

**Community Service**  
**The Alternative Form of Sentencing<sup>1</sup>**

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**1. Introduction**

Until recently, many offenders of the Prevention And Control of Infectious Diseases (Measures Within the Infected Local Areas) Regulations 2020<sup>3</sup> (“**Regulation**”), were subjected to the maximum fine of RM1,000-00 and in some cases custodial sentences.

This Article will now examine the application and use of community service as an alternative means of sentencing and why current legislations are inadequate and ought to be reviewed.

**2. Covid 19**

The Minister conferred by the powers under section 11(2) of the Prevention And Control of Infectious Diseases Act 1988<sup>4</sup> (“**PCID Act**”) issued the Regulation to control the spread of the Covid 19 pandemic. The Regulation came into force of law on 18<sup>th</sup> March 2020 and as at the date of this Article was subsequently extended vide Prevention And Control of Infectious Diseases (Measures Within the Infected Local Areas) (No. 2) Regulations 2020<sup>5</sup> (“**Regulation No. 2**”) to 15<sup>th</sup> April 2020. On 10<sup>th</sup> April 2020, the government has further extended movements until 28<sup>th</sup> April 2020.<sup>6</sup>

Pursuant to the Regulation & Regulation No. 2 (read together with the Prevention And Control of Infectious Diseases (Declaration of Infected Local Areas) Order 2020<sup>7</sup> (“**Order**”)) the infected local area is made up of all States in Malaysia.

**3. The Movement Control Order**

Arising from the Regulation, Regulation No. 2 and the Order, but save for essential services as specified in the schedule to the Regulation, all persons are prohibited from making any journey or gather whether for religious, sports, recreational, social or cultural purposes within the infected local area. In short, it is known as the Movement Control Order (“**MCO**”).

The other exceptions are set out in Rule 3 (1) of the Regulation, namely if it is (a) to perform an official duty, (b) to travel to premises for essential services, (c) to purchase, supply or deliver food or daily necessities, (d) to seek healthcare or medical services; or (e) special purpose as shall be determined by the director general of the Ministry of Health. Another

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<sup>3</sup> P.U.(A) 91

<sup>4</sup> Act 342 (last amended – P.U. (A) 374/2006)

<sup>5</sup> P.U.(A) 109

<sup>6</sup> The law on this extension has yet to be cited as at the date of this Article.

<sup>7</sup> P.U. (A) 87

exception is found in Rule 3(3) of the Regulation that allows gathering at funeral services with minimum attendees.

Through Regulation No. 2<sup>8</sup> the exceptions at (b), (c) and (d) mentioned above were further restricted insofar as the movement for such purposes cannot exceed a radius of 10 kilometres from one's residence. For these movements, a person may be accompanied by another person only if it is reasonably necessary. While in the case of performance of any official duty or in relation to essential services, the employee is obliged to be in possession of a letter of authorization from his employer.

In the case of other special or particular reasons, the written permission from a police officer having charge over the police station nearest to the person's residence is required for such movements.<sup>9</sup>

There are other restrictions in both the Regulation and Regulation No. 2 that may be imposed over persons entering the borders of Malaysia, the obligation to provide information and compliance with directives issued by the Director General of Health in respect of measures taken to prevent and control the spread of the virus.<sup>10</sup>

The consequence of the violation of any of the provisions in the Regulation and Regulation No. 2 will render the offender liable on conviction to a fine not exceeding RM1,000-00 or to imprisonment for a term not exceeding 6 months or to both.

#### 4. Stay Home Message

The importance to minimise and control the spread of Covid 19 virus is well understood. However, these are trying times and the occurrence of such a pandemic and the handling of such thereto is unprecedented! Most people have never been incarcerated, let alone been confined to their homes for a long duration of time.

