

Sentencing Strides: A Critical Examination of the Deficiencies in the Malaysian Criminal Justice System

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Abstract

The current sentencing system for criminals in Malaysia, like any other country's criminal justice system, faces its share of shortcomings that warrant scrutiny. This paper explores the deficiencies within Malaysia's existing sentencing system, delving into key areas where the system falls short in meeting the goals of justice, rehabilitation, and equity.

In this article, the author discusses four prominent deficiencies in Malaysia's criminal justice system, which include:

- i. The abolishment of the death penalty is still on the way; there is still a long way to go to completely abolish the death penalty policy and find effective alternative ways to regulatory sanctions.
- ii. The discretionary nature of sentencing leads to inconsistency in outcomes. The lack of comprehensive and structured sentencing guidelines contributes to uncertain sentencing decisions that result in a common phenomenon of the disparity of similar offences.
- iii. The punishment for recidivism still has an unreasonable and wide range, which results in unfair justice for repeat offenders.
- iv. Restorative justice, as an alternative approach that focuses on repairing the harm caused by criminal behaviour through inclusive and cooperative processes, has not been formally implemented into the criminal justice system.

This paper underscores the need to address these deficiencies to establish a more just, consistent, and effective sentencing system that aligns with international best practices and the evolving landscape of criminal justice. Potential solutions will be further discussed below, ranging from the development of standardised guidelines to promote equitable sentencing to the increased utilisation of alternatives to incarceration and the infusion of restorative justice principles.

Ultimately, by addressing these shortcomings, Malaysia can enhance its criminal justice system, aiming to strike a balance between punishment, rehabilitation, and societal reintegration for offenders.

Keywords: Malaysian sentencing system, criminal justice, human rights, deficiencies, improvements.

1. Introduction

As is well known, the criminal justice system stands as a linchpin in upholding law and order within a society, guiding the response to criminal transgressions and shaping the consequences for those who breach the law. In Malaysia, a robust and fair sentencing system is integral to ensure that justice prevails and societal harmony is maintained. However, recent years have revealed critical deficiencies in the current Malaysian criminal sentencing system, presenting multifaceted challenges that necessitate careful examination and strategic reform. This study embarks on an exploration of these deficiencies, pinpointing four primary issues that underscore the urgent need for reform.

First and foremost, the abolishment of the death penalty is an ongoing effort, reflecting a transformative shift towards more humane and effective punitive measures. Yet, this transformation necessitates exhaustive deliberation and the careful formulation of viable alternatives to capital punishment. Secondly, the discretionary nature of sentencing has culminated in an unsettling inconsistency in outcomes. The absence of comprehensive and structured sentencing guidelines has contributed to a sentencing landscape marked by uncertainty, resulting in pervasive disparities in penalties for similar offences. This inconsistency undermines the foundational principles of justice and equity within the legal system.

A third critical issue revolves around the punishment for recidivism, where an unreasonable and broad range of penalties perpetuates a cycle of unfair justice for repeat offenders. Addressing this disparity is imperative to cultivate a rehabilitative approach that ensures penalties align with the nature and severity of the crime while facilitating the reintegration of individuals back into society. Last but not least, the concept of restorative justice, with its potential for transformative impact, has yet to be formally integrated into Malaysia's criminal justice system. This gap represents a missed opportunity to engage in a more holistic and community-centred approach to justice, one that encourages accountability, rehabilitation, and reparation.

By delving into these pressing issues, this study endeavours to shed light on the existing inadequacies within Malaysia's criminal sentencing system. Through meticulous examination and analysis, the author aims to propose meaningful reforms that foster a more equitable, consistent, and effective approach to criminal sentencing in Malaysia, aligning it with evolving societal values and international best practices.

Ultimately, this endeavour aspires to contribute to a criminal justice system that is not only just but also adaptive and progressive, ensuring a safer and more harmonious society for all.

2. The Halfway to Abolishing the Death Penalty

The death penalty, also known as capital punishment, is a legal process in which a person is sentenced to death by the state as a punishment for committing a serious crime.¹ This ultimate penalty typically involves the execution of the convicted individual. When searching the history of cases in Malaysia, the death penalty has been used for a variety of offences, including murder, treason, espionage, and other crimes deemed to be of a grave nature.

