

Study on Effectiveness of Community-Based Corrections Mechanism in Sri Lanka as an Alternative Method to the Custodial Punishments

Prof. M.W. Jayasundara., D.M. Gamini Samarakoon

University of Sri Jayawardenepura, Sri Lanka

Abstract: In this study, the success of Sri Lanka's system of community-based corrections is discussed, with a focus on its usability. The research problem concentrates on how far the community corrections Act has been successful in achieving its objectives. For this purpose, 100 offenders who were undergoing treatment under the community corrections Act were randomly selected and interviewed using a semi-structured interview schedule. Apart from that, an interview schedule was used to collect data from randomly selected 12 community corrections officers and five lawyers. The study revealed that the main objectives of the community-based corrections act had not been achieved for simple reasons such as overcrowding of prisons, the decline in the imprisonment of offenders for minor offences, and sending them for community-based corrections. Reduction of reconviction and recidivism and rehabilitation have not been maintained at a satisfactory level for the last 20 years. The study has revealed that the lack of knowledge and misconceptions about the Act and its process, non-compliance with the provisions of the Act, failures in the Community Corrections Department, and the lack of human and physical resources are the main reason for the ineffectiveness of the corrective mechanism. It was found that no considerable amendments to the Act would be necessary if it were to be implemented properly. Finally, the study has recommended improving awareness among the judges, lawyers, and the general public; issuing guidelines for magistrates to properly implement the provisions of the Act; establishing an organized institution to implement community corrections orders; appointing qualified officers, and organizing proper training for them; providing of due facilities for the officers for the effective implementation of the mechanism.

I. BACKGROUND OF THE STUDY

Since the most primitive age of human society, sentencing has been identified as a way of inflicting punishment on individuals who do not conform to the behavioral patterns accepted by a society or group. People believed that crime was a violation of the divine system of rules by the evil element in society. Therefore, they considered that the wrongdoer should be given suitable punishment so that he would abstain from committing evil (Alarid, 2016:5). They thought that the more severe the punishment was it would be not only painful but the better to be free from evil; not only for the wrongdoer but also for his family and friends. Therefore, painful punishments such as the death penalty, whipping, or caning in public were frequent. The main idea of the punishment was to deter the offender from repeating the same course of misconduct. The objective of the punishment was often quite restricted.

However, with the emergence of modern human rights concepts after World War II, the methods of sentencing have drastically changed (Qafishah, 2020:172). Most countries meted out capital punishment to criminals involved in grave crimes. Incarceration has been identified as the most common way of sentencing. Today, the objective of sentencing has developed beyond the level it used to be. It is aimed at discouraging the offender from committing further crimes (individual deterrence), assisting the offender to develop his mindset not to offend again (rehabilitation), preventing the offender from committing further crimes through imprisonment (incapacitation) and expressing society's disapproval of the crime (denunciation) (Jain, 1995:88-91). In order to achieve the aforementioned objectives of punishment, most countries have resorted to custodial sentences. A custodial sentence is a judicial sentence punishing the convicts were mandatory custody either in prison or in some other closed therapeutic or educational institution. The word suggests that the sentence should require the suspension of an individual's liberty and the assumption of responsibility for the individual by another legal body or institution.

The time has come to rethink custodial punishment as well, at least for certain offences. Researchers and sociologists have observed and also it has been widely accepted today that the imprisonment of minor offenders, young offenders, drug offenders, and offenders who are punished with payment of a fine but are not in a position to pay such fines are kept with the other criminals who have committed serious offences, would lead them to be caught into a vicious circle of criminals and thus they become criminals. Further, it is also an accepted fact that incarceration does not meet the objectives of deterrence and rehabilitation (Livings, 2020:17). This can cause an increase in the crime rate in society and the collapse of a healthy social structure. Today, both criminologists and jurists have agreed that alternative sentencing methods need to be followed for effective individual deterrence and rehabilitation of minor offenders, younger offenders, and first-time offenders. Therefore a tendency has emerged in countries around the world to have recourse to the community-based corrections system as an alternative to custodial sentencing methods. Community-based corrections system includes the methods such as (i) Verbal sanctions such as an admonition, reprimand, and warning; (ii) Conditional discharge; (iii) Economic sanctions and monetary penalties, such as fines; (iv)

Confiscation or expropriation order;(v) Restitution to the victim or a compensation order; (vi) Suspended or deferred sentence; (vii) Probation and judicial supervision;(viii) A community service order; (ix) Referral to an attendance center;(x) House arrest; (xi) A combination of the measures listed above; (xii) Furlough and halfway houses; (xiii) Work or education release (Hirsch, 1990:162-173).

Community-based corrections started in Europe (Rapisarda, Byrne: 2020:7-8). Now it is widely adopted in other countries too. It is a way of correcting those who have committed minor offenses that do cause serious social consequences or those offenders who have truly behaved well in imprisonment. Overcrowding prisons, as well as the cost of institutional corrections, has become a growing issue for the judicial system of many countries in the world. On the other hand, public investment in imprisonment has not yielded the expected social security. Hence, community corrections mechanisms, in recent decades, have become popular as an effective alternative for the problem of overcrowding of prisons while providing a different way of monitoring convicted offenders during the period of punishment.

