

The Rehabilitation Theory in Adjudicating Child Offenders and Its Application in Malaysia

Mohd Al Adib Samuri¹, Zuliza Mohd Kusrin¹, Noor Aziah Mohd Awal², Amir Husin Bin Mohd Nor¹, Salasiah Binti Hanin Hamjah³ & Zaizul Bin Ab Rahman⁴

¹ Department of Sharia Law, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, Malaysia

² Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia

³ Department of Da wah and Leadership Studies, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, Malaysia

⁴ Department of Usuludin and Philosophy, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, Malaysia

Correspondence: Mohd Al Adib Samuri, Department of Sharia Law, Faculty of Islamic Studies, Universiti Kebangsaan Malaysia, 43650 Selangor, Malaysia. Tel: 60-3-8921-5511. E-mail: al_adib@ukm.my

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Abstract

Children who find themselves on the wrong side of the law must bear the legal consequences to ensure that they obey societal norms. The question is: what theory forms the legal basis for legal action against these troubled young offenders? Will the courts apply the deterrence theory by sentencing them to harsher punishments, or will they apply the rehabilitation theory by passing lighter orders? The objective of this article is to debate one of the theories applied by the Court for Children in their adjudicating process-the rehabilitation theory, and its application. This article will also discuss two legal provisions in the Child Act 2001 Malaysia (Act 611) which are based on the rehabilitation theory. This study finds that the rehabilitation theory is the best and most suitable theory to be applied to child offenders because it focuses on individual rehabilitation by taking into consideration the aspects of education, societal integration and rehabilitating them of their criminal mentality. The two aforementioned provisions, namely, on 'approved school' and 'community services', are orders founded on the rehabilitation theory and can potentially prevent child offenders from involving themselves in criminal activities in the future. The importance of this study is paramount as it shows that Malaysia is clearly behind in assimilating rehabilitative values and theory into Act 611. Ultimately, the placement of specific legislative provisions regarding community service within Act 611 is an initiative that must be expedited.

Keywords: rehabilitation theory, child offenders, Malaysian law

1. Introduction

The history of the juvenile criminal justice system for child offenders the world over is rife with conflict between efforts to uphold justice by meting out harsh punishments to children and prioritizing the best interest of the child by passing lighter orders. The harsher orders are products of the deterrence theory, while the lighter orders find their basis in the rehabilitation theory. At the centre of the conflict lies the question of whose interests need to be protected in the event of a crime committed by a child offender; the child who has in conflict with the law or society in general that has been and is at risk of being victimized? This conflict becomes visible when a given country experiences a phase involving its juvenile criminal justice system consistently changing back and forth from the deterrence theory to the rehabilitation theory. This situation, not unlike a swinging pendulum, infers that until the 'swinging' stops, the rehabilitation theory cannot be fully incorporated into the juvenile criminal justice system of any state, Malaysia included.

The return to the rehabilitation theory is necessitated simply by acknowledgment of it being the first and founding theory that formed the basis of this system at one point in time. In one of America's leading cases, *Kent v United States*, 383 U.S. 541 (1966), the court was of the opinion that children tried in courts for children today have been denied two of their basic rights; their constitutional rights and their right to receive rehabilitation as promised to them by the founding philosophy behind the formation of courts for children (Flowers, 1986). Therefore, this means that the pendulum must swing back to the rehabilitation theory, especially since that was

its point of origin when the system was first constructed in modern civilization. This is to fulfil the need for application of the rehabilitation theory in handling the issue of the rise in crimes committed by child offenders in countries across the world, including Malaysia. It thus follows that this article will discuss the application of the rehabilitation theory in several legal provisions regarding child offenders in the Child Act 2001 (Act 611).