Even though the death penalty has existed since the Malaysian Penal Code was launched, there are more and more arguments appealing to abolish it, as it is inhumane and contrary to the values of civil society.² Thus, whether it should be abolished remains a question worth pondering. And the core of the question of the abolition of the death penalty is the identification of the most basic human right of the people - the right to living.

As of today, 108 countries, more than half of the world's nations, have abolished the death penalty for all crimes, and 144 countries have ceased the use of the death penalty in law or in practice.³ Malaysia is one of the countries that had voted in favour of two UN General Assembly resolutions calling on countries to impose a moratorium on executions. Although executions were suspended, death sentences were still imposed.

As time passes, the Bill on the abolition of the mandatory death penalty is expected to be introduced in the parliamentary session in February 2023.⁴ Azalina, the minister in the Prime Minister's Department of Law and Institutional Reform, stated that the Attorney-General's Office had studied the implementation policy of imposing the death penalty in lieu of punishment, covering 11 offences under the Penal Code and the 1971 Arms Increase Order, as well as 23 offences for which the death penalty was imposed by judges under the Penal Code, the Weapons Act 1960, the Arms Increase Order 1971 and the Township Act 1961. The implementation of alternative sentences instead of mandatory death sentences is expected to have a direct impact on the 1,327 prisoners who have already been sentenced to death by judges, and alternative sentences can be carried out for others who have not yet been charged.

There is no doubt that this Bill for abolishing the mandatory death penalty is seen as a huge step towards a more fair and humane criminal justice system. Meanwhile, in the author's opinion, there is still a long way to go, as although mandatory death sentencing has been

¹ Robert Bohm, *Deathquest: An introduction to the theory and practice of capital punishment in the United States* (Routledge 2016).

² Sangmin Bae, 'Is the death penalty an Asian value?' (2008) 39(1) *Asian Affairs* 47.

³ Amnesty International, 'Death penalty 2021: Facts and figures' (*Amnesty International*, 24 May 2022) <<https://www.amnesty.org/en/latest/news/2022/05/death-penalty-2021-facts-and-figures/>> accessed 15 February 2023.

⁴ Malay Mail, 'Azalina: Bill to abolish mandatory death penalty slated for tabling in Feb 2023' *Malay Mail* (Kuala Lumpur, 21 December 2022) <<https://www.malaymail.com/news/malaysia/2022/12/21/azalina-bill-to-abolish-mandatory-death-penalty-slated-for-tabling-in-feb-2023/46545>> accessed 15 February 2023.

abolished, the judges still have the power to sentence offenders to death by using their discretion, and this discretion will lead to several considerations:

i. Judicial discretion and bias: Discretionary sentencing can lead to variability in outcomes for similar cases, as different judges may impose different sentences for the same crime based on their personal perspectives and interpretations of the law. While judicial discretion allows judges to consider individual circumstances and factors when determining sentences, it can also be influenced by personal biases, societal attitudes, and other subjective elements.⁵ This raises concerns about the potential for inconsistent and unfair sentencing, where factors such as race, socioeconomic status, or the quality of legal representation may play a significant role. It is well known that Malaysia is a common law country, and the sentencing decision follows former cases. Thus, even with discretionary power, there is a risk of arbitrariness in the application of the death penalty. Similar cases might receive vastly different sentences due to the subjective interpretations of judges, leading to a lack of predictability and consistency in sentencing outcomes.

ii. Wrongful convictions: We may acknowledge that worldwide, there are a host of wrongful convictions that lead to the death of innocent people.⁶ Thus, discretionary sentencing can still exacerbate the risk of wrongful convictions and executions. If judges have broad powers to impose the death penalty, innocent individuals might be subjected to this irreversible punishment due to errors, inadequate legal representation, or unreliable evidence.

iii. Lack of alternative sentencing options: The abolition of the mandatory death penalty should be coupled with the availability of alternative sentencing options that are proportionate to the crimes committed.⁷ Meanwhile, currently, the Bill for abolishing the death penalty does not attach alternative sentencing options or a monitoring system. This might include life imprisonment or other forms of punishment that allow for the possibility of rehabilitation and reintegration.