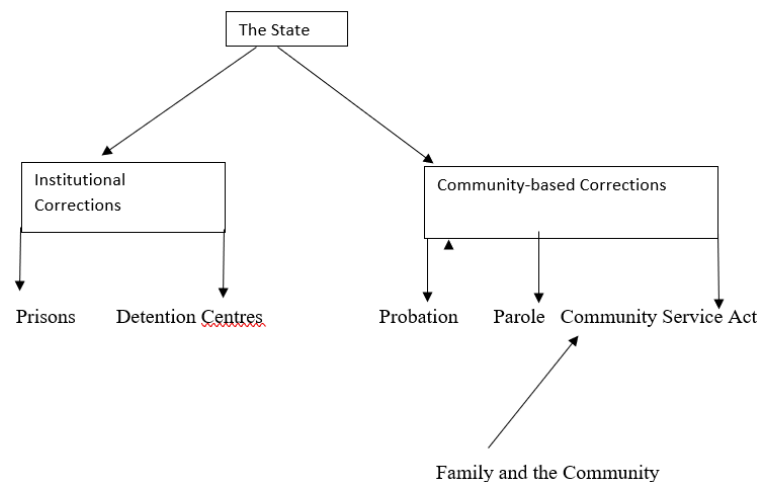
Sri Lanka has been practicing “Community Services” as an alternative to prison sentences since 1980. In the 1970s, with the sudden and unexpected overcrowding in prison, some reforms such as the “Home Leave”, “Release on License Scheme”, and “Release on license” were introduced. In this context, a Community Based Corrections mechanism was introduced to Sri Lanka through the Community Based Corrections Act No: 46 of 1999. The preamble to the Act states that this Act was introduced for the implementation of community-based corrections orders made by courts in place of the sentencing of imprisonment. The scope of the Community Based Corrections was promulgated by a Gazette Notification and at the same time, the operation of Section 18 of the Criminal Procedure Code Act, No: 15 of 1979 which was used to grant community work orders ceased to exist. With the introduction of this new Act, the Community Based Corrections Mechanism has become one of the most popular alternative sentencing mechanisms in Sri Lanka. Since its introduction in 1999, 20 years have elapsed. After 20 years, it will be worthwhile to evaluate the success of the Community Based Corrections Act. Therefore, this paper has taken up the challenge to evaluate the practical applicability of the Act.

Recidivism has been problematic in Sri Lanka after the application of both the custodial punishment system and the community-based corrections system. As it is not clear whether the custodial or non-custodial system causes a problem it is necessary to pay attention to this regard. If the problematic situation continues to prevail over the implementation of the community-based corrections system then the very purpose of the punishment and the purpose of the Act are negated. Therefore one of the aims of this research is to study the successfulness or the usefulness of the Act.

Even though twenty years have elapsed since the introduction of the act, the researcher harbors doubts, due to many reasons

such as lack of proper implementation systems, processes, and lack of funding whether the Community Based Corrections Act No: 46 of 1999 has met its expected goals. To achieve its objectives, Community Based Corrections Officers have been appointed for every Magistrate’s Court situated within the judicial Divisions gazetted by the minister from time to time under Section 1 (3) of the Community Based Corrections Act. Their number has gradually increased and at present, 125 regional Community-based Corrections Centers are in existence throughout the country attached to 125 Magistrate and Circuit Courts (Ministry of Rehabilitation and Prison Reforms, 2018:1). Every regional community-based corrections center consists of a community-based corrections officer and one or two assistants. Most functions and responsibilities delegated to the commissioner of community-based corrections under section 4 of the Act are carried out via these regional centers. Acquisition of correctional orders and the organization of vocational training programs, counseling, corrections programs, and development programs are carried out by the regional centers with the participation of the offenders under community-based corrections orders. This delegation of power has made the function of the commissioner run smoothly and it has been effective in the long run. Therefore, this paper has attempted to analyze the existing corrections system introduced by the Community Based Corrections Act and identified loopholes, if any, and made recommendations for the effective implementation of the community-based corrections system in Sri Lanka.

Conceptual Framework



According to the conceptual framework of this study, the State controls and maintains the criminal justice system which consists of the police, judiciary, and corrections. Both institutional corrections and community-based corrections operate under the umbrella of corrections. Prisons and other detention centers and rehabilitation centers operate mainly as institutional corrections while programs that are conducted in the community and outside the prisons for offenders are considered community-based corrections. Although community-based correctional programs are operated in the community, they are carried out under the purview of State

correctional officials and State policy plans. The community intervention in these programs seems to have minimal.

According to the theoretical framework of this study, scholars argue that community-based corrections have failed and they create a “minimum security society” through the State intervention in offenders and their families through community-based corrections (Lowman, Menzies, and Palys, 1987:219). Moreover, community-based diversion programs are considered to be “widening the client net”, that is filling these correctional programs with minor offenders whose offences would not have resulted in a conviction unless community-based programs existed (Cohen, 1985). This study tries to find out the relevance of the above conceptual framework and theoretical framework for the State-run program of the Community Service Act of Sri Lanka.