2. The Application of the Rehabilitation Theory in Sentencing Children

The rehabilitation theory is one that focuses on personal change in the offender so that they discontinue their criminal activities once and for all upon their return to society (Sherman, 2002) and enable them to have a more constructive role (Elrod & Ryder, 2005) via receipt of psychiatric therapy, counselling, vocational training, better education, drug-rehabilitation programs and any other techniques based on scientific methods that can reduce recidivism (Cragg, 1992). In addition to this, it should not be forgotten that the main objective of the court for children and the system that governs it must surely be based on an approach that moves toward the rehabilitation, curing and saving of these offenders (Ellingston, 1948) in a manner that benefits and caters to each different individual (Champion & Mays, 1991). When the aforementioned has been achieved, the child offender is effectively rehabilitated in the mold of a law-abiding individual. Therefore, if the child offender's actions can be construed as an effect of his failure to adhere to societal rules, his rehabilitation process must convince him that he is capable of accepting and living with societal norms and values (Barron, 1954). For child offenders, the rehabilitation theory concentrates more on the individual child and less on society (Nolan, 2002). This theory is therefore suitable for fulfilling legal requirements that protect the best interest of children. With that, it may also be deduced that the courts too tend to focus more on rehabilitation rather than orders of a deterring nature.

The rehabilitation theory is fitting for child offenders because children are a category which is entirely different from that of adult offenders. Child offenders in general have better prospects for rehabilitation compared to adults for a variety of reasons (Horowitz, 2000). One of the main reasons is because children have a lower 'guilt-factor' than adult offenders. In addition, Huss (2008) stated that the law views children as free from culpability or the consequences of the crime committed. A clearer example is that legal institutions have determined that any child under a specific age group cannot be considered responsible and incapable of forming criminal intent. It is thus obvious that a child who has breached the law should not be viewed as or treated as an adult offender. Contrarily, that child offender should instead be viewed and treated as a child whose parents, in their wisdom, would see and care for, especially when he is in trouble. Child offenders cannot also be presumed to be public enemies; it is actually the public that should try to understand, guide and protect them (Mann, 1984).

Issuing a lighter sentence based on the rehabilitation theory to children is not in contravention of achieving justice. This does not also mean that the rights of the victim have been ignored, or that society's best interest has been set aside. It is because of the above that Cullen & Wright (2002) argued that the rejection of the rehabilitation theory on the basis of wanting a more 'deserving' sentence is in fact a denial of the child's opportunity to have a better life. Geraghty (1997) added that a fair system is one that can combine a fair trial with a sentence that is equal in magnitude to the child's responsibility for the crime committed. Orders that incorporate rehabilitation contain an element of duty and necessity to protect society. A fair system, especially one that is focused on troubled youths, must be flexible in nature but also consistent in its response to each offender as individuals.

The rehabilitation theory has been incorporated in the court for children's system through the court itself. For example, the judge presiding in a juvenile court is the acting 'parent' in this scenario, and determines the outcome of the trial according to the needs of the child. Historically, the objective behind the juvenile court was to create a flexible system that could focus on the individual when handling child-offender cases. With that, it was through the formation of the juvenile court that judges were granted a wide discretionary power stressing on the best interests of the child. Merton & Nisbet (1961) stated that the rehabilitation theory allowed for more flexible procedure in the court and that judges could have more discretion in their sentencing so as to ensure that the child's needs are well and truly met according to the background of the case. In fact, some rehabilitative values appear during the process of a trial involving a child offender. For example, certain expressions are used to differentiate the situation from that in an adult criminal court. Despite these expressions varying from state to state and system to system, there exists a tendency to distinguish the legal proceedings in a juvenile court from adult criminal court proceedings, all in the best interest of the child. Cook (2001) further explained that, the evidence and proof in trials that apply different processes will not influence the type of sentence issued by the court. All of the above shows that the rehabilitation theory is easily applied by the juvenile court is practical, capable of serving justice and is cost-effective.