Thus, while abolishing the mandatory death penalty is a positive step towards a more just criminal justice system, it is crucial to address the potential pitfalls of discretionary sentencing. To ensure fairness and consistency, there must be clear guidelines and criteria for judges to follow when deciding whether to impose the death penalty. These guidelines should aim to minimise subjective interpretations and biases. Striking a balance between judicial discretion and safeguards against bias, arbitrariness, and wrongful convictions is essential to ensure that sentencing decisions are consistent, transparent, and respectful of human rights.

Furthermore, robust appeal and review mechanisms are essential to ensure that discretionary

⁵ Siegfried L. Sporer and Jane Goodman-Delahunty, 'Disparities in sentencing decisions' in Margit E. Oswald, Steffen Bieneck and Jörg Hupfeld-Heinemann (eds), *Social Psychology of Punishment of Crime* (John Wiley & Sons Ltd 2009).

⁶ D. Michael Risinger, 'Innocents convicted: An empirical justified factual wrongful conviction rate' (2007) 97 J. Crim. I. & Criminology 761.

⁷ Hugo Adam Bedau, *The Death Penalty in America* (OUP 1998).

death sentences are subject to thorough scrutiny, as it helps prevent miscarriages of justice and provides a safeguard against arbitrary sentencing.

3. Disparity in the Sentencing of Similar Offences

As the author discussed in the first deficiency of the current sentencing system, judicial discretion and bias may influence the sentencing for the death penalty. At the same time, it will also result in disparities in sentencing decisions, not only for the sentencing of death but also for all punishment of offences.⁸

Disparity refers to a difference in treatment that may result in an unfair outcome. Meanwhile, disparity in sentencing means the cases in the trial are disposed of differently. Under the criminal justice system, criminals commit similar offences but receive different sentences. Furthermore, under *Article 8(1) of the Federal Constitution (FC)*, everyone is equal under the law. But, if there is a disparity in sentencing, it might cause a miscarriage of justice and violate the FC. This is a jeopardy to the criminal justice system because the criminals do not receive fair and equal treatment. As we know, “theft crimes” are the most rampant offence in Malaysia, through statistics from the Royal Malaysia Police, which shows that there are 41,479 reported cases under the offence of theft in 2021. Thus, we may analyse the phenomenon of disparity in sentencing in a chart to see more clearly.⁹

Cases¹⁰	<i>Ngu Shu Khan v PP</i> [2019] 1 LNS 1723	<i>Azra Ahmad Rosli v PP</i> [2019] 1 LNS 548
Name of Offender	Ngu Shu Khan	Azra Ahmad Rosli
Offence Committed	Theft of one handbag containing one power bank, and cash of RM200.	Theft of five iron drain covers, the estimated loss is approximately RM300.
Law	<i>Section 379 of the Penal Code</i>	<i>Section 379 of the Penal Code</i>
Age bracket	Adult	Adult
Background	First-time offender	First-time offender
Sentencing result	15 months' imprisonment	10 months' imprisonment

Through the above chart, we can clearly see that the basic background of the two cases is quite similar. Both are first-time offenders, they were convicted in the same year, the value of the stolen items is similar, they are both adults and they face the same charge under *Section 379 of the Penal Code*. Meanwhile, according to the first case law's judgement, the

⁸ Yichen Pan and Wong Jun Hao, 'Comprehensive Research on the ways to Minimize the Disparity of Sentences in Similar Offences in the Malaysian Criminal Justice System' (2023) 1(4) West Science Law and Human Rights 287.

⁹ *Ngu Shu Khan v PP* [2019] 1 LNS 1723.

¹⁰ *Azra Ahmad Rosli v PP* [2019] 1 LNS 548.

court takes the rampancy of theft cases and public interest into consideration and decides to give a heavier sentence, which results in some disparity in the sentencing result.

Apart from that, there is another case law that has a hugely different result if we compare it to the previous case law: the High Court in Malaysia revised the 13-month jail sentence of a man over shoplifting to only one month.¹¹ Thus, we can clearly see the variance of aggravated punishment in the repeat offenders system in the Penal Code over time. Before the 20th century, the only legislative provision was *Section 75 of the Penal Code*, which only regulated the offence punishable under Chapter XII (Offences Relating To Coin And Government Stamps) or Chapter XVII (Offences Against Property). After that, legislators introduced *Section 75A* to regulate other serious offences and protect a wider range of social interests. Admittedly, both of these efficient provisions have some effect on protecting the whole society because of the severe punishment for repeated offenders.

