

IMPRISONMENT AS A FORM OF PUNISHMENT: A CASE STUDY OF MALDIVES

Mohamed AffanShafy¹Ramizah bint Wan Muhammad²

¹Ahmad Ibrahim Kulliyah (Faculty) of Laws (AIKOL), International Islamic Malaysia (IIUM), P.O. Box 10, 50728 Kuala Lumpur, Malaysia. Email: shafy.mv@gmail.com

²Ahmad Ibrahim Kulliyah (Faculty) of Laws (AIKOL), International Islamic Malaysia (IIUM), P.O. Box 10, 50728 Kuala Lumpur, Malaysia.

ABSTRACT

Keywords:
Penal Code;
Alternative;
Punishments;
Maldives;
Imprisonment;

Today punishment of imprisonment is seen to be given a less prominent significance in terms of punishing offenders as a means of rehabilitation and reducing recidivism rates throughout the world. However, it is found that the Maldivian courts have adopted a pattern of punishing offenders through imprisonment as a general form of punishment for almost all types of crimes despite considering the severity and mitigating factors of a given case. This pattern of punishing offenders through imprisonment alone is practiced by an authority of discretion given to the judges in the Penal Code of Maldives even though the same Penal Code allows for the application of other forms of alternative punishments. Whilst some may argue on the effectiveness of imprisonment as a general form of punishment, our argument lies in resorting away from a punishment that yields less possible avenues for rehabilitation and reintegration of offenders back into the society and that the preference should be given to alternative forms of punishments based on the circumstances surrounding any individual case.

Publisher All rights reserved.

INTRODUCTION

In Maldives the criminal justice system is handled by professionals in their areas of expertise, however, the criminal justice system has failed to reduce crime and rehabilitate offenders, each year the crime rate increases especially in areas of grievous violence (Maldives Police Service, 2015). United Nations annual report on crimes 2005 indicated that Maldives as a nation with a high crime rate (UNODC, 2005). Around 2014 the Department of Penitentiary and Rehabilitation service had a prisoner capacity 73% beyond prison capacity (United States Department of State, 2014). To stop the wave of crime in 2015 Maldives adopted a new penal code hailed to be compatible with the most advanced penal systems around the world (Mohamed Hassan, 2015). However, even after the implementation of the new penal code, the crime rate did not seem to diminish; it continued a rapid growth trend according to government statistics (Statistics Maldives, 2017). By the end of 2016 the prisons were still a 110% full. (World Prison Brief). It is found in studies conducted on the aspects of imprisonment as a punishment and its effects from an individual level to the negative impact on society as a whole (Braman, 2002). These include implications from psychological effects to human rights issues as a direct result of confining an individual (Schnittker & John, 2007). Abandoning the idea of imprisonment as a general form of punishment has proven to be effective in the Scandinavian region as it can be seen that overall in a short duration of time the prison populations dropped by 75% through the implementation of alternative forms of punishments (Larson, 2013). Methods of effective deterrent policies which does not rely on prison sentences has proven to be far effective as it involves the help from government institutions to NGO's in helping the offender to get back as a law-abiding citizen. This form of humane punishment methods is most salient in Finland as these are proven to be much more effective than keeping offenders in prisons (Antilla, 1975). Even in the most necessary cases of having to sentence someone to prison, studies conducted in the Nordic region shows that the prisons itself should be as humane as possible with effective rehabilitative resources and treatment opportunities (Ugelvik & Dullum, 2012). In simple terms, the punishment is the loss of liberty; all other rights are provided (Larson, 2013). In a study conducted in Iran in 2009 it was found that the stakeholders of the judiciary preferred alternative forms of punishments over imprisonment as imprisonment was considered ineffective in terms of rehabilitating offenders (Ghassemi, 2009).

MATERIALS AND METHODS

Participants

Participants were chosen from volunteers from both sides of the criminal justice system and separated into two main groups; Group 1 included judges and lawyers whilst Group 2 included prisoners and prison officers.

In Group 1, the section regarding the judiciary had 18 respondents of which 5 were judges, 5 criminal defense lawyers and 8 public prosecution lawyers. Participants were excluded if they were not currently working in the criminal justice system in Maldives.

In Group 2, the section regarding the law enforcement had 28 respondents of which 7 were Prisons Officers working in various prison facilities in Maldives and 21 prisoners who were sentenced to imprisonment for various types of crimes. In participants from the prisoners' section, only participants who were sentenced to imprisonment were included whilst participants from the category Prisons Officers were selected from those who were currently employed as prisons officers.

Materials

The questionnaire for the stakeholders of the criminal justice system was designed in a three-tier basis which included assessing the knowledge and awareness of laws and regulations currently in place; assessing the reasons and results for having the punishment of imprisonment as a preferred punishment, and assessing their view of alternative forms of punishments and their view for reforming the criminal justice system.

The questionnaire for the Prison Officers were designed to identify their knowledge and the provisions provided in the prison laws and on identifying the implications of practical applicability of the prison laws in the scope of rehabilitation, prison facilities, issues related to imprisonment and prisoner abuse.

The questionnaire for Prisoners were designed to find the situation inside the prison and the affect it had on them and their families.

