

Community Service Order for Juvenile Offenders: Theoretical and Legal Framework

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Abstract: A community service order is one that is viewed to be highly appropriate for juvenile offenders. However, there is still a void where extensive legalistic studies discussing this order should be, especially from the aspect of theoretical framework. In relation to this the purpose of this research is to debate the pros and cons of community service orders from the aspect of theoretical framework. This research finds that community service orders are based on rehabilitation theory and that they put the best interest of the child or juvenile first. The juvenile offenders will be integrated with society through community service orders and this process will simultaneously decrease the rate of recidivism and increase the potential for their rehabilitation.

Key words: Community service order, juvenile offender, rehabilitation, theoretical framework, potential, Malaysia

INTRODUCTION

After over a hundred years of the juvenile criminal justice system's presence and function in the modern world, orders that integrate juvenile offenders with society at large have begun to make their appearance. One such order is community service. Over the last two decades, community service has been gaining acceptance within the juvenile criminal justice system in multiple countries. This order is considered to be effective in reducing the imprisonment rate of juvenile offenders as well as preventing such children or youths from being unnecessarily exposed to the negative influences of harsh sentences. This order also has the potential to return processed juveniles into society (Samuri and Awal, 2009).

This study will debate the theoretical framework which is the basis of community service. This research will also discuss the definition, goals and history of the community service order as well as any praise and criticism directed at it.

DEFINITION OF THE COMMUNITY SERVICE ORDER

The community service order is often considered to be one of the most imaginative and valuable punishments developed this century. From the aspect of its definition this order is described by Claster (1992) as a court order that requires the guilty party to serve or work for a predetermined period of time sans remuneration within the auspices of a charitable or community-based organisation. Claster (1992)'s interpretation is considered to be

complete as it covers five aspects, namely the relevant authority that issues the order, the form of the order, the period of the sentence, the benefits gained by the work carried out and for whom said work is done for. This order is also classified as a sentence passed upon the convicted by a court of law that does not involve imprisonment and is often equated and referred to as non-custodial or an alternative to imprisonment (McLaughlin and Muncie, 2006). Clear and Braga (1995) further expand upon the interpretation by defining community service. Community service represents works carried out by the convicted for a public agency or non-profit organisation for the purpose of repairing any damage that is a result of the crime in question or to provide compensation to the community for the convicted offender's actions. As an alternative to imprisonment this sentence possesses some attractive qualities such as requiring the offenders to repay their debt to the aggrieved society in question (Caputo, 2004) and that the offenders are sentenced fairly, especially in respect of the number of hours required to serve regardless of their status, condition or the apparent difference in costs involved when compared to incarceration.

GOALS OF COMMUNITY SERVICE

The main goal of community service with regards to juvenile offenders is to rehabilitate and develop positive attitude, behaviour and competency in order to enable them to become responsible and contributing members of society upon their reaching adulthood. Rauner (2000) explains that by providing assistance to children and

youths, it will reinforce the good habit of rendering assistance to others increase their ability at communication, empathy and cooperation. Community service also enables the imparting of feelings of responsibility towards ones own nation to juvenile offenders while simultaneously providing them with work experience, professional discipline and increased self-esteem as well as the opportunity to increase their interpersonal skills (Stenberg and Colman, 1994). Rauner goes on to add that juvenile offenders will also be given a greater opportunity to fulfill meaningful roles within their community (Rauner, 2000). The goals of community service can be further explained (Caputo, 2004).

Punishment and accountability: Community service holds the offender accountable for the actions that they committed and the resulting negative effects of said actions on the community by having them serve or carry out specified tasks. An assumption is made in which the community is considered to be an indirect secondary victim affected by the crime in question. Community service prevents the offenders from having excessive idle time and places the responsibility to work and carry out tasks upon them.

Restoration and repair: The overall philosophy of community service is restoration and repair. This practice provides benefit to the victims, the community and the perpetrator as well. Community service affords the offenders an opportunity to repair any damage that may have been the result of their crime while at the same time providing benefit to society. The work carried out by offenders can result in an increased quality of life of the community in question and allows them to become a source of labour to be used by government agencies as well as non-profit organisations.

Restitution: The unpaid works performed via community service can be used as an alternative to paying damages to the victim.

Rehabilitation: Community service can assist offenders in developing their sense of responsibility and self-worth as well as motivate them in seeking lawful employment.

Victim involvement: Community service provides victims with the opportunity to voice out and suggest the type and form of service to be imposed on the offender.