The sudden impact of 'self-imprisonment' at home has necessitated a change in the lifestyle for most members of society. Some have been able to adapt to such confinement but others for one reason or another are unable to make this adjustment. There could be multiple of reasons for this inability. Some could be indifferent to the MCO. Others may have sound reasons that can be associated with financial, social, medical or even mental health concerns. Those most afflicted are daily wage earners who have suddenly been deprived of their daily income. Others in the confines of smaller homes or apartments (in particular low cost apartments) with numerous numbers of occupants may find the constriction overwhelming. Whilst some others may be subjected to physical or even sexual abuses that warrants their movement.

While the laws appears to apply to all places whether in public or private areas, the formidable message of the government is for all to **"Stay At Home"** and for the adoption of **"Social Distancing"**. These messages are aimed with good intentions to minimise and control the spread of the Covid 19 virus.

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<sup>8</sup> Rule 4(1) Regulation No. 2

<sup>9</sup> Rule 5 Regulation No. 2

<sup>10</sup> Rule 6 Regulation & Rule 8, 9 & 10 Regulation No. 2

However, it has now become unclear whether the message “**Stay At Home**” meant, “**Stay Inside the Home**”!

The lack of clarity in the government’s messages has caused some to misconstrue the law. For example, the question arises as to whether one is in violation of the MCO if he jogs despite keeping a safe distance or if exercising within the confines of one’s private grounds constitutes an offence under the MCO. The “**Stay At Home**” & “**Social Distancing**” messages appears to be somewhat inconsistent with the law and requires urgent clarity. After all, jogging by oneself is indeed “**Social Distancing**” whilst exercising in one’s home garden is in compliance with the message, “**Stay At Home**”!

## 5. Arrest and Charges

Whatever the reasons may be, the increasing number of arrest for violations of the MCO is alarming. As of 10<sup>th</sup> April 2020, 7,479 individuals have been reported to be arrested for the commission of various offences under the Regulation and Regulation No. 2.<sup>11</sup> While as at 4<sup>th</sup> April 2020, 2,294 individuals have been reported to be charged in court for such offences.<sup>12</sup>

## 6. Sentencing

The media reports initially showed that the maximum fine of RM1,000-00 was imposed notwithstanding that the offenders have pleaded guilty to the commission of the offence under the MCO.<sup>13</sup>

This was escalated to the imposition of custodial sentences. In one particular instance, it was reported than 17 individuals were sentenced to 14 days imprisonment for violating the MCO even though they have pleaded guilty to the offence.<sup>14</sup> Whilst in another it was reported that 2 men who were caught fishing during the MCO were sentenced to 3 months imprisonment although in mitigation they had explained that they were odd job workers without an income during the MCO and were only trying to put food on the table for their families<sup>15</sup>.

As at 1<sup>st</sup> April 2020<sup>16</sup>, 378 individuals were serving custodial sentences for violating the MCO.

Through letter dated 2<sup>nd</sup> April 2020, the prisons’ director general drew concern over the imposition of custodial sentence for the MCO offenders and instead requested that the courts consider the imposition of community service. The request is timely, bearing in mind that our prisons are over-crowded and the need for social distancing to minimise and control the spread of the Covid 19 virus in prison may be arduous. Many around the world have shown

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<sup>11</sup> Malay Mail 10/3/2020 – Senior Minister: 7,479 individuals arrested to date defying MCO, 207 IPs open over Covid 19 fake news

<sup>12</sup> Free Malaysia Today 8/3/2020 – Compound fines under MCO will punish the poor more, say activists.

<sup>13</sup> Free Malaysia Today 31/3/2020 – 11 fined RM1,000 for jogging during MCO

<sup>14</sup> The Star 9/4/2020 – 17 jailed two weeks for defying MCO

<sup>15</sup> The Star 4/4/2020 - Duo caught fishing say they were only trying feed their families; both get three months' jail

<sup>16</sup> Daily Express 7/4/2020 – Violators of MCO should not be jailed

concerns over the vulnerability of imprisoned population and the pandemic<sup>17</sup>. Incarceration would, in the circumstances, defeat the very purpose of the MCO.