Additionally, to identify the extent of the sole application of imprisonment as a general form of punishment, 79 criminal cases sentenced were analyzed and studied.

Procedure

All participants who volunteered in the study were provided with confidentiality assurance before they started answering a questionnaire. A multiple-choice questionnaire was presented to each participant. The questionnaire was prepared as a computerized document delivered through a smart phone or computer. For the Judges and Criminal Defense lawyers the questionnaire was individually delivered to their

phones after receiving consent that they were willing to participate. For Public Prosecutors, the questionnaire was delivered through a volunteer from the Prosecutor General's office which he then shared on the Prosecutor Generals official group where participants were allowed to freely volunteer in the study. For Prisoners, the questionnaire was provided to them through a lawyer and had assisted in the answering process. A lawyer was present at all times when the prisoners gave their answers. This did not exclude the fact that some of the prisoners who participated were already released and were free. The Prisons Officers had their questionnaire delivered to them by the Inspector of Correctional Services through an exclusive Prisons Officers online platform, in which they were given the option to volunteer to answer the questionnaire. All the participants were given enough time to complete the questionnaire and once they completed the data was immediately recorded.

In addition, sentencing pattern of criminal cases by the criminal court was acquired from the official Criminal Court database and the most recently available 79 cases were chosen for the study. Each case was divided in to 2 main parts where the first part identified the type of the crime and the second part looked into the punishment meted for the particular case.

RESULTS AND DISCUSSION

Stakeholders of Criminal Justice System

On the aspect of the amount of knowledge on the Penal Code, 66.7% of the respondents said that the preference of imprisonment is the result of the Penal Code. Additionally, 27.8% of the respondents said that imprisonment is the most effective form of punishment for crimes in general. Whilst 11.1% said the reason for meting out imprisonment sentences is because it saves time for the judiciary.

It was found that 33.3% of the respondents were not aware of the provisions of the law regarding out of Court settlement. Whilst 61.1% of the respondents said that the settlement provisions set in the laws is not addressed effectively by the Prosecutor General. Furthermore, 83.7% of the respondents shared a view that the penal code is not effective in reducing crimes while 50% of the respondents said imprisonment as a general form of punishment is not effective at all in crime reduction. It is found that 72.2% of the respondents do not think that Maldivian prisons are capable in handling and reforming prisoners. Consequently, 66.7% of the respondents said alternative forms of punishments should be prioritized and 77.7% of the respondents suggested inclusion of modern and alternative forms of punishments in the penal code.

Prisons Officers

Out of all the Prisons Officers who volunteered to answer the questionnaire, 71.5% of the participants had experience in Maldivian prisons for 5 years and above. Out of all the participants, 42.9% said additional punishments were given to prisoners inside the prisons. Furthermore, 28.6% of the prison officers said they use weapons and force on prisoners ‘sometimes’. While, 28.6% of the respondents said they have seen other officers taking bribes from prisoners. Additionally, 57.1% said prisons are understaffed. Moreover, 57.1% of officers said they have witnessed deaths of prisoners whilst 28.6% said they have witnessed grievous bodily injury caused by prisoners. In addition, 57.1% said they have witnessed violence on prisoners and 85.7% said there are gangs and drug syndicates operating inside prisons. Furthermore, 14.3% of the respondents said the prisoners do not get appropriate medical treatment. And 57.1% of the respondents said the prisoners are not segregated and are mixed along with violent criminals and terrorists. Whereas, 42.9% said there are no rehabilitation programs available for prisoners. And, 71.4% of them said some prisoners were kept in solitary confinement. Consequently, 85.7% of the officers said it would be more beneficial for the tax payer if the money spent on prisons were diverted to rehabilitative and alternative forms of punishments. 57.1% of the respondents said that they believe there is an increment in the prison population since the adoption of the new Penal Code.

Table 1: Overall Application of mandatory Prison law provisions as viewed by Prison Officers

Provisions	Non-Compliant	Compliant to some extent	Fully Compliant
8	16.075%	55.34%	28.57%

Prisoners

Out of the prisoners who participated in the questionnaire, 62% of the prisoners had dependents at the time of imprisonment, while 85.7% of the prisoners were sentenced to less than 5 years imprisonment. Additionally, 47.6% of the prisoners said they were given additional punishments inside the prisons and that prison officers used weapons and force on prisoners. Furthermore, 61.9% of the prisoners said they have seen prison officers taking bribes from prisoners. Also, 57.1% of the prisoners said the prisons were understaffed and 85.7% of the prisoners said they do not receive appropriate medical treatment. And, 90.4% of the prisoners said prisoners were either mixed with all times or sometimes with violent criminals. Furthermore, 66.7% of the prisoners said drugs and narcotics were available in prisons, and 52.4% said there were no rehabilitation programs

in prison. Whilst 14.3% of the prisoners said they do not even know if there was such a thing as rehabilitation for prisoners. Moreover, 52.4% of prisoners said they were put in solitary confinement. While 76.2% of prisoners said they think imprisonment is effective only sometimes for general crimes, 71.4% of prisoners said anyone who comes out of prison will not be physically and mentally fit to function as a member of the society.