The application of the rehabilitation theory for child offenders has several aims. Levinson (2002) opined that with rehabilitation, a child offender may eventually become a law-abiding adult citizen. Also, Hoge, Guerra & Boxer (2008) argued that the objective of rehabilitation is to shape and mold a child offender's behaviour from one that is not criminal in nature to one that is productive. Furthermore, Roberts (2004) stated that the rehabilitation theory also acts as a step toward increasing the quality of life of a child offender, and not just reducing their involvement in criminal activities. Mann (1984) on the other hand added that the goal of the rehabilitation theory is to rehabilitate offenders and protect society from a social environment that leads to crime. The views of all these experts further clarify that the rehabilitation theory is primarily focused on the rehabilitation of the child, after which society and the whole country will experience the indirect effect of such, i.e. a receding crime rate and a more controllable environment.

There are many reasons why children should be given orders based on the rehabilitation theory. Vedder (1954) argued that children are generally indecisive, and that many judges overlook the fact that such indecision in children can only be remedied if they can mature normally allow the decision-making process to be built-up gradually. Moreover, child offenders are presumed to possess a different capacity, and their needs are not the same as adult offenders (especially from the aspect of overcoming negative influences and their dependency on others), which therefore call for a different set of procedures for child offenders and for their orders to respond to their specific rehabilitation requirements. The criminal act of a child offender is a projection of their immaturity, and it is not appropriate to allow them to bear the burden of the crime and receive the same punishment as an adult offender.

Orders based on the rehabilitation theory are given when the court finds that the child offender has not received parental guidance, care or observation, or has been living in a state of poverty which has denied him an education (Grisso, 1997). This further shows that only the rehabilitation theory is capable of solving the problems faced by such children. There is also the age factor that allows a child offender the opportunity to be given a sentence based on the rehabilitation theory. Heckel & Schumaker (2001) stated that younger offenders guilty of even serious crimes may avoid being sentenced harshly, depending on the court issuing an order to that effect. On the other hand, for young offenders who are approaching adulthood, rehabilitative orders are not the main focus of the court. It is thus clear that the factors of maturity, a lower degree of culpability compared to adult offenders, the child's background and his age are all taken into account by the juvenile court in issuing a rehabilitative sentence.

Aside from that, children are potentially more inclined to respond positively to rehabilitation therapy. Children can be rehabilitated because of their relatively shorter life experiences; children who want to be rehabilitated will be so more easily. McShane & Williams (2007) argued that childhood and adolescence are periods of growth and development, and that they are therefore more receptive to any form of intervention for the sake of the child's best interest. By stressing on rehabilitation, the juvenile court can work toward fulfilling the different requirements of individual child offenders and at the same time protect the interests of society.

The rehabilitation theory should be applied when sentencing child offenders to avoid the negative effects that come from the deterrence theory. Osgood et al. (2005) argued that as a result of the deterrence theory, child offenders will leave after serving their imprisonment harbouring feelings of resentment from not being treated fairly, inferiority and revenge. In the event of this happening, a schism will be created that prevents the child's transitional process into adulthood. This schism includes closed-off work opportunities, limited qualification for educational programs and difficulty in forging relationships.

There are several ways in which the rehabilitation theory can be applied to child offenders. Basically, the rehabilitation theory can be assimilated when the child offender is permitted to live within society while serving his sentence (Sparta & Koocher, 2006). This is why the majority of orders aimed at rehabilitation usually tie the child to society. Elrod & Ryder (2005) listed in detail the forms of rehabilitation programs for child offenders in different states such as community service, rehabilitation institutes, early intervention, intensive observation programs, varied systemic therapy, house arrest, protective homes, daily treatments, foster care, payment of compensation, mediation, post-incarceration programs, and medical treatment for drug abuse. Furthermore, rehabilitation programs for child offenders involve several other components: education, vocational training, community service and any other requirements related to reducing the rate of recidivism among them. Also, rehabilitation involves the use of a more clinical approach and a variety of experts in the fields of psychiatry and psychology. Tappan (1960) was of the view that a clinical approach is more effective in detecting psychological, mental and personality issues in the offender. Therefore, the child will be rehabilitated holistically, thus maximizing his potential for change and successful integration into society.