Research Problem

The Community-Based Corrections Mechanism is administrated through the Department of Community-Based Corrections. A considerable number of offenders have already undergone community corrections orders. However, even after 20 years of the introduction of this mechanism, it is doubtful whether the objectives of the Act have been achieved. It is admitted that recidivism and reconviction are continuous occurrences and also there is no decline in the overcrowding of prisons. As such, there is an urgent requirement to evaluate whether the community-based corrections Act has met its expectations since its introduction to the Sri Lankan legal system. In looking back over the past twenty-year period, during which the Community Based Corrections Act No: 46 of 1999 has been in operation its effectiveness has not been assessed in depth so far. Hence, this study is designed to analyze and evaluate whether the Community Based Corrections system introduced by Community Based Corrections Act No: 46 of 1999 has been able to meet the purpose and expectations of the Act.

Objectives of the Study

1. To identify the current community corrections system adopted in Sri Lanka and to ascertain its effectiveness.
2. To identify the issues related to the practical aspects of the community-based corrections system.

II. METHODOLOGY

To achieve the research objectives, a complete examination of the custodial punishment system in Sri Lanka and the Community Based Corrections Mechanism as introduced by Act No: 46 of 1999 with special attention was given to the practical aspects of its applicability. Therefore, the researcher had to rely on a mixed research methodology to collect qualitative and quantitative data.

The present study was conducted by the researcher through semi-structured interviews with community correction officers, prison officers, judges, and practicing lawyers. The primary data collection was personally conducted by the researcher

upholding the highest ethical standards. To conduct the interviews, a sample of participants was selected.

The Sample

The sample group was limited to hundred offenders under community corrections orders. They were divided into three groups including fifty offenders from the 9 Magistrate’s Courts in Hulftdorp; twenty-five offenders from the Maligakanda Magistrate Court; and another twenty-five offenders from the Colombo Fort Magistrate Court.

Twelve officers of the Community-Based Corrections Department from various parts of the country were interviewed on the telephone. There was no opportunity to conduct interviews with the prison officers from the Anuradhapura prison except with one officer. However, it was possible to obtain answers to the questionnaires sent to all five prison officers. Further, the researcher was successful in interviewing five Lawyers practicing in magistrate courts.

III. FINDINGS OF THE STUDY

Table 1: Age group of the offenders

Age	Number of Offenders	Percentage
Less than 18yrs	2	2
Between 18-35yrs	59	59
Between 36-60yrs	39	39
Total	100	100

Source: Field Research -2020

As Table 1 indicates the majority of offenders who come under the Community Corrections Act belong to the age category of 18-35 years. The least number of offenders 2% represents the age group less than 18 years. But there are a considerable number of offenders (39%) who represent the age group of 36-60 years.

Table 2: Marital Status of the offenders

Marital Status	Number of offenders	Percentage
Unmarried	57	57
Married	41	41
Separated (but legally married)	02	2
Total	100	100

Source: Field Research -2020

The majority of those who have committed drug offenses or minor offenses and were thereby released under the Community Corrections Act were unmarried and their number stands at 57%. The rest were married and 2% of them had become separated from their spouses. The cause for the separation seems to be the criminal behavior of the husband.

Table 3: Level of Education of the Offenders

Level of Education	Number of offenders	Percentage
Not attended school	03	3
Year 1- Year 5	10	10

Year 6 – Year 11	58	58
Pass O/L	24	24
Pass A/L	04	4
Graduated	01	1
Total	100	100

Source: Field Research -2020

Table 3. indicates the extent of the offenders’ educational level. Accordingly, 58% of the offenders have studied from years 6 to 11 years in their respective schools and 24% have passed the O/L examination. The majority of them have completed their secondary education. Only 3% of the offenders have never been to school. The table shows that even the graduates tend to violate the law by committing minor offences such as alcohol and drug-related crime.

The achievement of the Objectives of the Community Service Act

The Community Based Corrections Act 1999 was introduced to the country with several objectives anticipating considerable changes in the criminal justice system in Sri Lanka. To achieve these objectives, the Community Corrections Department was established. The main task of the Community Corrections Department is to achieve the objectives of the Act. The other objectives of the department include the diversion of offenders sentenced to imprisonment for minor offenses towards community-based corrections through the enforcement of the community-based corrections Act no. 46 of 1999, reduction of congestion in prison, and the incurrence cost in this regard through the decline in the imprisonment of minor offenders, use of their labor to develop the country through community corrections orders, working towards the mental and spiritual development of the offenders under community-based orders and assist the families of the offenders under the community-based corrections and people who run the risk of becoming offenders in search of better economic, social and spiritual life.¹ The question is whether the department of community corrections has been able to achieve these objectives during the tenure of its office.

Table 4: Previous Convictions of the offenders for any other criminal offences before the present conviction

	Total No.	Percentage
Yes	56	56
No	44	44
Total	100	100

Source: Field Research - 2020

Table 5: Various Programs were conducted from 2011 to 2018 by regional community-based corrections Centers.

