of funds by the government to support such alternatives, but the long term benefits would make it worthwhile.

VI. CONCLUSION

In conclusion it can be said that in a small country like the Maldives, alternatives to incarceration need to be more fully explored before they are established and implemented at every stage of the criminal justice process. Even if alternatives to incarceration are established, it will only be limited to certain offences, with a definite list of criteria. It is possible that the majority of the law-abiding citizens will look upon leniency and non custodial sentences as problematic. The question is when the time comes would parliament support such a system, and would the majority of the people accept such a system of community based non-custodial sentences? Would the alternatives to incarceration increase the rate of crime, or decrease it? Would leniency deter potential offenders? These are some issues that would have to be addressed if any new methods were to be implemented into the criminal justice process. With greater numbers incarcerated, a serious effort needs to be made to determine whether alternatives to imprisonment are desirable or not, and whether it could be an effective method of sanctioning criminal offenders.