Rehabilitation may take place in two stages; the first stage during the offender's trial in a court for children, and the second stage after his sentence had been passed. When the court focuses on the rehabilitation theory, it means that the focus isn't on the crime that has been committed, but rather on the child who committed it. Huss (2008) explained that, based on the rehabilitation theory, child offenders are not automatically given harsh orders for the crimes they committed. For example, if a child stole the property of his neighbour, the court will sentence him with restitution or payment of compensation to the neighbour rather than sentence him to prison for theft. Such judgments are believed to be more effective in educating and rehabilitating child offenders as well as being more cost effective. Aside from that, Feld (1997) argued that courts for children that applied the rehabilitation theory had judges who were specifically trained in the field of child development, and that they possessed an empathetic quality making them capable of issuing orders based on the individual case in the best interest of the child. This is achieved by maximizing the judge's discretionary power, while simultaneously giving leeway in diagnosing and treating the child by perceiving the child from all aspects of his life. This is because the problem of criminal child offenders is just a symptom of the real problems they face; therefore ideally the crime itself should not influence the severity or duration of their sentence. Feld's view is consistent with Vedder's (1954), one of the pioneer scholars defending the rehabilitation theory. Vedder (1954) argued that the judge must have some knowledge regarding the offender's personality, his social background and his physical and mental state, and that the judge must also identify what the actual needs of the child are, and if possible, also identify the cause of his anti-social behavior. Materials and investigative reports may provide such information. Vedder (1954) stressed that these are some of the main criteria that must be present in any court for children, and that they have already been implemented in a few states that support the rehabilitation theory. However, Kahn & Roosevelt (1963) have criticized the role of the juvenile courts in implementing the rehabilitation theory. They were of the view that a judge's advice in court to change a child's values and his personality cannot be relied upon because it is rooted in their own life experience. In relation to that, there are no theories that explain how the courtroom itself can be a place of rehabilitation. Therefore, despite the fact that the experience of a courtroom trial can be an intimidating one, it is quite short and simple for children.

The second stage of implementation is via programs at rehabilitation institutions, i.e. after the sentence has been given. Bryant (1989) stated that the rehabilitation theory does not only alter behavior, it also changes the heart of the person which leads to the alteration of his behavior. This theory is highly relevant in cases with child offenders because the child's behavior towards society will change after he has been rehabilitated. Furthermore, the goal behind the formation of rehab institutions for child offenders is to shape these children into productive individuals in their adult lives. From a historical point of view, the rehab institution is meant to provide a stern environment far from negative influences, and fill it with daily discipline to shape the child's behavior and morals.

In relation to this, Bartollas, Miller & Dinitz (1976) suggested that rehab institutions should create an environment that is conducive to positive reinforcement of the child's personality to the point where he can return to society and start a better life. Besides that, the said environment should also educate the child offender to be more responsible for his actions. It is thus clear that the rehabilitation theory can be implemented in two stages; the first being when the child is processed via court proceedings, and the second at a rehab institution. This integration further shows that the rehabilitation theory is two-pronged and works to rehabilitate child offenders at every level in the criminal justice system.

The question of how far the rehabilitation theory is effective in its aim to rehabilitate child offenders is an important issue for discussion. The answer to that is highly subjective, and there are certain conditions that need to be fulfilled before it can be considered 'effective'. For example, McShane & Williams (2007) were of the view that the effectiveness of rehabilitative treatment depended on the kind of sentence the offender is serving and is also influenced by specific environments. The rehabilitation theory would only be considered effective if there is wide and continuous support from a variety of parties such as the institution's employees, the government and others.

Children have great potential for rehabilitation because they are different from adult offenders. Veerman (1992) argued that there is a solid basis for believing that rehabilitation programs for child offenders are more effective than rehabilitation programs for adult convicts. The basis in question is the difference in their level of maturity and culpability. However, there are limitations to the rehabilitation theory which may render it ineffective.