It can thus be summarized that community service is focused on two key aspects, them being the development and rehabilitation of offenders and providing a benefit that can be enjoyed by society.

A BRIEF HISTORY OF COMMUNITY SERVICE

Community service orders have been known to be in effect since the time of the Roman Empire. In the modern era, its first known use dates back to the 1960's when judges of Alameda County, California were known to dispense it as a means to avoid imposing traffic fines upon women with low incomes. This was to avoid them being sent to jail for failure to pay said fines (Tonry, 2001). In order to circumvent the costs of imprisonment and the negative effects of the former upon female offenders, they were instead ordered to perform physical labour for the community without any remuneration. This idea was further developed and applied across America during the 1970s. Its development was based on the idea of symbolic restitution where the offender compensates for the damage they caused symbolically by serving the community for free to its benefit (Caputo, 2004).

This community service programme in California raised the interest of legal and policy-makers and began to influence similar programmes in the US and other countries. A pioneer project was also started in the United Kingdom during the 1970s and applied as a form of sentencing combined with a probationary order and imprisonment (Tonry, 2001). In the United Kingdom this order came into force via the Criminal Justice Act 1972 and English Courts began to issue similar orders in the early 1970s. The intention of the law-makers at the time was for this order to be a form of sentence replacement for adult offenders who were guilty of offences punishable by imprisonment. However, young offenders and children aged 17-21 years are those who most often receive alternative sentences such as this (Hirschel and Wakefield, 1995).

According to Alarid, the community service order model in Britain does not resemble that of the American Model. In England and Wales, the law views that a community service order of 40-240 h service is a punishment on par with imprisonment and is a plausible alternative sentence. Contrary to the situation in America, the law there does not view the community service order to be punitive enough to replace imprisonment as a sentence. Further in America a community service order is issued in conjunction with a probationary order and a longer period of service, for example 100-1000 h. From this, Alarid posits the community service order in America is more punitive in nature compared to other countries that follow the British System. This society-based sentence later spread throughout Europe and other common-law countries. However, the idea to implement community service orders did not travel as fast to other parts of the world; for example in Malaysia this sentence only came into force as recently as 2007, 30 years after its introduction to the world's criminal justice systems.

COMMUNITY SERVICE ORDER BASED ON THE REHABILITATION THEORY

The theory that forms the base of the community service order is the theory of rehabilitation. This theory means that crimes may be prevented by tackling the factors causing them, i.e., economic and social as well as the offender himself which are believed to be the causes of the offender's involvement in criminal activity (McLaughlin and Muncie, 2006). The theory is also interpreted as crime prevention by changing the offenders' personality whereby he will finally abide by the rules of the law or in other words be rehabilitated (Packer, 1968). The main objective of this theory is to integrate the offender with society after having served a given period of his sentence and to change the content or form of the punishment in order to achieve this (Hudson, 2003). Rehabilitation focuses on modifying the offender's inclination towards criminal behaviour through intervention and shaping it into a more pro-society tendency with rational thought-process and responsible-action capabilities (Walters, 1992). Convicted offenders are brought to a constructive place in society through several combinations of treatment, education and training (Miethe and Hong, 2005). With the former, the offender may be more easily returned to society and is able to continue his existence in a useful and productive way of life compared to situations that push him toward criminal acts (Jackson, 2003). Such treatment and service will therefore help the offender become a law-abiding citizen (Caputo, 2004). Seeing as all of the above are thought of as objectives that are not only worthwhile but highly sought after, their attainment by means of punishment is thus completely justifiable (Jackson, 2003).

The rehabilitation theory is found to be very suitable for juvenile offenders because of the substantial difference between them and adult offenders. Horowitz (2000) is convinced that juvenile offenders have much larger prospects of being rehabilitated compared to adult offenders based on a variety of factors. The leading factor is that children feel or bear a lower degree of guilt compared to adult offenders. A less harsh sentence based on the theory of rehabilitation for children is not something that goes against the values of justice. It also does not mean that the victims' rights have been ignored or that the interest of society has been done away with. Because of this, Cullen and Wright (2002) argue that to reject rehabilitation theories with the excuse of wanting a more just kind of sentence is to actually deny the child's need to live a better life. This argument is supported by Geraghty (1997) who states that a system that is presumed to be just is a system that can combine a fair trial with a

sentence corresponding to the juvenile's offence and responsibility for it. A sentence that acknowledges and promotes rehabilitation contains that element of responsibility and ultimately, the need to protect society.