Program	Number of Programs							
	2011	2012	2013	2014	2015	2016	2017	2018
Counseling and Drug Prevention	750	551	465	1320	2591	3572	2252	3378
Shramadana/ Free service Programme	47	50	120	669	936	1274	850	792
Religious Programmes	47	19	53	274	387	407	172	278
Vocational Training Programmes	15	95	39	226	254	236	156	292
Medical Treatment (Number referred)	06	25	966	Not categorized	222	1004	2280	4282

Sources: Community-Based Corrections Department

It can be observed from the figures in above table 5 that from 2013 to 2018 there was a considerable increase in the number of programs organized for the rehabilitation of offenders. These figures show the efforts made by the Department of Community-Based corrections to achieve its primary targets. Table 05 further illustrates the fact that a comparatively large number of counseling and drug prevention programs were conducted in 2018 as compared to the number of programs conducted in 2013. When considering other programs, there is a huge increase in the number of offenders presented for medical treatment. However, the effectiveness of those programs remains questionable.

The view of the researcher is that if the rehabilitation process is successful, the number of reconvictions should be less than the number of first-time offenders. Yet, it is quite the contrary. According to the figures for re-conviction in 2011, the number of reconvicted offenders was 58.4% and in 2017 it was 52.7%, but by 2019 the number has declined to 44.8%. Therefore, comparing the re-conviction rate with the rehabilitation programs implemented as shown in Table - 05, can be assumed that process of the offenders through community-based corrections orders has not functioned successfully.

When the figures in Table – 05 are examined it is apparent that except for referring offenders for unpaid community work, much attention has not been paid to the other conditions described under section 9 of the Community Based Corrections Act. Section 9(2) of the Community Based Corrections Act explains the purpose of incorporating conditions into community-based corrections orders. They are as follows;

- (b) Enabling any personal factors which contributed to the offender’s criminal behavior to be assessed.
- (c) Providing an opportunity for the offender to recognize, take steps to control, and if necessary, receive treatment for, those factors; and

- (d) Enabling an offender with needs in areas directly related to his or her criminal behavior, to participate in programmes designed to address those needs” (Community-based Corrections Act No. 46 of 1996).

Thus, it is clear that the Community Based Corrections Act intends to study the causes of engaging in crimes and remedy the situations while rehabilitating the offenders as a whole. But as seen from the above figures, this process has not been successful.

This is further evident from the number of drug addicts in the country. In 2019, out of 29,172 total numbers of prisoners, 18,625 were drug-related offenders. This indicates that 72.7% of the offenders admitted to the prisons in 2019 were convicted for narcotic drug offences, excise offences, appearing in public places drunk, and theft. (see Table 01 above). Further, most numbers of offenders convicted in the magistrate Courts are convicted for possessing illegal alcohol or brewing it, having cannabis, heroin, and other similar drugs, public nuisance by drunken behavior, and committing petty thefts. Figures given in table – 06 below show the statistics relating to the nature of the offences by the offenders who were referred to community corrections in 2019.

Table 6: Offences for which the community corrections orders were obtained

Offence	Total No.	Percentage
Illicit Liquor	03	3
Drugs (Category)	89 Heroin (77) Cannabis (06) Ice (04) Ash (02)	89
Public nuisance	00	00
Theft	02	2
Cheating	03	2
Illicit weapon	00	00
Keeping stolen property	00	00
Other	03	3
Total	100	100

Source: Field Research -2020

is vital to identify the reasons for the increase in offences so that proper punishment could be meted out to overcome the situation. There could be many reasons for drug offences. One of the main reasons for use of illegal alcohol, heroin, and the retention of cannabis is the addiction to alcohol and drugs. Therefore, it is necessary to provide them with medical treatment and counseling to rescue them from the situation. Some get addicted to alcohol or narcotics because they are not properly recognized by society or given a due place. There they lack the necessary self-confidence to meet challenges in life. Unless they are properly guided and rehabilitated, imprisonment would be no use. Rehabilitation can be properly achieved only through the community corrections itself, but not

inside a prison. Therefore, the motto of the Community Based Corrections Act should be inter alia, bringing out people with self-confidence who will ultimately render a useful service to society. Therefore, the main focus should be on their personality development and obtainment of useful services from the offenders and this could be achieved by referring them to educational, vocational, personal training, or development programmers. The objectives of the punishment could not be achieved by merely imposing imprisonment or fines on the offenders. They should be dealt with with a therapeutic approach. Many tend to brew illicit liquor or resort to petty stealing due to abject poverty and therefore they will be further pressurized if a fine was imposed on them. Still, some others continue to engage in illegal activities to pay out their fines. As this is a recycling process there seems to be no way out. Therefore, imprisonment is not the proper punishment for drug offenders.

This young, unmarried, and uneducated group of offenders inevitably need a correctional mechanism instead of placing them in a prison. Further, drug offenders essentially need drug treatment and counseling. But as per table – 05, several programs conducted for the rehabilitation of offenders and the medical treatments provided to them are not satisfactory.