The catalyst for the transformation of custodial sentences and fines to community service for MCO offenders is the result of the case of the 23 seminarians and 1 priest who were charged on 2<sup>nd</sup> April 2020 for playing football within the private grounds of College General Major Seminary, Penang<sup>18</sup>. They pleaded guilty and in substitution of prison sentence they were given a 3 month community service.

The public outcry, emanating from various bodies including the Malaysian Bar<sup>19</sup> and the plea from the prison department are some of the reasons that the authorities have now taken heed of compounding the offences committed under the MCO instead of proffering immediate charges in court.<sup>20</sup> It is reported that the offender will be issued a compound for RM1,000-00 (the maximum under the PCID) and payable within 14 days. This means that if the offender is unable to pay the compound, in all probability he will be charged in court.

Since 9<sup>th</sup> April 2020, it was reported<sup>21</sup> that 392 compounds have been issued. 392 compounds is a sizeable number bearing in mind that the law on compounding the MCO offences came into force in just 2 days.

Hence, a senior Minister was reported to suggest that the maximum fine of RM1,000-00 is inadequate and ought to be increased.<sup>22</sup>

Such a suggestion has found the wrath of several groups including Klang MP, Charles Santiago who was reported to have said, *“Rich people can pay the compound fines and get away with it. But for the poor – like the men who were caught fishing because they had no food at home – it’s different.” “The law may look innocent, but the ramifications for the poor are more severe.”*<sup>23</sup>

At this juncture, it is well to observe the judgment of Muniandy JC<sup>24</sup> in the case of the two individuals who were caught fishing during the MCO to feed their family, where His Lordship held,

*“The sentence meted out has to reflect both specific and general deterrence. It cannot be a mere tap on the wrist. It has to reflect seriousness of the offence. The aim of the Regulations is to promote public good as the rakyat is prostrating before the State and its machinery to alleviate the looming pandemic of Covid 19.*

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<sup>17</sup> . World Health Organization - Preparedness, Prevention & Control of COVID-19 In Prisons And Other Places Of Detention (15 March 2020)

<sup>18</sup> Penang Magistrates Court No. 83-407-04/2020

<sup>19</sup> Free Malaysia Today 2/4/2020 – Bar Council urges authorities to cool off on MCO arrests.

<sup>20</sup> Section 25 PCID 2020

<sup>21</sup> NST, 8/4/2020 – Police hand out RM1,000-00 fine for violating MCO.

<sup>22</sup> The Star, 10/4/2020 – Govt may increase fines for MCO violators.

<sup>23</sup> Free Malaysia Today 9/4/2020 - Compound fines under MCO will punish the poor more, say activists.

<sup>24</sup> Chin Chee Wei & Chong Poh Wah v PP (unreported)(9/4/2020)(Taiping High Court No. AB-43-2-04/2020)

*Has the magistrate accorded ample consideration to the mitigating factors advanced by the accused through his counsel. Yes, but in the premise the magistrate ought to have taken into account other forms of alternative punishment available pursuant to the law which would be befitting the crime committed by the accused.”*

His Lordship went on to reverse the sentence imposed by the Magistrate and instead imposed 3 months community service to commence and take effect after the lockdown period.

The above decision has resonated well with the public for it puts into perspective the objective of the MCO and meting out a just and fair sentence in the circumstances of the case.

The writer will demonstrate below, why a hefty fine is equally not a solution in meting out sentences on MCO offenders, especially for first time offenders.

## 7. **Principles of Sentencing**

Rule 7 of the Regulations<sup>25</sup> provides as follows,

*“Any person who contravenes any provision of these Regulations commits an offence and shall, on conviction, be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or both.” (emphasis is added)*

Case law has explained that the term “shall be liable”, carries the meaning that the Court is vested with a discretion whether to impose imprisonment or other sentences<sup>26</sup>.