INTEGRATION OF JUVENILE OFFENDERS INTO SOCIETY

One of the elements in the application of the rehabilitation theory towards children is their integration with the community. To rehabilitate a child, the system must reconnect them to society as it is they who will act as the child's guardians and rehabilitators. This is based on the theory of social control as stated by Moeller (2001). Moeller (2001) argues that the social control theory views that juveniles with natural tendencies for anti-social behaviour need to be controlled by society. There are several aims meant to be achieved by the integration of a juvenile into society as an element of his rehabilitation. Among them to name a few are: to reduce the rate of recidivism (Harley, 1996) to offer them a second chance (Davis, 1999) to return him to society as a useful member (Mann, 1984) or one who is normal and productive (Duffy, 2004) and finally to give him a sense of family and determine a place in society for him to function. The integration of juvenile offenders into society also involves the component of family because families are part of society. This premise is endorsed by Pagnanelli (2007) who states that families can help increase the effectiveness of the juvenile offender's rehabilitation process. Family is a vital socialisation agent that influences and assists in shaping a child's attitude, ethics, behaviour and personality.

The question is: what is the duty of society in the rehabilitation of a juvenile offender? Champion and Mays (1991) state that society should be involved alongside the agency responsible to oversee and manage community service, obey restitution orders and go through the trial programmes. Society should have prepared sufficient care for children at risk and provide the opportunity for children to be rehabilitated, especially for those raised under social pressure and a hostile environment in their society. A child on his own is unable to bear the burden of responsibility for the crime he has committed and together society must work to rehabilitate him and others like him (Hoge *et al.*, 2008). In addition to this, Nolan (2002) explains that the rehabilitation theory focuses on the relationship between the offender and society and gives a detailed account on how to unite them. The rehabilitation theory places great confidence in man's innate nature that is easily moulded or influenced. Furthermore, Cullen and Wright (2002) posit that a

rehabilitation order must be conducted within society and not in an institution of detention. There must also be follow-up programmes after the rehabilitation process has taken place. From these opinions and views of Hoge *et al.* (2008), Nolan (2002) and Cullen and Wright (2002), it may thus be concluded that juvenile offenders should be integrated with the community to rehabilitate them. It therefore follows that society is the most suitable place to reform juvenile offenders because it is society that will educate and ensure that those juveniles obey the norms of societal living.

So how far is society ready to accept juvenile offenders based on their role once these offenders are returned to them? Heckel and Shumaker (2001) reveal that former juvenile offenders often find themselves being denied their right to obtain employment and play a role in society even though the crime they are guilty of was committed long ago. The fact is that society's acceptance varies, depending on the situation. For example, a juvenile offender who committed murder out of his being abandoned abused or exploited may be forgiven by society which may view his crime as being justifiable. On the other hand, juvenile offenders who kill out of rage or revenge will most probably be faced with a very unforgiving society. This critical observation by Heckel and Shumaker (2001) clearly focuses on society's nature that fails to integrate itself with former juvenile offenders. In effect therefore, society should be more ready to accept them so that they do not return to their former criminal activities. In addition, the criminal justice system for children will do its level best to protect the identity of a juvenile offender. In answer to this issue raised by Heckel and Shumaker (2001) and Moore (2003) posits that by limiting access to a juvenile's criminal record, he can avoid the stigma and negative perception that society may have of him from his first offence. If that child no longer involves himself with crime in the future, they have a chance to restart their lives with a clean record. It thus follows that the matter raised by Heckel and Shumaker (2001) only bears relevance if the child's secret and identity is made known to his society. On another note, Fagan (1991) brought up another issue which is that the process of reconnecting a juvenile offender with society will face much difficulty, especially when attempting to reconcile interpersonal and communal skills within the juvenile offender in a volatile and unpredictable societal environment.

Fagan (1991) and his opinion does contain some truth, especially when the juvenile offender in question is not mentally and emotionally prepared to face society after their rehabilitation in the system. This issue tossed by Fagan (1991) may be answered with Pagnanelli (2007)

argument that juvenile offenders may build positive relationships with the community through the individuals involved in their case, such as the lawyer, judge and social worker. Such relationships can stimulate trust, good core values and a positive attitude to help the child reintegrate into society.

In continuing this discussion, a look at the views of both the critics and supporters of community service orders is called for.