All three cases above involve theft, specifically shoplifting, which are considered similar offences. Meanwhile, the differences in their sentencing results are evident. It is of great significance for us to analyse and explore effective and efficient methods, such as importing an AI judgement model to assist judges in handling each case in order to solve that phenomenon¹², and help achieve fairness and equality in criminal justice.

4. Unreasonable Range of the Aggravated Punishment for Recidivism

Repeated offenders are also named “recidivists”. Aggravated punishment for recidivism in order to protect the whole society and keeping safety is one of the most severe sentencing systems in criminal law. Scientifically, using criminal punishment methods to fight against the phenomenon of recidivism is not only crucial for punishing criminals, reducing the rate of recidivism and enhancing the effectiveness of prevention, but also for respecting both victims’ and criminals’ human rights.

Under Malaysian criminal law, the categories of recidivism can be divided into “common recidivism” and “special recidivism”. The former refers to any offenders who had committed a certain offence before, and after being sentenced, continued committed offences. The latter refers to specific offenders qualified under *Sections 75 and 75A of the Penal Code*. *Section 75* pertains to the punishment of persons convicted, after a previous conviction of an offence punishable with three years imprisonment, which is launched in the first original version of the Penal Code. *Section 75A* addresses the punishment of mandatory imprisonment for persons convicted of multiple serious offences, which is launched in the second version of the Penal Code.

¹¹ Hayati Dzulkifli, ‘Sentencing disparity: Judge reduces shoplifter’s sentence to one month’ *Daily Express* (Kota Kinabalu, 31 December 2019) <<https://www.dailyexpress.com.my/news/145680/sentencing-disparity-judge-reduces-shoplifter-s-sentence-to-one-month>> accessed 6 March 2024.

¹² Yichen Pan, ‘International Human Rights: Challenges and Solutions for Intelligent Judgment in the Ai Era’ [2023] 1 LNS(A) Ivii The Malaysian Current Law Journal.

Thus, we can clearly see the variance of aggravated punishment in the repeat offenders system in the Penal Code over time. Before the 20th century, the only legislative provision was *Section 75 of the Penal Code*, which only regulated the offence punishable under Chapter XII (Offences Relating To Coin And Government Stamps) or Chapter XVII (Offences Against Property). Subsequently, legislators introduced *Section 75A* to regulate other serious offences and protect a wider range of social interests. Admittedly, both of these efficient provisions have some effect on protecting the whole society because of the severe punishment for repeated offenders.

Meanwhile, the rationality and effectiveness of the punishment need to undergo further and deeper study as follows:

First and foremost, the deficiency of “common recidivism”. The principle of aggravated punishment for recidivism is a universal principle even in the whole world. Meanwhile, its application still needs some restrictions in order to protect human rights. To be more specific, no requirements restricting common recidivism may lead to excessive punishment for offenders¹³, and the specific requirements may include: the offender’s age, mental condition and the period of time between the offender committing the two offences. If the offender is only a child or youngster instead of an adult, their mind may not be mature enough to recognise their behaviour. Therefore if a youngster who commits offences twice are regarded as recidivists and their punishment is aggravated, it may not lead to a fair sentencing result, because they should be protected under the Child Act 2001, which defines children as anyone under the age of 18, provides for the protection and welfare of children, and sets out the rights and responsibilities of various parties, including parents, guardians, and the government, towards them.

Secondly, if the offender’s mental condition is unusual, and they are even diagnosed with neuropathy, punishment becomes meaningless and violates human rights, since they cannot even control their behaviour. Furthermore, what is worth mentioning is the factor of the period of time elapsed between the offender’s commission of the two offences. If there is a very long gap between the two offences, then it is unreasonable to impose an aggravating sentence.