The rehabilitation is usually ineffective for implementation on child offenders who have committed repeat offences, in spite of the fact that rehabilitation should have had a positive effect on them (Nagel & Nam, 2001). Aside from that, Cullen & Wright (2002) added that the rehabilitation theory is faced with the probability of failure if there is an occurrence of problems such as lack of resources, a lack of trained officers to provide

rehabilitative treatment, a deficiency in knowledge related to criminology to diagnose and treat the offenders, abuse of power by the court and the rehabilitation officer, a variation in the orders given to children who are found guilty of the same offence, the incidence of child offenders who had committed serious crimes being forced to live with and mingle with child offenders guilty of only minor offences, and finally, the placement of child offenders in rehab institutions where the conditions are not unlike prison. Cullen & Wright's (2002) views are quite comprehensive, and encompass the whole of the criminal justice system's administration, especially in the way the courts implement this theory. However, the problems listed above can be resolved, as the issue is not a theoretical one but more of an administrative aspect that arises when there are parties manipulating it.

3. The Elements of the Rehabilitation Theory for Child Offenders

The rehabilitation theory focuses on two elements: the child offenders' rehabilitation, and his re-integration into society. The first element is to rehabilitate the child through various means such as behavioural modification, education and reshaping the thought-process. These methods are applied in the justice system to rehabilitate child offenders.

Behavioural modification according societal norms is the main objective in the rehabilitation of child offenders. Brewer & Williams (2005) argued that if a child wants to be rehabilitated, the court must stress on the changes that can and must be made to the child offenders' behavior by taking into account the offender's best interest. Any and all external factors that have influenced the child offender, whether directly or indirectly, can be identified. With that, treatment and rehabilitation may be administered to the individual involved as an alternative to the unwanted behaviour. With the rehabilitation theory, the juvenile court generally leans toward rehabilitation orders that move away from incarceration for child offenders. Cullen & Wright (2002) found that rehabilitation programs are more effective when the justice system concentrates on certain aspects such as stronger focus on changing child offenders who are at risk of repeating their offences and other high-risk child offenders. Besides that, the child offender should also be given cognitive-behavioural treatment.

Secondly, children can only be rehabilitated by being given an education suited to his circumstances (Cullen & Wright, 2002). The education given to child offenders includes making it compulsory for them to learn under a general school system or remedial education (basic reading & writing), or vocational training. These are all essential to the successful rehabilitation of the child offenders for when they return to society so that they have the opportunity to rise above their future troubles. Through education, child offenders have the potential to not involve themselves in criminal acts again (recidivism), and also give them a sense of hope for the future and a change in their values and ways of thinking.

Education is important to most child offenders because they are generally found to have experienced problems in their studies. Among the orders that make education compulsory and are capable of rehabilitating child offenders are which sentence them to school. McShane & Williams (2007) explained that there is a distinct difference between the rehabilitation offered by rehab institutions and facilities found in adult prison.

In a children's rehab institution, there are treatments for mental health issues, therapeutic psychology and education. The rehab institution will educate the child offenders formally as other children are outside. The education of child offenders can be offered in two phases (Messmer & Otto, 1992). Firstly, during the sentence, and secondly, after the child is freed from rehab. In the first phase, the child offender may receive training and preparation to return to society in the future. In the second phase, the child offender must be given guidance counselling and directions. However, Hecht & Habsha (2003) explained their concerns regarding the problem of educating child offenders. For example, untrained staff and an inadequate curriculum may interfere with its implementation, as well as the possibility of the child offender's education not being well-managed. Besides this, child offenders are also found to have received vocational training that is insufficient to the point where it makes it difficult for them to find work once they leave their institutions, and it is this that causes them to relapse into a life of crime.