In the circumstances, if the courts refer offenders for community-based corrections merely to minimize the numbers admitted to prisons rather than carrying it out in a manner that would serve the purposes laid down in section 9 (2) of the Community Based Corrections Act, the core purpose of the entire Act can never be achieved. The lack of interest shown in this respect by the community-based corrections department is the main drawback of this process. Programs conducted by the regional community corrections centers are hardly sufficient to rehabilitate the offenders. Most centers do not adequately and qualitatively conduct counseling programs. The research reveals that the rehabilitation process is at a minimum level as a result of the above factors.

All these figures analyzed above ultimately indicate that the community corrections department with the community-based corrections Act has not been able to achieve its objectives of reduction of congestion in prisons in subjection of minor offenders to community corrections instead of imprisonment, the effective rehabilitation of offenders, abatement of recidivism and the allied objectives of the community-based corrections department. Therefore, it is obvious that the community corrections Act has not been successfully implemented.

IV. DISCUSSION

Problems Identified in Community Corrections Program

In this research, the researcher has identified the following factors that stand against the successful implementation of the community-based corrections process to rehabilitate offenders in Sri Lanka.

Lack of knowledge about the Community Based Corrections Act and community-based corrections process.

The Community-based corrections process together with the community-based corrections Act has been in operation in the country for over 20 years. Overall research findings have revealed that some magistrates, lawyers, community corrections officers, and offenders are not sufficiently aware of the community corrections Act and the subject of community corrections in general.

The researcher got an opportunity to discuss the community corrections Act with five lawyers practicing law at the magistrate's court of the Colombo judicial zone. Of them, two lawyers did not have a proper idea about the Community corrections Act, yet they said they plead for "Community Service" for their clients. According to the provisions of the Act, offenders can be referred to supervision, counseling, medical treatment, educational, vocational, and personal training or development programs. However, magistrates pay the least attention to these aspects probably because of the least knowledge about the Act as well as its purpose the enactment is rather a time led in scope. Most of the offenders are referred to as "community services" at the court itself and other related public places mainly with the view to providing an easy solution to the problem of finding labor for their activities, but not in line with the pure purpose signified in the community corrections Act.

The Act itself requires the consent of the offender before a community corrections order is imposed. Therefore, offenders' knowledge of the Act is essential for the proper implementation of the Act. However, it appears that the offenders also do not have adequate knowledge of the community-based corrections Act and its process. They merely request community corrections orders to avoid being sent to prisons. It is interesting to note that a couple of offenders answering the questions "Do you think these types of sentences are better than imprisonment? and What are your reasons?" answered that it is a shame to give consent for community correction orders. Therefore, this research revealed that there are some offenders (even though the number is less) who perceive community corrections orders as a shame (shaming experience) and thus they prefer to pay the fines even by obtaining money on credit or perhaps prepared to go to prisons if they are unable to pay.

Further, 68 offenders out of 100 expected their other economic, social, and family issues be resolved by the community corrections process. Community corrections officers said that because of this attitude, they found it difficult to perform their responsibilities. These types of practical difficulties occurred merely because the offenders or the general public did not have any proper idea as to what community correction was and its purpose. This type of misconception should be dispelled.

During the discussions, 60% of correctional officers said that when they explained the community corrections orders and their benefits to the offenders, certain offenders opted for a community corrections order to get rehabilitated. This brings out that if the offenders are provided with adequate knowledge

about the Act, they are willing to grab the opportunities available to them. Therefore, a good grasp of the Act and its purpose are of vital importance.

Misconceptions / Negative attitudes about the Community corrections process

The success of any project would depend on the correct attitude of the people involved in it. However, during this research, it was revealed that some magistrates, lawyers, community corrections officers, offenders referred to such orders, and the general public at large showed very negative attitudes towards the community corrections process. It also appears that the community corrections system has not yet been identified as one which would amend the life of an offender through rehabilitation and avoid the recurrence of crimes. It is still being considered by lawyers and offenders as a mechanism for avoiding imprisonment. Sometimes even magistrates do not consider the community corrections order as a direct sentencing method. They tend to consider it as a measure that can be adopted in the absence of any other sentences. Another obvious truth is that certain offenders feel ashamed when they get a community corrections order. On the other hand, the general public misconceives the community corrections order as a petty sentence. Therefore, the deterrence aspect of punishment would not be achieved as expected. This sort of misconception and wrong attitudes negate the whole purpose of the community-based corrections Act. The same type of attitude among the lawyers and judges makes it much more difficult to eliminate the misconception among the general public.

Another critical complaint received from the community corrections officers is that community correction orders would be issued only when an application is made to the court for a community corrections order, but most of the time lawyers are not asking for a community corrections order. According to the community corrections officers, the truth is that the lawyers do not want the client to be sent to community corrections for rehabilitation. According to them, lawyers are more concerned about the fact that many accused will re-offend so that they can thrive on the cases. Appropriate steps should be taken to change this type of attitude among lawyers.

Non Compliance with the provisions of the Act

It was observed during the research that the community corrections process does not operate as per the provisions and guidelines of the Act. This non-compliance with the Act is one of the main reasons for the unsatisfactory functioning of community-based corrections. When going through the case records and orders of the Magistrate's courts, it was found that community corrections orders were imposed only when requested by the lawyer or offender himself. Most of the time, these orders are issued even without calling for a pre-sentence report.