The exercise of judicial discretion is best explained by Sultan Azlan Shah (Ag LP as His Majesty then was)<sup>27</sup> as follows,

*“I have had occasion to say elsewhere, that the very concept of judicial discretion involves a right to choose between more than one possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred. That is quite inevitable.”*

In the exercise of its discretion, it is held that a sentence according to law, “means that the sentence must not only be within the ambit of the punishable section, but it must also be assessed and passed in accordance with established judicial principles.”<sup>28</sup>

Such judicial principles has been well recorded by Hamid Sultan JC (as his Lordship then was) in ***Leken @ Delem ak Gerik (M) v Public Prosecutor***<sup>29</sup>. His Lordship explains some of the factors to be considered before imposing sentence. These factors include having regard to,

- (a) the gravity or severity of facts constituting the offence;
- (b) the circumstances in which it was committed;
- (c) the rampancy of such offence in the area;

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<sup>25</sup> Rule 11(1) Regulation No. 2

<sup>26</sup> Jayanathan v PP [1973] 2 MLJ 68

<sup>27</sup> Bhandulananda Jayatilake v Public Prosecutor [1982] 1 MLJ 83

<sup>28</sup> PP v Jafa bin Daud [1981] 1 MLJ 315

<sup>29</sup> [2007] 3 MLJ 730

- (d) the offender's previous record;
- (e) the offender's contribution and support to his family members;
- (f) the offender's means;
- (g) the effect of conviction and sentence on his job opportunities;
- (h) the age and health of the accused;
- (i) whether it is his first offence;
- (j) whether the accused had cooperated with the police after the commission of the offence;
- (k) whether the accused had pleaded guilty;
- (l) status of the accused;
- (m) whether there was violence during the crime; and
- (n) public interest.

His Lordship went on to hold that whilst public interest is an important consideration, it cannot be the sole criteria in determining the appropriate sentence.

Apart from the consideration of these factors, the objective of sentencing must equally meet the aim of the legislation that stipulates the offence and its penalty. The punishment must reflect and befit the seriousness of the crime. If the seriousness of the situation is not reflected in the sentence imposed, it may "*defeat the object of the statute.*"<sup>30</sup>

This brings the discussion to the aims of sentencing. Suffice that reference is made to Dato Mah Weng Kwai's<sup>31</sup> paper<sup>32</sup> that explains the aim of sentencing as follows,

*"There are five main aims of sentencing — deterrence, rehabilitation, prevention, retribution and just deserts. It may be helpful here to state briefly what they are. The first three are popularly considered to be utilitarian aims:*

- (i) *Deterrence — A deterrent sentence aims both to deter the individual offender from committing offences in the future and to deter potential offenders from committing crime.*
- (ii) *Rehabilitation — A rehabilitative sentence seeks to reform an offender from being a criminal to being an honest and responsible member of society.*
- (iii) *Prevention — A preventive sentence is naturally an incapacitative sentence as it aims to directly prevent the offender from committing further crimes against other members of society.*
- (iv) *Retribution — Retribution demands that the sentence imposed reflects the degree of revulsion which society feels towards the conduct of the offender.*
- (v) *Just Deserts — The concept of giving an offender his just deserts stipulates that the severity of the sentence should be proportionate to the seriousness of the crime and that similar offences should receive similar sentences."*

The government's message is clear, in that, the sentences applicable under the MCO are intended to serve as a deterrent. In putting aside many of the judicial principles set out above, the courts have approached the sentences on MCO offenders by imposing terms of imprisonment and in some instances imposing the maximum fine of RM1,000-00, in echoing

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<sup>30</sup> PP v Loo Choon Fatt [1976] 2 MLJ 256

<sup>31</sup> Retired Judge Court of Appeal, Malaysia

<sup>32</sup> Sentencing Principles — Judicial Discretion and Mandatory Sentences presented at the 12<sup>th</sup> Commonwealth Law Conference held at Kuala Lumpur (September 1999)

the government's message of deterrence. It is perhaps necessitated since the nation is fighting an unknown enemy and the protection of the public overrides the rights of the individuals.