The third phase is the treatment of the criminal mentality in the child. It must be reiterated to the child that their past offences cannot be repeated in the future. This will shape their mentality so that they want to become responsible individuals. Besides this, these child offenders will be taught to make the right decision and see the consequences of their actions to themselves or others. Brewer & Williams (2005) summarized that rehabilitation programs offered by courts for children contain elements of behavioural modification and reduce the probability of criminal tendencies. The same applies to counselling and group or individual psycho-therapeutic interviews which can assist these child offenders in abstaining from criminal activities. This approach has only been applied at the outset of the 21st century, which involved psychologists and psychiatrists in diagnosing the factors leading to the behavioural problems faced by child offenders and giving them the appropriate treatment to rehabilitate

them. With that, the child offender can be better rehabilitated because each treatment is tailored according to each of their psychological problems. There are also scholars such as Stephenson & Scarpitti (1974) who have voiced their criticism on the rehabilitation of a child's criminal mentality. This is in light of the view that a delinquent personality is one rooted in childhood, thus meaning that the child's way of thinking and acting upon those thoughts is already strongly in place. However, Stephenson & Scarpitti (1974) believe that the truth is child offenders can be educated, changed and rehabilitated, if the right techniques are applied.

The second element in the rehabilitation theory for children is their integration with society. In order to rehabilitate these children, the system must connect them to society, as society will be their guardians and rehabilitators. This is based on the social control theory (Moeller, 2001). Moeller quoted the social control theory that is of the view that children who have a natural tendency to be anti-social must be controlled by society.

There are a number of objectives for integrating child offenders with society as an element of rehabilitation. Among them are to reduce the rate of recidivism, to offer them a second chance at life, to have him return to society as a normal, productive and welcome member of society, to strengthen family ties and to provide him a place in society as a functional member. The integration of child offenders also involves the family component since families are part of society. The family institution may help to raise the effectiveness of the child's rehabilitation process. The family is an important socialization agent, and it can influence and shape a child's personality, values and behavior (Pagnellelli, 2007).

The question is, is it society's responsibility to rehabilitate child offenders? Champions & Mays (1991) state that society must be involved. That society must provide sufficient care to children at risk, and to give them the opportunity to be rehabilitated, especially to those who grew up under great social pressure and stimulating environments. The child alone is not capable of bearing the burden of his crime and society must work together to rehabilitate him. In addition, the rehabilitation theory focuses on the offenders' relationship with society, and gives details on how to integrate them with society. The rehabilitation theory places utmost confidence in human's natural tendency to be easily influenced. Furthermore, Cullen & Wright (2002) are of the view that the rehabilitation sentence must be conducted within society and not in a correctional facility, and that there should be follow-up programs after the rehabilitation is over. It therefore follows that in society is the most suitable place to re-shape child offenders because society will teach and ensure that the child obeys the norms they have set.

So how far exactly society is ready to accept child offenders into their fold after the child has been returned to it? Heckel & Shumaker (2001) revealed that the rights of ex-child offenders to find work and play a part in society are often denied, even when the crime was committed long ago. In fact, society's degree of acceptance is often different according to the situation. For example, a child offender who has killed only because he was abandoned, abused or exploited may be forgiven by society by justifying his actions. But for child offenders who have killed out of rage or vengeance, their society will be one which will not be able to forgive them. Heckel & Shumaker's criticism clearly focuses on society's failure to integrate with ex-child offenders. Society must therefore be more prepared to accept them so that they do not go back to a life of crime. In addition, the juvenile criminal justice system will do its best to protect the identity of a child offender. By limiting access to a child's criminal record, the child can avoid the stigma and negative image society will almost certainly give him following his first offence. If they do not commit any crimes in the future, they have a chance to start a new life with a clean record. It therefore follows that the issue raised by Heckel & Shumaker (2001) is only relevant if the child's identity is revealed to the society he is in.

Aside from that, Fagan (1991) stated that the process of reconnecting the child offender with society will be faced with difficulty, especially in the attempt to use interpersonal skills and societal values in a society that is unstable and unpredictable. Fagan's view has a ring of truth to it, particularly if the child is not prepared mentally and emotionally to face society after completing their rehab. This issue voiced by Fagan may be addressed with the idea given by Pagnellelli (1991) that argues that child offenders can construct positive relations with society via the individuals involved in their case such as the lawyer, judge and social worker. Such relationships can help build the child's trust and values to assist them integrate into society once more.