The community corrections officers said that they were not in agreement with this practice which involves great difficulty in the implementation process. They added that the most serious problem the department encountered was that the reference for

community corrections orders was done by the magistrates only on the request made by the offenders or lawyers without any consultation with the community-based corrections officers and this is totally against the provisions of the Act. Those officers say that as a result of this non-compliance with the provisions of the Act, the offenders who deserve to receive the community corrections orders cannot be properly identified. Community corrections officers are the most suitable persons to decide the best order for the rehabilitation of the offender, as they have been trained in that domain. However, it seems their expertise is not made use of in selecting the offenders for the community corrections order. Community corrections officers are of the view that if they are allowed to submit a pre-sentence report considering the offender's family background, employment history, pre-conviction, family details and causes to commit offenses, etc. they would recommend the most appropriate community corrections order for the offender. However, this does not practically take place the officers of the department are of the view that the sole intention of the act will be retarded by the fact that the offenders deserving of community corrections orders could not be identified due to the difficulty in tracking necessary information about them. Section 5 of the Community Based Corrections Act provides that the offenders to whom community corrections orders could be issued and on such occasions a pre-sentence report should be called for from the community correction officer to recognize the suitable ones.

The other major complaint received was that there was no uniformity in the community correction procedures adopted in the courts and also there lacked uniformity in the orders issued. The community corrections officers complained that as the different judges followed different procedures of different courts, it is not easy for the community correction officers to get used to one uniform system. All these have drawbacks as the procedure in the Act is not followed.

Failures of the Community Corrections Department

The community corrections officers were also of the view that there existed no proper organizational structure to activate the community correction system. They say that there is no State controlled systematic body to undertake the offenders and rehabilitate them through it and that the community corrections department is not strong enough as it also functions like any other government department. Further, it was said that there was no coordination between the different institutions. The corrections officers complained that they had to do all their work at small corrections centers where there were only one or two officers. Therefore when there is a large number of offenders, these two or three officers find it difficult to supervise them, identify due programs, and rehabilitate them. Two offenders who completed the questionnaire said that as the corrections officers were busy, they did not get much time to talk to them. Even though it is said by only 2% of the total offenders interviewed, the point raised by them is of considerable importance.

Lack of Human and Physical Resources

The other main obstacle identified by the researcher was the lack of human and physical resources. Community corrections offices complained that there were shortages of assets in the community corrections department to maintain the process. Particularly adequate facilities were not available in the regional offices to implement community corrections programs. Some officers were not provided with the minimum facilities like furniture and stationery. There are no separate buildings for community correction officers. Most of the community corrections officers carry out their duties in a small room or a couple of rooms within the court premises.

Some of the community corrections officers interviewed by the researcher said that there should be separate community corrections centers and they should be located outside the court premises. In their opinion, those officers should have the liberty to run community corrections programs without interference from the court or its registrar. Especially they were of the view that the court registrars did not see any difference between "community service" under Criminal Procedure and "community-based corrections orders" under the Act.

Not only the community corrections officers but also two of the offenders in their answers to the questionnaires revealed that when they came to the court premises, people including the police officers humiliated them and therefore they suspected that the community corrections office was located outside the court premises.

Amendments to the Schedule of the Act

Out of the total interviewees, no one suggested any amendments to the Act. However, most of them suggested that changes be made to the schedule of the Act. They pointed out that according to the schedule of the Act, an offender who defaulted on payment of a fine below Rs. 3,000/-, would be given 50 to 75 hours of unpaid community work. If an offender is ordered 60 hours of unpaid community work, he has to work for 7 or 8 days to cover those 60 hours, assuming that he works 8 hours a day. If he is engaged in paid labor work he can earn a minimum of Rs. 1,000/- a day which implies that he can earn Rs. 3,000/- in 3 days. Therefore, rather than working for 7 or 8 days, offenders opt for the payment of the fine, even obtaining a loan from somebody, or if not he tends to engage in another criminal activity to pay this amount after having been released from the court by a community corrections order. Consequently, the community corrections department finds it difficult to achieve its target of rehabilitation and correction of the offenders. Therefore, the corrections officers suggest that the schedule of the Act needs to be amended.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

Punishment is an indispensable part of the criminal justice system. In the most primitive age of human society, the objective of the punishment was retribution. With the advancement of human rights, the objectives of punishment

changed into deterrence, incapacitation, rehabilitation, and restoration. As of today, imprisonment is the common mode of punishment. However, due to the overcrowding of prisons, the failure of rehabilitation, and the reformatory process in prison, and for several other reasons, community-based corrections came into being as an alternative to imprisonment.

In Sri Lanka too, the government makes higher spending on prisons though the effectiveness of it is not as expected. Prison overcrowding and recidivism keep increasing. In addition when offenders have been imprisoned the family members become subject to greater mental agony. Therefore, the Sri Lankan government with the objectives of *inter-alia* being an alternative sentencing method particularly to reduce overcrowding of the prisons and to reduce the number of prisoners who go to jail on default of payment of fines has stepped into the path of community-based corrections by introducing Community Based Correction Act in 1999. Twenty years have passed since the Act was introduced.