Thirdly, the punishment for “special recidivism” is provided in *Sections 75 and 75A of the Penal Code*. *Section 75* only regulates crimes for the kind of property crimes, which is the punishment of persons convicted, after a previous conviction of an offence punishable with three years’ imprisonment. The offender has to commit the behaviour which is forbidden by *Chapter XII or Chapter XVII of the Penal Code*, including offences relating to coin and government stamps, theft, extortion, robbery and gang-robbery, criminal misappropriation of property, criminal breach of trust, receiving stolen property, cheating, fraudulent deeds and dispositions of property, mischief, criminal trespass. Meanwhile, as a special and specific

¹³ Michael Tonry, ‘Legal and Ethical Issues in the Prediction of Recidivism’ (2014) 26(3) Federal Sentencing Reporter 167.

legislation fighting recidivism, the protection of social interests only on the property, which is obviously not enough to regulate and punish the special recidivism.

Furthermore, as *Section 75A* defines “repeated offenders” depending on the definition of “serious offence”. Under this provision, offenders who committed at least two counts of serious offences and were punished with at least two years of imprisonment for each of those convictions, shall be defined as “repeated offenders.”¹⁴ While, at the same time, *Section 52B of the Penal Code* defines “serious offence” as those who will be punished with imprisonment for at least ten years. This definition has evoked much controversy.

In the case of *PP v Asri Che Din*¹⁵, the core issue is whether an offence under *Section 6(1) of the CESOWA*¹⁶, which provides a sentence of imprisonment for a term of not less than two years and not more than ten years upon conviction, is considered as a serious offence. This means that judges have discretion on whether to sentence him to imprisonment for 10 years or below this term under this section. Meanwhile, on the other side, *Section 172D(4) of the Criminal Procedure Code* states that a “serious offence” is one where the maximum term of imprisonment that can be imposed is not less than ten years.

Thus, as the judge said in that case, if the court can impose a term of imprisonment of ten years or more, the offence is termed a serious offence. Meanwhile, in the author’s opinion, the definition of “serious offence” in *Section 75A* should not merely depend on *Section 52B of the Penal Code* or *Section 172D(4) of the Criminal Procedure Code*, because these provisions define “serious offence” solely based on the result of punishment. The seriousness of the crime is not equal to serious punishment¹⁷ due to the influence of other factors, for instance, the criminal’s age, and subjective factors, which may lead to mitigating or aggravating factors for the final sentencing result.

Last but not least, it is well known that the subject of crime includes not only natural persons but also legal persons¹⁸ (for example: units, companies, organisations, etc.). Meanwhile, it is still unclear whether in Malaysia, the legal person is suitable for aggravated punishment as a repeated offender as well. This loophole will lead to the inability to fundamentally solve the problem of crime committed by unit, and cannot effectively reduce the unit crime rate at the same time.

Thus, the above deficiencies of punishing repeated offenders should be solved more reasonably by combining the factors of human rights and the current criminal justice system.

¹⁴ Thomas J. Miceli, *The Paradox of Punishment: Reflections on the Economics of Criminal Justice* (Palgrave Macmillan 2019) 121-48.

¹⁵ *Public Prosecutor v Asri Che Din* [2018] MLRHU 973.

¹⁶ Corrosive and Explosive Substances and Offensive Weapons Act 1958.

¹⁷ Alfred Blumstein and Jacqueline Cohen, ‘Theory of the Stability of Punishment’ (1973) 64(2) *J. Crim. L. & Criminology* 198.

¹⁸ Yoram Dinstein, ‘International Criminal Law’ (1985) 20(2-3) *Israel Law Review* 206.

5. The Conflict Between Retributive Justice and Restorative Justice

Restorative justice is a concept in the criminal justice system that seeks to repair the harm caused by criminal behaviour by bringing victims and offenders together to identify and address the harm caused and find a way to make amends.¹⁹ Thus, restorative justice aims to restore relationships and repair harm rather than solely punishing the offender.²⁰ In the criminal justice system, restorative justice is implemented through various programs and initiatives that aim to provide a more comprehensive response to criminal behaviour. This can include restorative justice circles, victim-offender mediations, and other forms of community-based interventions. Furthermore, compared with the traditional criminal justice system which is based on retributive justice - a concept in the criminal justice system that holds individuals responsible for their actions by imposing a punishment that is proportional to the crime committed - restorative justice provides an alternative to traditional forms of punishment.

Until now, no official restorative justice has been introduced in the Malaysian criminal justice system. Nevertheless, with the development of technology for repairing the environment, some countries have implemented restorative justice in environmental justice cases. These include the US, Canada, Australia, New Zealand and England and Wales (common law countries), as well as China and Japan (civil law countries).