4. Discussion: Application in Malaysia

Article 1 of Convention on the Rights of the Child (CRC) defines child as every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. Malaysia had ratified this convention in 1996 and several law provisions that related to child had been amended. In Malaysia, Child Act 2001 had been legislated to govern various aspect including juvenile justice. This particular act defines the child as a person under the age of eighteen years; and in relation to criminal proceedings, means a person who has

attained the age of criminal responsibility (10 years) as prescribed in section 82 of the Penal Code.

Despite Act 611 being formed to follow the legal requirements of the (UNCRC), the rehabilitation theory has yet to fully take its place in the juvenile criminal justice system of Malaysia. In fact, only a few orders are found to be based off the rehabilitation theory, which will be discussed in this sub-topic. This matter has consequently resulted in child offenders being continuously subjected to harsh orders by the Courts for Children in Malaysia.

4.1 Approved School

Rehabilitation schools in Malaysia are known as approved schools. By virtue of Act 611, approved schools are places of rehabilitation for child offenders. It must be stressed that approved schools are not the same as the correctional institutes provided for in Act 611, known as Henry Gurney schools. This is because both institutions are different in the theories that form their basis, their nature and their administration. As of today, the approved school acknowledged by Act 611 is named the Tunas Bakti School.

The determination of an approved school is based on the jurisdiction of the Minister. Its construction is aimed to provide education and training, and the children are restricted to the school for reasons stated in Act 611. Aside from that, the Minister also has the power to classify the schools involved according to their specific age groups, and ensure that the child sent there is of the appropriate age. Act 611 also provides that only child offenders aged 10-18 years can be sent to these schools. The court for Children cannot sentence a child below the age of ten or above the age of 18 to an approved school.

Furthermore, the law also specifies approved schools for a number of child categories. Firstly, a child may be sent to an approved school if he is found guilty of any offence. Secondly, children who have not been involved in criminal activity but are at risk of doing so because their parents can no longer control them may also be sent to these schools. Thirdly, any child offender who has committed a misdemeanour but who is considered by the court to be best placed in an approved school to improve his morals. Even though the court has the power to issue this sentence, Act 611 provides that this sentence only be issued with the recommendation of the respective officer in charge to send the child there.

The next question is what kind of offences may receive this kind of sentence? Act 611 gives power to the court to use it, as long as it is appropriate and beneficial, as formerly discussed. In the case of *Sia Yik Hung v PP*, the High Court in Sibu had cancelled the sentence for an approved school that was passed by the Juvenile Court (as it then was) before, i.e. for three years or until the age of 18 years. However, the cancellation of the sentence was made not because it was inappropriate, but because of the court that tried the case. The High Court decided that the Magistrate Court or Sessions Court did not have jurisdiction to try cases related to bribery under the Anti-Corruption Act 1961. The High Court ordered that the child be retried at another Juvenile Court. In another case, *PP v The Offender*, the child offender was involved in the possession of drugs under section 39A (2) of the Dangerous Drugs Act 1952. However after weighing his offence, the High Court rejected the possibility of a prison sentence, fine, or probation, because it wasn't suitable with the age of the offender. The court therefore sentenced the offender to an approved school. It is clear that in these two cases, the court possessed wide discretionary powers to consider the appropriate sentence for the child depending on the facts of the case. The court will issue an order to send the child offender to an approved school. The court will then hand over the child to the police to be brought to the approved school, and the police will hand over custody of the child to the school custodian. Together with the handover, the Court for Children must submit all the information that should be made known to the approved school. If an order for placement in an approved school has been issued, but the child has been hidden by someone or someone has prevented the child from going to the school, that individual will have committed an offence. The court may also issue the same to anyone who acts as such, and they must present the child to the court.