CRITICISMS AGAINST COMMUNITY SERVICE ORDERS

The critics of community service mostly direct their attention to several points of discussion such as theory, implementation and its effectiveness. From the theoretical aspect, Hirschel and Wakefield argue that the objective of community service orders is often a vague one. A community service order may be seen as punitive, rehabilitating and also retributive, i.e., giving something back to the community. These conflicting aims may reduce the actual benefits to the offender. Hirschel and Wakefield (1995)'s argument must be re-evaluated because a retributive concept is not the same as justification for retribution as a punishment. Retribution means to retaliate to the criminal act with an equivalent punishment whereas in the community service theory, the service is repayment for any damage that may have been caused to society and not a harsh punishment equal to the offender's crime. If a community service order is regarded as punitive based on the period of time required to complete it a prison sentence is much harsher and more punitive for children because they will be forced to bear it for an even longer duration as well as be denied their freedom.

There are other views arguing that the offender does not provide the service to the community voluntarily, such as in Stark and Goldstein (1985)'s criticism. In fact, Feld (1999) argues that the offender must agree and volunteer to carry out the order before it can be issued to ensure preservation of justice. These criticisms are groundless because there is not a single sentence in the world that requires a court to procure the offender's agreement or consent to it. Juvenile offenders must pay for the damage they caused and it is unreasonable to place enforcement of a community service order on par with forced or heavy labour because the activities are communal in nature and not physically burdensome.

Other than these aforementioned opinions, there are also some who state that community service orders are exposed to injustice. Since, the duration of the sentence is flexible and the law gives vast discretionary power to

judges with no real measure to oversee the wielding of this power, there is plenty of room for injustice to occur. This criticism was voiced by Feld (1999) who continued in his argument that issuing an order such as this as an alternative sentence cannot possibly illustrate the effectiveness of rehabilitation techniques. Moreover, there is injustice in the inconsistency of the punishments served by each different individual.

Community service orders are also criticised from the aspect of their effectiveness. In a study on community service orders as a form of criminal sentencing reported by Clear and Braga (1995) their research analysis rejected the idea of community service being able to better rehabilitate offenders or prevent crime more effectively than short-term imprisonment. Furthermore, Cochrane *et al.* (2004) added that there is lack of solid evidence to show that community service orders are more effective in reducing the number of repeat offenders compared to punitive approaches and measures. It would thus seem that Clear and Braga (1995) and Cochrane *et al.* (2004) are most likely of the opinion that short-term imprisonment is the better choice for offenders. These esteemed individuals may have also likely forgotten that imprisonment imparts a negative effect on a child's emotions, fixes a permanent societal stigma on him and that there are no rehabilitation programmes for him while incarcerated. Therefore, in evaluating its effectiveness, the yardstick is essentially subjective and must take into consideration a variety of things.

In sum, criticisms against community service orders may be illuminated with a more exact and deeper understanding of the theory and implementation of these orders. With regard to this sentence's effectiveness, many other considerations need to be made and assessed before rejecting these orders that have their own unique impact which is to rehabilitate juvenile offenders and return them to society.

ARGUMENTS IN SUPPORT OF COMMUNITY SERVICE ORDERS

Scholars and experts in support of community service orders are of the view that it is the best and most suitable sentence to rehabilitate juvenile offenders and perhaps even adult ones. The previous discussion on the theoretical aspect is part of the various ideas supporting community service orders.

The foundation of community service orders is based on the advantages and effects of these orders to the offender and society. Community service is a more humane and positive-effect kind of sentence in rehabilitating offenders. Aside from that offenders

undergoing this sentence will this benefit society and help fix the damage caused by his offence. Offenders sentenced to community service are also less inclined to repeat the offence they committed (Tak, 2001). Tonry (1996) adds that community service is a sentence that coincides with the needs and concurrence of society because it produces good values for it. From an administrative point, community service orders can reduce the crowded numbers in prison and simultaneously save the government a generous amount of expenses which can be used for other purposes (Morris and Rothman, 1995). To punish minor offences that are committed time and time again with imprisonment will have a detrimental effect on the economy therefore orders such as community service are suitable and effective for such offences (Clear and Braga, 1995). It may thus be concluded that community service orders are extremely convincing as an apt and appropriate sentence for juvenile offenders, especially when the ultimate objective is their rehabilitation.

CONCLUSION

This study proves that theoretically, it is certain that community service orders are able to rehabilitate juvenile offenders and give them an opportunity to pay for their mistakes to society. These juvenile offenders will get to interact with society throughout the duration of their sentence and learn how to obey societal norms. Furthermore, the rehabilitation theory that lays the ground for community service orders is the best and most appropriate theory for juvenile offenders compared to adult offenders. This is because the rehabilitation theory has the potential to alter the juvenile offender's behaviour to become a law-abiding individual, capable of integrating himself into society.

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