However, it appears that neither a term of imprisonment nor a hefty fine has restrained the growing number of violators. After all, if the gory messages on the cigarette boxes have not deterred smokers, what more the messages on *Stay At Home* and *Social Distancing!* The objective of imposing deterrent sentences for MCO offenders appears not to have met its purpose. In fact, it is causing more hardship. The intent and purpose of the MCO is defeated if offenders are put into prison thereby causing them to be exposed to groups or clusters with the possible of encouraging the spread of the Covid 19 virus. The lockdown through the MCO has already caused severe financial hardship to individuals and businesses. A fine will only add to their woes.

Hence, a more practical approach has to be considered in dealing with the MCO offenders. A rehabilitative and preventive approach is needed.

A way forward is to impose a community service sentence in lieu of the imposition of custodial sentence or even a fine for at least in the case of first time offenders. For a start, most of the offenders are otherwise law abiding citizens. To some, it could very well be their first offence. Many may not have been previously arrested. Hence, their experiences of arrest for offences under the MCO, being subjected to handcuffs and going through the process of investigation and remand is sufficiently traumatising. These, in on its own would have served as a form of 'imprisonment', constituting a deterrent effect envisaged by Rule 7 of the Regulation to prevent repeat offenders.

The imposition of a community service sentence will be beneficial to both the offender and to the public at large. For a start, the offender who has no previous conviction, will not be subjected to the harshness of imprisonment or in the case of poverty to the harshness of the fine. While the public would benefit from the offenders service through the community service.

There are 2 legislations applicable for the imposition of community service. We have the Criminal Procedure Code for youthful offenders and the Offenders Compulsory Attendance Act 1954<sup>33</sup> ("OCA").

## **8. Community Service Order for Youthful Offenders**

The Criminal Procedure Code ("CPC") provides for the imposition of a community service order on youthful offender in lieu of custodial sentence or a fine.<sup>34</sup> A youthful offender is defined as one who is above the age of 18 and below the age of 21<sup>35</sup>.

The term "*community service*" falls within the Ministry having charge of women, family and community and is defined to mean any work, service or course of instruction for the

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<sup>33</sup> Act 461

<sup>34</sup> Section 293(i)(e)(i) CPC

<sup>35</sup> Section 2(1) CPC

betterment of the public at large and includes, any work performed which involves payment to the prison or local authority.<sup>36</sup>

The community service order may require the youthful offender to perform community service not exceeding 240 hours. The Court may specify the nature, time, place and conditions when imposing the community service order.

The community service order pursuant to the CPC applies to any offence so long as it is punishable with fine or imprisonment.<sup>37</sup> Such an order can be imposed and substituted for a custodial sentence or fine imposed under the MCO.

Consequently, imprisonment will only increase the prison population and add further cost to the tax payer, whilst a community service order reduces these burden and more importantly adds benefit to the community with unpaid work and enlightens the offenders with virtues of giving back to the community. It also prevents the youthful offender from being exposed to serious crime or hard-core criminals who could influence and lead the youthful offender to be a further threat to society on his release from prison.

Similarly, if a fine is imposed in all likelihood, the young offender may not be able to meet his sentence and consequently may end up in prison. The latter has even undesirable consequences. Even if he is able to meet the payment of the fine through the assistance of third parties, he may not have learnt from the commission of the offence.<sup>38</sup> Worst, there lie the possibility of him repeating his offence. There would be no opportunity to proffer rehabilitation of the offender merely through a fine.

It has been stressed that it is desirable for young offenders, especially first offenders to be kept out of prison, where possible.<sup>39</sup> It is indeed in the public interest to keep young offenders out of prison and in the same breath instilling adequate punishment to enable them to turn a new leaf.<sup>40</sup> It is said that the primary purpose of punishment is reformatory.<sup>41</sup> A community service order, could well be a form of reformation for the youthful offender.

## 9. **OCA**

The OCA on the other hand provides for the imposition of a compulsory attendance order. The compulsory service order is akin to community service order, since the offender is obliged to undertake such work as may be ordered by the officer of the compulsory attendance centre.<sup>42</sup>

The imposition of a compulsory attendance order under the OCA is in lieu of a custodial sentence or imprisonment if the offender is unable to pay a fine.