The period of detention in the school is for not more than 3 years or until the age of 18 years. However, this period may be extended if it has expired. Act 611 only provides for extension of the sentence if it is close to ending and the child needs training programs to find suitable work. The extension of the detention must have the permission of the Board of Visitors, but it cannot exceed 6 months or 18 years of age. Furthermore, any extension cannot be related to the child's behavior that has not yet been remedied.

Seeing as the sentence is based on the rehabilitation theory, rehabilitation programs are also given to the child once he is out of approved school. An aftercare order after his release is given by the Court for Children while issuing the order for an approved school. The surveillance period is for only a year, and the offender will be observed by an officer or any party chosen by the courts Child Welfare Committee.

If the child offender runs away from an approved school or does not go back to the school after term break, the child may be arrested without a warrant and taken to a court for children in the area where he was found or the district where the school is located. If the runaway child is not yet 18, the Court for Children must order that he be brought back to the approved school or is sent to another approved school. There are three sentence periods that may be issued by the court. Firstly, the period can be the same as being outside of school. Secondly, the remainder of the offender's sentence. Thirdly, any period that does not exceed six months. The same choices are given to child offenders who have reached the age of 14 years, but the court may also send these children to a Henry Gurney school if the situation calls for it on the recommendation of the respective officer. It is an offence to anyone who assists in moving a child to the point where they escape from an approved school. Act 611 determines the form of the crime as such: the removal of a child from an approved school without permission, directly or indirectly being aware of assisting his egress, hiding the child, or preventing him from returning the approved school. Whosoever is charged with this offence may be fined up to no more than RM10, 000 or imprisonment for not more than five years or both. Based on observation, the study finds that many inmates of the Henry Gurney School are child offenders who had run away from an approved school (Sekolah Tunas Bakti). Their actions were met with a harsher punishment, i.e. being sentenced to Henry Gurney School.

It can thus be concluded that approved schools are a form of rehabilitation sentencing that stresses on the shaping of values and morals. The theory that forms the basis of this sentence pays more attention to the best interests of the child.

4.2 Community Service

Community service orders are not clearly provided for in Act 611. In implementing community service for child offenders, judiciary bodies have used the provisions in section 93(1) (e) Act 611 to give the sentence of community service order to child offenders. This provision is actually part of the additional terms that may be given by magistrates to child offenders with good behavior orders.

Actually, Criminal Procedure Code (Act 593) states that the order can only be given to young offenders aged 18 to 21 years old. This means that there are no other clear legal provisions that allow child offenders under the age of 18 to receive community service orders. Furthermore, the number of credit hours allowed by law is 240 hours. The law has also determined that the court has the power to identify the form, nature, duration, terms and location of the community service. Even prior to that, the law has construed community service as any work, service or action that is beneficial to society in general. The responsible government body to implement community service is the Community Welfare Department. Also, there must be a revision of the laws in Act 611 to ensure that community service can also be a sentence for child offenders of a reasonable age. The court for children must be given specific power to enable them to issue such orders for child offenders. These new provisions must cover issues such as number of credit hours, the form, method of implementation, and the observing party, similar to Act 593.

5. Conclusion

It can be concluded that the rehabilitation theory is extremely suitable for application to child offenders and not just adult offenders. It is this theory that has breathed life to the juvenile criminal justice system and courts for children across the world. The philosophy and conceptual theory of rehabilitation stresses on the best interest of the child and promotes treatment based on the individual by focusing on elements such as behavioural modification, education and integration with society.

This article summarizes that the rehabilitation theory is more suitable and beneficial to child offenders because it has their best interests in mind. However, this does not deny the benefits and effectiveness of orders based on the deterrence theory on children. Clearly, the child's interest in court will only be protected if orders based on the rehabilitation theory are given priority by the courts.

This article has discussed the application of the rehabilitation theory in two orders, i.e. the approved school sentence and community service. Both these orders are rehabilitation orders that are popular in many countries, including those which adhere to a common law system. Malaysia must therefore attempt to provide special laws to allow community service to be implemented as a sentence for child offenders.

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