To sum up, there are several advantages to restorative justice compared to the traditional criminal justice system:

i. Encourages rehabilitation: Instead of encouraging the “an eye for an eye” approach, restorative justice aims to help offenders take responsibility for their illegal actions and make amends for the victims, which can lead to rehabilitation that focuses on the idea that criminal behaviour can be changed through appropriate treatment and rehabilitation programs. This theory is based on the belief that many individuals engage in criminal behaviour due to underlying social, psychological, or economic factors. These factors can be addressed and treated to reduce future criminal behaviour and recidivism as well.

ii. Addresses harm and conflict in a gentler way: Restorative justice focuses on repairing the harm caused by criminal behaviour. It provides a more complete response to the victim²¹, who is the central to the whole process of restorative justice and can ultimately lead to a sense of healing.

iii. Reduces reoffending: Research shows that restorative justice programs have reduced

¹⁹ Harleen Kaur and Ayushka Sharma, ‘The Principle of Restorative Justice Towards the Strengthening of Crime Prevention as Viewed from the Pragmatic Gandhian Lens’ in Raman Mittal and Kshitij Kumar Singh (eds), *Relevance of Duties in the Contemporary World: With Special Emphasis on Gandhian Thought* (Springer 2022).

²⁰ Jeremy Olson, Rebecca S. Sarver and Brad Killian, ‘Seeing the Harm to Happiness: Integrating Satisfaction with Life into Restorative Practices’ (2023) 34(1) *Criminal Justice Policy Review* 88.

²¹ Liam J. Leonard, ‘Can Restorative Justice Provide a Better Outcome for Participants and Society than the Courts?’ (2022) 11(1) *Laws* 14.

reoffending rates compared to traditional forms of punishment because they help offenders realise their wrong behaviours at the root.²² Thus, restorative justice programs are often more cost-effective than traditional forms of punishment, such as imprisonment or whipping.

Furthermore, as formerly stated, restorative justice in Malaysia's criminal justice system can be used in at least two aspects: both children who come into conflict with the law and environmental crimes.

5.1. Discussions on the Child Justice System

Restorative justice for children typically involves bringing together the child, the victim, and other relevant stakeholders, such as family members, community leaders, and service providers, to work together to repair the harm caused by the child's behaviour. This process is often facilitated by trained restorative justice practitioners, and the goal is to help the child understand the impact of their actions, take responsibility for their behaviour and make amends to the victim and the community. The core of this theory is based on the Child's Act 2001, which protects children who are under 18, avoiding severe punishment on them because their minds may not be mature and they do not realise their wrongful behaviour.

Nevertheless, the application of restorative justice to cases involving children is not unlimited; there are certain circumstances that may not be suitable for its implementation²³, which may include:

i. The nature of the crime and the degree of social harm caused by the child is very severe.

The nature of the crime, its impact on the victim, and the level of harm caused are crucial considerations for implementing restorative justice. Although certain cases informally apply restorative justice for children who come into conflict with the law, this is because the harm caused and the nature of the crimes are not that severe.

Thus, severe crimes that have caused significant physical, emotional, or psychological harm to the victim may pose challenges to the restorative justice process, as they are in conflict with the purpose of restorative justice and may not play an effective role in rehabilitation.

ii. The child who infringes the law whose attitude is impenitent.

In the process of restorative justice for child offenders, the first and foremost factor is to consider whether both the offender and the victim would like to take part in the restorative justice system. If either party is not willing to participate, restorative justice may not be a viable option. Therefore, it is important to assess the willingness of both parties before initiating the process.

²² Kayla Welch, 'Restorative Justice: An Alternative Dispute Resolution Approach to Criminal Behavior' (2022) 1 J. Disp. Resol. 143.

²³ Yichen Pan, 'Comparative Analyse of the Exceptions in Resorting to Restorative Justice When Children Come into Conflict with the Law' (2023) 8(8) Malaysian Journal of Social Sciences and Humanities 1.

Furthermore, the offender must take responsibility for their actions and show willingness to make amends for the harm caused. This requires the offender to be willing to engage in a process of introspection and self-reflection and listen to the victim and the community's perspective on the harm caused.

iii. Young recidivism.