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<sup>36</sup> Section 293(i)(e)(ii) & (iii) CPC

<sup>37</sup> PP v Muhammad Asyraf Bin Ayut [2019] 5 LNS 39

<sup>38</sup> Supra – see the case cited at note 35.

<sup>39</sup> Tukiran bin Taib v. Public Prosecutor [1955] MLJ 24

<sup>40</sup> Siew Peng & 4 Ors v. Public Prosecutor [1985] 2 MLJ 125

<sup>41</sup> Raja Izzuddin Shah v PP [1979] 1 MLJ 270

<sup>42</sup> Section 6(2) OCA

Such an order can be introduced in substitution of a sentence of imprisonment provided that the term of imprisonment does not exceed 3 months and on condition that the offender enters into a bond with or without surety.

Some of the salient conditions of such an order include:

- (a) That the order will require the daily attendance of the offender at the compulsory attendance centre to undertake compulsory work for a period not exceeding 3 months for such hours in a day not exceeding 4 hours.<sup>43</sup>
- (b) If the offender is gainfully employed the compulsory attendance order will take effect during the offender's leisure hours<sup>44</sup> and must not interfere with his employment.<sup>45</sup>
- (c) The offender is obliged to report to the compulsory attendance centre at the time and day as specified by the centre's officer.<sup>46</sup>

There are no age limit for the imposition of a compulsory attendance order, save that if there are concerns with the offender's health after his medical examination, the order may not be made or if made, the order must make exceptions of the type of compulsory works which the offender is not physically capable of performing<sup>47</sup>.

The benefits of the imposition of such an order is similar to a community service order under the CPC as set out above.

## **10. Legislation for community service**

As recent as 2019, the courts have been encouraged to consider the imposition of community service as an alternative mode of sentencing. Then Chief Justice of Malaysia, Tan Sri Richard Malanjum had called on the courts to do so, when he said,

*"We are encouraging our judges and judicial officers to consider imposing community services instead of imprisonment to offenders in appropriate cases. In this way not only it may better rehabilitate the offenders, it is also costs savings for the Prison."*<sup>48</sup>

However, there appears to be a lack of effort made towards developing a more cohesive use of the community service sentencing. After all the OCA was enacted in 1954 with the last amendments thereto being made in 1971<sup>49</sup>

The current legislations on the alternative sentence of community service is anything but desirable. For a start, there are no provisions in the law to impose community service sentencing on juvenile offenders under 18 years of age. Secondly, the OCA will only apply to substitute imprisonment of 3 months or less. Such a limitation cuts off the opportunity to impose community service sentencing in particular, for non-seizable offences where the sentence of imprisonment may exceed 3 months.

## **11. Comparison With Community Service Sentencing In Other Jurisdiction**

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<sup>43</sup> Section 5(1) OCA

<sup>44</sup> Section 5(3) OCA

<sup>45</sup> Section 6(3) OCA

<sup>46</sup> Section 6(1) OCA

<sup>47</sup> Section 5(2) OCA

<sup>48</sup> 11/1/2019 – Speech at the Opening of the Legal Year 2019

<sup>49</sup> P.U.(B) 324/1970

A demonstration from other jurisdiction will reveal the need to improve on our current legislations on the subject.

**(a) The UK – England & Wales**

The Criminal Justice Act 2003 provides for the imposition of a community order for persons over the age of 18<sup>50</sup>.

The types of community order includes<sup>51</sup>,

- (i) an unpaid work requirement,
- (ii) a rehabilitation activity requirement,
- (iii) a programme requirement,
- (iv) a prohibited activity requirement,
- (v) a curfew requirement,
- (vi) an exclusion requirement,
- (vii) a residence requirement,
- (viii) a foreign travel prohibition requirement,
- (ix) a mental health treatment requirement,
- (x) a drug rehabilitation requirement,
- (xi) an alcohol treatment requirement,
- (xii) an alcohol abstinence and monitoring requirement,
- (xiii) in a case where the offender is aged under 25, an attendance centre requirement, and
- (xiv) an electronic monitoring requirement.