This research was conducted to study the said community corrections system introduced by the community-based corrections Act, ascertain its effectiveness, providing recommendations for systems and process strengthening of the community corrections system.

As mentioned in the conceptual framework Western scholars point out failure in community-based correctional programs in the world but the community service act operates in Sri Lanka shows positive results. Over twelve thousand offenders are released annually under this program and thereby redress the problem of prison overcrowding. Further, the assumption of “widening the client net” through these programs means filling these community programs with minor offenders whose offenses would not have resulted in a conviction unless community-based programs prevailed. The present study does not support this as the offenders are referred to community service orders after the conviction has been made by the court. Consequently, the court has the power only to send them either to prison or order them to pay a fine, otherwise, the court cannot release offenders without any punishment as western scholars argue, even if they have committed a minor offence. It is believed that the state officials, community members, and family members of the offenders are taking care of the security aspects of offenders and it is their responsibility to keep vigilance upon offenders who are in the community service order so as not to violate the conditions of the order and deviate from their rehabilitation process and it that sense this study assume community service act and its process lay the path for a minimum security society.

The study revealed that although there are properly constituted provisions in the Community Based Corrections Act, continuous prison overcrowding and the increasing rate of reconvictions & recidivism shows that the community corrections system has failed in the country due to certain weaknesses in implementing the correction process though it has been in operation for over 20 years.

If any correctional program is to be successful, it is essential to have a piece of wide knowledge about that program or Act and its process by those who are directly involved in the process. In addition to that, the general public should know about the program at large. The findings of the study indicate that even lawyers, magistrates, community correctional officers, and the offenders who are involved in this community service process do not have sufficient knowledge about the community corrections Act and its process. For them, the Act is only a tool for avoiding offenders being sent to prison and avoiding being punished with fines.

Another obstacle to running the community service Act properly is that the provisions and guidelines of the Act are not correctly followed by the officers involved. The findings of the study indicate that community corrections orders are imposed only when requested by the lawyer or offender himself. It is a basic requirement that a community service order is imposed upon an offender after considering the pre-sentence report submitted by a community correctional officer yet most of the time, these orders are given even without calling for a pre-sentence report. Some magistrates impose community corrections orders without consultation with the community corrections officers which is totally against the provisions of the Act. Consequently, proper persons who deserve community corrections orders cannot be identified.

The findings of the study suggest that some officers and offenders referred to this program do have wrong attitudes about the community corrections process. It also appears that the community corrections system has not been recognized yet as one which would correct the life of an offender, rehabilitate offenders and prevent recidivism. Consequently, some offenders feel ashamed when they get a community corrections order. Even some magistrates consider community corrections orders as an optional sentence rather than a direct sentencing method. The general public also thinks of it as a petty sentence. This misconception and wrong attitudes regarding the community service Act make it difficult to achieve its objectives of the community service Act.

The dearth of human and physical resources for the department of corrections has adversely affected the functions of the community service process. Owing to the lack of correctional officers in the respective judicial divisions and the lack of office spaces for correctional service create problems for offenders as well as correctional officers. In some judicial divisions, offenders who are under the community service Act do not get enough time to discuss their matters with correctional officers. Further, the lack of training and experience for correctional officers hinders the identification of the causes of the criminal behavior of offenders and the making of recommendations to the court on which conditions to be applied for offender rehabilitation. Therefore, as it is indicated by the finding of the study correctional officers need proper training as to how offenders’ problems are identified and the way offenders are rehabilitated avoiding reconvictions of offenders. Some offenders suggested correctional offices be established outside the court premises as they are humiliated by some police

officers when they are in the court premises. To resolve the problems and obstacles identified, the researcher recommends the following steps to be implemented.

Recommendations

During the research after having analyzed the information collected and the through the discussions with the relevant officers and after studying the academic article written on the subject, the researcher, identified several obstacles that hinder the successful operation and smooth running of the community-based corrections process. The researcher has realized several steps to be implemented, as remedial measures, to achieve the target of the community-based corrections Act.

Improving and Increasing Awareness about the Community Based Corrections Act and its purposes.

As it has been observed, one of the main obstacles to the proper implementation of the Act is unawareness of the Act. To overcome this issue, it is necessary to educate magistrates, Lawyers, community corrections officers, offenders, and the general public about the provisions of the Community Based Corrections Act. Awareness programs should be implemented throughout the country and such awareness programs should not be mere awareness of the Act and procedure, but special attention should be given to the importance of the community corrections Act and the advantages of proper implementation of the same. Especially judges and lawyers should be educated as to why this type of Act has been imposed and what can be achieved in society from proper implementation of it.

Guidelines for magistrates to properly implement the provisions of the Community-Based Corrections Act

The researcher has also observed that what is expected from the judges is not happening concerning the issuance of community corrections orders and also that there is no uniformity in the procedure adopted by the judges.

Therefore, the researcher recommends that whilst organizing the education sessions for the judges, to make sure the proper implementation, guidelines can be issued to the judges from the Judicial Service Commission or whatever relevant authority to follow the Community Based Corrections Act.