Young recidivism refers to instances where a juvenile offender reoffends after having previously been involved in the criminal justice system. The ultimate goal of restorative justice is to restore relationships, promote healing, and prevent future harm,²⁴ by involving all parties in the process of repairing the harm caused by the crime. Restorative justice aims to create a sense of closure for the victim, foster empathy and understanding between the victim and offender, and promote positive change in the offender's behaviour. The approach also seeks to strengthen the community by addressing the root causes of crime and create a sense of accountability and responsibility among all members.

Meanwhile, if the offender reoffends, it means the root cause of the crime still exists, suggesting that restorative justice does not express the effectiveness of its role. Thus, while restorative justice holds promise for addressing conflicts involving juvenile offenders, the above exceptions have to be carefully considered. Balancing the principles of restorative justice with the complexities of different cases, the rights of victims, and community safety requires a thoughtful and nuanced approach, and restorative justice should be viewed as one tool among many in a comprehensive approach to juvenile justice.

5.2. Discussions on Environmental Offences

As for the suitability of restorative justice for environmental crimes, we can examine the development of environment-related laws in Malaysia. Although the relevant environmental protection law has been amended countless times and the multiple fines under certain crimes have even increased to ten times, there continue to be many cases of environmental crimes each year.

The essence is that although the law has been more strictly amended, and the scope of the crackdown for those cases has been expanded, there has been no substantial innovation in the way of assuming responsibility. The consequence of this is ignoring the persistence of the particular consequences of environmental crime and also failing to take active measures to call for criminals to actively modify the environment.

Meanwhile, in developed countries which include New Zealand, Australia, Canada and the US, restorative justice is adapted into their domestic environmental crime system, appealing for the repair of the damage by the offenders. In this way, the offender may receive a less severe punishment and experience self-remorse, which solves the problem at the root and significantly prevents them from re-offending. Therefore, with the continuous development

²⁴ Ibid.

of social systems, more and more countries have begun to adopt the criminal concept of restorative justice - which is a new way of assuming responsibility for environmental damage caused to perpetrators - instead of traditional revenge justice methods.

Thus, it can be seen that restorative justice theory not only provides a practical reference for environmental justice to restore the damaged ecological environment, but also respects the legitimate rights and interests of offenders through adapting ideological enlightenment and institutional incentives to guide offenders to participate in damage restoration and environmental protection practices.

6. Conclusion

The exploration of the deficiencies within the current sentencing system for criminals in Malaysia sheds light on crucial areas that warrant attention and reform. The analysis has highlighted a range of challenges that undermine the system's effectiveness in achieving its core objectives of justice, rehabilitation, and equity. These deficiencies encompass both systemic and practical aspects, each contributing to a complex landscape that impacts offenders, victims and society as a whole.

The discretionary nature of sentencing has led to inconsistent outcomes, raising concerns about fairness and uniformity in the application of punishment. The absence of comprehensive and structured sentencing guidelines further compounds this issue, leaving judges with limited guidance in determining appropriate penalties for various offences. The overreliance on mandatory minimum sentences, while aiming to deter crime, can result in disproportionate punishments that fail to consider individual circumstances and the potential for rehabilitation.

Moreover, the limited emphasis on rehabilitation as a primary goal of sentencing overlooks the opportunity to address the underlying causes of criminal behaviour and promote meaningful reintegration into society. The absence of robust data and research impedes evidence-based policy-making and hinders efforts to assess the system's effectiveness over time.

Furthermore, the lack of integration of restorative justice principles and the scarcity of resources for offender reintegration underscore the need for a more holistic approach that prioritises victim satisfaction, community involvement and support for individuals seeking to break the cycle of crime.

Addressing these deficiencies requires a multifaceted approach that encompasses legal reforms, resource allocation, improved data collection as well as a shift towards more balanced and rehabilitative sentencing practices. Developing comprehensive and clear sentencing guidelines, promoting alternatives to incarceration, and integrating restorative justice principles can contribute to a more equitable, consistent, and effective sentencing system.

Moving forward, it is imperative for policymakers, legal practitioners, and stakeholders within the criminal justice system to collaborate in addressing these deficiencies. By undertaking these efforts, Malaysia has the potential to cultivate a sentencing system that aligns with international best practices, respects human rights and embodies the principles of justice, rehabilitation and social reintegration for the betterment of both individuals and society at large.

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