Each of the community order is defined and explained in the Act, where provisions are made for its duration, supervision, reporting, control and etc.

The Court is empowered to order more than one community order but the order must be compatible one with the other<sup>52</sup> and must specify a date by which each of those requirements must have been complied with; and the last of those dates must be the same as the end date.<sup>53</sup>

The community order must specify a date (and the end date) and cannot exceed three years from the date of the order.<sup>54</sup>

**(b) Australia**

In Australia, legislation<sup>55</sup> obliges the court not to pass a sentence of imprisonment on any person for a federal offence, or for an offence against the law of an external Territory, unless there are no other appropriate sentences having regard to all the

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<sup>50</sup> Section 177 Criminal Justice Act 2003

<sup>51</sup> Sections 199-215 Criminal Justice Act 2003.

<sup>52</sup> Section 177 (6) Criminal Justice Act 2003

<sup>53</sup> Section 177 (5A) Criminal Justice Act 2003

<sup>54</sup> Section 177 (5B) Criminal Justice Act 2003

<sup>55</sup> Section 17A Crimes Act 1914

circumstances of the case. If the Court shall pass a custodial sentence, it must state the reasons that there are no other sentence appropriate for the offence.<sup>56</sup>

Such a restriction is more profoundly applicable to offences relating to property, money or both, where the total value does not exceed AUS\$2,000 and the offender has no previous record of custodial sentence, unless there are exceptional circumstances that otherwise warrants its imposition.<sup>57</sup>

The provisions for the imposition of community service can be gleaned from various Federal and State statutes. At Federal level, laws<sup>58</sup> provide to empower the Australian courts in particular cases, to make *inter alia* a community service order, a work order, a sentence of periodic detention, an attendance centre order, a sentence of weekend detention.<sup>59</sup>

At State level, laws are abound to sentence an offender with various community orders. For instance, in the State of New South Wales<sup>60</sup>, the courts are empowered to impose community correction orders and community service work instead of imposing a sentence of imprisonment on an offender. Relevant laws are also place in New South Wales making provisions concerning community service work to be performed by offenders.<sup>61</sup>

**(c) Singapore**

In Singapore, the law allows the imposition of community orders through the Singapore Criminal Procedure Code and the Children & Young Persons (Community Service Orders) Regulations 2001, for juveniles above the age of 14.

However, the court cannot impose a community order where,<sup>62</sup>

- (a) an offence for which the sentence is fixed by law;
- (b) an offence where the sentence consist of a minimum or mandatory term of imprisonment, caning or fine (in the case of a mandatory sentence);
- (c) an offence within the 3rd Schedule to the Registration of Criminals Act;
- (d) the offender has previously been sentenced to imprisonment exceeding 3 months, other than one in default of payment of a fine;
- (e) the offender has previously been sentenced to corrective training or preventive detention;
- (f) the offender has been previously detained or subject to police supervision under the Criminal Law (Temporary Provisions) Act;
- (g) a person who has been admitted —
  - (i) at least twice to an approved institution under section 34 of the Misuse of Drugs Act;

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<sup>56</sup> Section 17A(2) Crimes Act 1914

<sup>57</sup> Section 17B Crimes Act 1914

<sup>58</sup> Section 20AB Crimes Act 1914

<sup>59</sup> Section 20AB(1AA) Crimes Act 1914

<sup>60</sup> Crimes (Sentencing Procedure) Act 1999 & Children (Community Service Orders) Act 1987

<sup>61</sup> Crimes (Administration of Sentences) Act 1999

<sup>62</sup> Section 337 Singapore Criminal Procedure Code

- (ii) at least twice to an approved centre under section 17 of the Intoxicating Substances Act; or
- (iii) at least once each in both institutions in (i) and (ii) above;
- (ga) an offence under the Misuse of Drugs Act, the Misuse of Drugs Regulations or the Intoxicating Substances Act, if the offender had previously been admitted to an approved institution or an approved centre;
- (h) a fine-only offence; or
- (i) an offence which is punishable with a term of imprisonment which exceeds 3 years.