Incorporating an organized institution to implement community corrections orders.

The researcher also observed that there are several organizational and departmental issues in the community corrections department and those issues are a barrier to meeting the expectations of the community-based corrections Act. More importantly, qualified officers should be appointed to strengthen the due process and the existing officers should be given the proper education and training. All these are possible only if the government allocates required sufficient funds. Therefore, it is a must that government should honestly get involved in the process.

It is also equally important to operate the community corrections system uniformly throughout the country.

Therefore, at least one community corrections center should be established in each district island-wide. Each community correction center should at least establish a rehabilitation center, a vocational training center, and a medical center.

Appointing qualified officers and organizing proper training for them.

It was also observed by some of the community corrections officers' answers to the researcher during the research that the lack of qualified officers is a hindrance to the better implementation of the process. Some community corrections officers suggested that steps should be taken to reorganize the community corrections department from the top of the hierarchy. Objections were raised by some of the community corrections officers regarding appointing the Commissioner as they are against the practice of appointing civil service officers as the Commissioner. Those Community Corrections Officers are of the view that when a new commissioner is appointed from another department, he or she takes a few years to understand the act and its practice and by the time they gathered the required knowledge and experience, the time has come for a transfer. Instead, they recommend that a senior community corrections officer who has got the relevant qualifications, be appointed as a Commissioner so that he has better practical knowledge as well.

Providing due facilities

It is also a mandatory requirement to monitor the progress of the rehabilitation process of the offender. The non-availability of sufficient facilities to carry out the community correction orders and the system stand as a major challenge. Therefore, it is recommended that all modern facilities should be provided with all the centers to do the reformation process in particular and carry out the due operation of the system successfully.

Schedule to the Act to be amended.

The researcher would not suggest any amendment to the Act, but the researcher agrees with the corrections officers' views of the schedule to the Act as it seems logical and meaningful. Therefore, it is recommended that the schedule of the Act need to be amended accordingly.

REFERENCES

- [1] Alarid, Leanne Fiftal. (2016) Community-based corrections, Cengage Learning.
- [2] Community-Based Corrections Act No. 46 of 1999
- [3] Cohen, Stanley, (1985) Visions of Social Control: Crime, Punishment, and Classifications. Cambridge: Polity Press
- [4] Criminal Procedure Code of Sri Lanka No. 15 of 1979
- [5] Hirsch, Andrew von, (1990) The Ethics of Community-Based Sanctions, Volume: 36 issue: 1, page(s): 162-173 available at https://www.sagepub.com/sites/default/files/upm-binaries/86776_Chapter_1_Definitions%2C_History%2C_and_Development_of_Community_Corrections.pdf accessed on 12/10/2020.
- [6] Jain, Ashok K. (1995) Criminology, Penology &Victimology, Ascent Publications 1 ed.
- [7] Livings, B. (2020) 'What do judges mean when they sentence to protect the safety of the community?'. Current Issues in Criminal Justice, 1.

- [8] Lowman, J., Menzies, R.J., Palys, T.S. (1987) *Transcarceration: Essays in the Sociology of Social Control*. Vermont: Gower Publishing Company Ltd.
- [9] Ministry of Legal and Prison Reforms, "Report on Community Service Orders" (Colombo,1990).
- [10] Penal Code No.2 of 1883, (as amended)
- [11] Performance Report – 2018 of Department of Community Based Corrections.
<https://www.parliament.lk/uploads/documents/paperspresented/performance-report-department-of-community-based-corrections-2018.pdf> accessed on 24/09/2020.
- [12] Performance Report 2019, Department of Community Based Corrections,
<https://www.parliament.lk/uploads/documents/paperspresented/performance-report-department-of-community-based-corrections-2019.pdf> accessed on 12/10/2020.
- [13] Prison Statistics of Sri Lanka 2020 – vol. 39 page 47, table 4.25,
<http://prisons.gov.lk/web/wp-content/uploads/2020/08/prison-statistics-2020.pdf> accessed on 08/08/2020 accessed on 15/10/2020.
- [14] Probation of Offenders Ordinance No.42 of 1944
- [15] Rapisarda, S.S., Byrne, J.M. (2020) 'The Impact of COVID -19 Outbreaks in the Prisons, Jails, and Community Corrections Systems throughout Europe' *Victims and Offenders*, 1
- [16] Performance Report, Department of Community Based Corrections, 2017 from January to December. 2018.
- [17] Performance Report-2018, Ministry of Rehabilitation and Prison Reforms, Colombo, Government Press, 2018.
- [18] Report on effectiveness of community-based correction mechanism in Sri Lanka. 2014- Department of Community Based Correction.
- [19] Report of the Committee on Prison Reforms, Sri Lanka sessional papers, 1981.
- [20] Qafisheh, M. M. (2020). Human Rights at the Time of Transition: How Security Forces Can be Held Accountable in a Divided Community? *Journal of Conflict and Security Law* Vol 25, Issue 2, 171.
- [21] Sentencing and Penalties Decree 2009 (GOVERNMENT OF FIJI)
- [22] The extraordinary gazette notification No 386/15 Wednesday, January 20, 1986