Table 2: Overall Application of mandatory Prison law provisions as viewed by Prisoners

Provisions	Non-Compliant	Compliant to some extent	Fully Compliant
7	49.99%	36.03%	13.97%

Criminal Case Sentencing Pattern

From 79 cases which were given sentences under the penal code, it showed that 73 cases were given imprisonment punishments less than 1 year whilst only 7 cases had punishments of imprisonment that exceeds 1 year with 4 cases of 1 year 7 months and 2 cases with 1 year 12 days. Average imprisonment period was for 6 months. Lowest imprisonment period given to a case was for 12 days. In general, these cases were not sentenced based on aggravating and mitigating factors regardless of the similarities between 2 individual cases punishment differed vastly. There was no consistent pattern found in the application of the Penal Codes sentencing guideline. Only 6 cases were given alternative forms of punishments of house arrest and fines no other alternative punishment method was considered.

DISCUSSION

The main purpose of this study was to identify the practical application and the enforcement of the laws within the criminal justice system in Maldives in particular the Penal Code from the aspect of punishment of imprisonment. The study started with the assumption that implementation of imprisonment as a main form of punishment is detrimental and ineffective in reducing crime and rehabilitating offenders. This hypothesis was proven to be correct after the conduct of the survey among the respective groups. It showed that the stakeholders in the judicial system are not fully aware of the provisions of the laws and have resorted to the application convenience over giving fair justice. This lack of understanding of the provisions of alternative forms of punishments and other mitigating factors could have heavily

influenced in meting criminal punishments for offenses which could otherwise be mitigated without compromising the freedom of the offender. Also, this study has found that prison officers are poorly trained and inadequate staffing arrangements and the dire working conditions as well as a lack of a knowledge and the failure to monitor and dysfunctionality of the legally mandated overseeing parties have led to the dire situation the current prison system that is already in Maldives.

CONCLUSION

In conclusion, the result of this study shows that despite the fact that the provisions for alternative forms of punishments are made available and despite the laws are in place, without the lack of knowledge and lack of understanding how the system would work and would be implemented would lead to a complete failure of the entire system. Instead of getting benefit from a law that is in fact in essence made to create harmony and consistency, it will create more damage and be a burden on the society. This research will contribute to the knowledge of effective implementation of penal policies. There is still much to understand on the mechanisms and enforcement of a humane, fair and a just Penal Code inclusive of all facets of the Criminal justice system.

Acknowledgements

We grateful for all those people who participated, facilitated and maintained the credibility of the survey. Without the support and willingness of the participants to participate in this survey, it would not have been completed. Through this research, We hope that we are able to reform the criminal system and provide more rehabilitative programs to enable prisoners to come back to society, as valued members of the society.

REFERENCES

- Antilla. (1975, February). Probation and Parole- Social Control or Social Service? *International Journal of Criminology and Penology*, 3(1), 79-84.
- Braman, D. (2002). Families and Incarceration. Yale University.
- Ghassemi, G. (2009). *Criminal Punishment in Islamic Societies: Empirical Study of Attitudes to Criminal Sentencing in Iran*. Springer Science + Business Media B. V.
- Larson, D. (2013). *Why Scandanavian Prisons are Superior*. Retrieved July 20, 2017, from The Atlantic Monthly: Doran Larson, Why Scandinavian Prisons Are Superior 2013, Published by The Atlantic Monthly Group.<http://www.theatlantic.com/international/archive/2013/09/why-scandinavian-prisons-aresuperior/279949/>
- Maldives Police Service. (2015). *Crime Statistics*. Retrieved December 2017, from <https://www.police.gov.mv#casestat>

- Mohamed Hassan. (2015). *Maldives Creates Historical Penal Code*. Retrieved January 5, 2017, from Maldives Independent:
<http://maldivesindependent.com/politics/maldives-celebrates-historic-penal-code-101013>
- Schnittker, J., & John, A. (2007). Enduring Stigma: The Long-Term Effects of Incarceration on Health. *Journal of Health and Social Behavior*, 48(2), 115-130.
- Statistics Maldives. (2017). *Government Statistical Yearbook* . Retrieved September 30, 2017, from
<http://statisticsmaldives.gov.mv/yearbook/2017/wp-content/uploads/sites/4/2017/07/8.22.pdf>
- Ugelvik, T., & Dullum, J. (2012). *Penal Exeptionalism: Nordic Prison Policy and Practice*. Routledge.
- United States Department of State. (2014). *Country Reports on Human Rights Practices for 2014*. Retrieved January 5, 2017, from Bureau of Democracy, Human Rights and Labor:
http://photos.state.gov/libraries/maldives/231771/PDFs/hr_report_2014_Maldives.pdf
- UNODC. (2005, September). *South Asia Regional Profile*. Retrieved January 5, 2017, from UNODC:
http://www.unodc.org/pdf/india/publications/south_Asia_Regional_Profile_Sept_2005/11_maldives.pdf
- World Prison Brief. (n.d.). *Maldives*. Retrieved September 30, 2017, from
<http://www.prisonstudies.org/country/maldives>