The type of community orders include the following,

- (i) A mandatory treatment order – This entails the offender to undergo psychiatric treatment for a duration not exceeding 24 months<sup>63</sup>;
- (ii) A day reporting order<sup>64</sup> - An order for the offender to report to a reporting centre for supervision and to undergo counselling and rehabilitation from 3 to 12 months;
- (iii) A community work order<sup>65</sup> - Applicable to offenders above 16 years of age or above to perform unpaid community work that is associated with that offence under the supervision of a community work officer that will promote in the offender a sense of responsibility and acknowledgment of the harm that he has done by committing that offence;
- (iv) A community service order<sup>66</sup> - Applicable to offenders above 16 years of age for him to make amends to the community for the offence by performing such unpaid community service works such as, general cleaning, repair, maintenance and restoration works, at hospital, charitable, educational, cultural, or recreational institution or organisation or any government land under the supervision of a community service officer; or
- (v) A short detention order<sup>67</sup> - Applicable to offenders above 16 years of age requiring him to be detained in prison for a period not exceeding 14 days.

The type of community service for young offenders are similar to the community service order under the Singapore Criminal Procedure Code, namely, the young offender can be ordered to perform works such as, general cleaning, repair, maintenance and restoration works, at hospital, charitable, educational, cultural, or recreational institution or organisation or any government land.<sup>68</sup>

The Singapore laws on the community order appears comprehensive and does provide for terms, tenure, control, supervision, variation etc of the community order.

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<sup>63</sup> Sections 339 - 340 Singapore Criminal Procedure Code

<sup>64</sup> Section 341-343 Singapore Criminal Procedure Code

<sup>65</sup> Section 344 Singapore Criminal Procedure Code

<sup>66</sup> Section 346 Singapore Criminal Procedure Code

<sup>67</sup> Section 348 Singapore Criminal Procedure Code

<sup>68</sup> Children & Young Persons (Community Service Orders) Regulations 2001

## 12. Conclusion

A brief review of the community service laws in these 3 Commonwealth jurisdictions will disclose that our legislations on community orders are lagging far behind.

For instance, the UK (English & Welsh) legislations provide for drug rehabilitation and alcohol treatment when these could be better alternatives to drug related offences or alcohol induced offences. Regrettably, the laws on sentencing in Malaysia does not offer such alternatives, save for those classified as drug dependents.<sup>69</sup> If, funds are a limitation, perhaps legislation can provide for the offender to pay the cost of such rehabilitation or treatment in proportion with the offenders' financial ability.

Even Singapore's community work order<sup>70</sup> that compels the offender to perform community work associated with the offence will augur well in Malaysia, especially for those offenders who have caused damage (in particular vandalism) to public property or even damaging common property in high rise buildings. In this way, the offender will assume responsibility for his misdeeds. Again if funds are a limitation, laws can be put in place to order the offender to pay the cost in proportion with the offender's financial ability.

The Tokyo Rules<sup>71</sup> encourages Member States to develop non-custodial measures within their respective legal systems and reduce the use of imprisonment. Some of the non-custodial measures proposed by the said Rules, include community service order, referral to an attendance centre and probation & judicial supervision.

If the authorities are serious in changing the course of sentencing to one of rehabilitation and to reduce the already overcrowded prisons, the government must take heed and review the current laws on community service sentencing and enhance its application.

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<sup>69</sup> See. Drug Dependants (Treatment And Rehabilitation) Act 1983

<sup>70</sup> Section 344 Singapore Criminal Procedure Code

<sup>71</sup> United Nations Standard Minimum Rules for Non-Custodial Measures (Tokyo Rules). Adopted by the General Assembly resolution 45/110 on 14<sup>th</sup> December 1990