

Rehabilitation of Suspended Offenders in Sri Lanka

M.W. Jayasundara¹, H.S.U. Ramyakumara²

¹Department of Criminology and Criminal Justice,
University of Sri Jayawardenepura, Sri Lanka.

²Open University of Sri Lanka

¹madawalajayasundara@yahoo.com

Abstract

Most defence counsels in Sri Lanka are likely to make applications on behalf of the convicted accused to obtain a suspended sentence passed under section 303 of the code of criminal procedure act number 15 of 1979. Under this law, there is a provision to impose suspended sentences repeatedly for the convicted accused, and this militates against the aim of punishment. It may cause a loss of public confidence reposed in the judicial system. The research problem of this study is "what are the reasons for the escalation of violations of the conditions of the suspended sentences by the offenders". This research aims to find the gaps in the law relating to the suspended sentences and reasons for committing crimes repeatedly by those who stand accused under the suspended sentences. The data were collected in 2019 through interviews and observation from a systematic sample of 57 offenders. The opinions of 12 magistrates and six lawyers from both Kurunegala and Kegalle districts were solicited. The data pertaining to the offenders were also obtained from the fingerprint registers maintained at the magistrate courts of both districts. The study reveals that suspended sentences imposed upon offenders are neither monitored by any authority nor referred to any rehabilitation programs. The suspended offenders lack awareness about the purpose, the effect, and the consequences of violating the conditions of their suspended sentence. The study recommends introducing guidelines for the prevention of further crimes by suspended offenders and a programme rehabilitating them.

Keywords: Suspended Sentence, Convicted Accused, Violation, Rehabilitation, Code of Criminal Procedure

1. Introduction

The suspended sentence will not be implemented unless the offender commits a subsequent offence during the operational period of the suspended sentence. The suspended sentence as a mode of punishment comes under community-based corrections, and the offender can live among the other ordinary people of the society while carrying the penalty. The suspended sentence will deter the offender from committing further offences as he fears the implementation of the sentence which has already been passed on him (Qadri, 2016:372-3). Those factors should be considered from a judicial perspective and for that purpose, judicial discretion is necessary to subject to the conditions stated below. Whatever the necessity of

attaining certainty and predictability, if the judicial discretion which is directed by a guideline is exercised, then certainty and predictability that are desiderata of a legal system will not be undermined. For that purpose, there should be a guideline that directs the exercise of discretion within the framework of the law. The exercising discretion in that manner will not be new laws made by judges or any deviation from the existing law. When all judges follow the guideline, the uniformity of the judgment or the order is secure. Further, it is necessary to contemplate the justification of extending the operational period of the suspended sentence or making no order for the subsequent offence committed by the accused during the operational period of the suspended sentence.

Even though the suspended sentence is an appropriate punishment alternative to incarceration, the crime records indicate that violations of the conditions of the suspended sentences by committing subsequent offences during the operational period remain high. In Sri Lanka, the law relating to the suspended sentence is enshrined under section 303 as amended by Act number 47 of 1997 amendment to the Code of Criminal Procedure Act No. 15 of 1979 (CCRPA). Section 303 (13) (iii) and (vi) allow the judge to suspend the sentence wholly without considering the suspended sentence, which has already been passed and making no order concerning the earlier suspended sentence. Under section 303 (13) (iii), the magistrates tend to impose another suspended sentence for the offenders, who have committed subsequent offences that are punishable with imprisonment during the operational period of the suspended sentence passed previously. Though section 303 describes the grounds to be considered for suspending the sentence, the above-mentioned section 303 (13) (iii) does not state the grounds which are necessary to be considered when imposing another suspended sentence to the offender who is under the operative period of the suspended sentence which has already been imposed. Section 303 (13)(iii) allows setting an additional fine of up to 25000 rupees or extending the operational period of the suspended sentence. Imposing another suspended sentence without considering the suspended sentence which is in operation for an earlier case, or imposing another suspended sentence with an additional fine or extending the operational period of the suspended sentence for the subsequent offence depends on the discretion of the magistrate.

The discretion varies from magistrate to magistrate, and some magistrates pass suspended sentences for the offenders who have committed the subsequent offence during the operational period of the suspended sentence, which is in operation for the previous case or cases as the said provision has not included the criteria for passing another suspended sentence without considering the same type of sentence

for the previous case. After the conviction for the subsequent offence, there is no point in passing a suspended sentence repeatedly on the accused because it causes reoffending. It is contrary to the aims of punishment. On the other hand, we do not have a system to correct the offender who is serving a suspended sentence. Therefore, this area must be studied. This research intends to explore the reasons for committing a subsequent offence by the offender who is under the operational period of a suspended sentence and also to examine the lacunas in the law relating to the suspended sentence, in order to make suggestions or recommendations where necessary for reforms and the mechanism required to rehabilitate the offenders effectively.

2. Research problem

Incarceration of offenders had been intensely adopted in the past as there was no other effective alternative. The concept of the suspended sentence has been accepted recently as an appropriate mode of punishment for the first-time offender as it prevents him/her from getting into unwholesome association with hard-core criminals. In the three years from 2015 to 2017, the magistrates' courts of Kurunegala and Kegalle Districts have imposed suspended sentences for 1923 offenders, and of them, 577 offenders have violated the conditions in the suspended sentence imposed previously by committing another offence during the operational period. Approximately one-third of the suspended offenders are convicted by the court for recidivism during the operational period of the suspended sentence. Thus, the reconviction rates of the offenders who are still in the operative period of the suspended sentences are ever escalating. This area has not been previously explored by any research. Therefore, the research problem of this study concerns the reasons for the escalation of violations of the conditions of the suspended sentence by the offenders.

3. Objectives

A considerable number of offenders are reconvicted while they are under the operational period of the suspended sentence. Therefore, this research aims

To see how many offenders have committed subsequent offences during the operational period of the suspended sentence imposed previously.

To examine which factors are responsible for such recidivism of the offenders.

To identify the lacunas in the law relating to the suspended sentence.

To elucidate the measures that can be adapted to minimize the number of offenders who are reconvicted while under the operational period of the suspended sentence.

4. Literature Review

The seriousness of the offence is one of the factors that should be considered in meting out the appropriate punishment for the offender. The manner of committing the same offence can aggravate the gravity of the offence. For example, an organized gang of robbers committing a robbery by using a deadly weapon is more serious than one person committing a robbery without a deadly weapon. The seriousness of an offence is determined according to the manner that it has been perpetrated and it varies from case to case and shall be considered by the trial judge.

The sentence of the offence fixed by law, the powers at the court's disposal and the seriousness of the offence are prescribed in law. The mitigating factors are mostly related to the offender's background and his/her penal history. Non-availability of facts related to previous conviction or previous conduct, age of the offender, number of dependents, health condition of the offender and repentance of the offender, etc., are considered as mitigating factors.

The justification of punishment depends on the above factors. Punishment involves many aspects. In ancient times, the only object of punishment was retribution. The philosophy of punishment developed gradually and deterrence, rehabilitation, incapacitation, restoration of justice, and denunciation are now considered as the theories of punishment. While retribution and denunciation are backward-looking theories, deterrence, rehabilitation, incapacitation, and restoration of justice are forward-looking theories. The retribution theory allows retaliation which is not intended at making any correction (Suran, 1996). Once an offender has committed any crime, consequently, the offender has to bear the same consequence. If the offender made the victim blind, the offender was made blind (Newman, 1978). But in the modern world, punishment relies more on forward-looking theories. The rehabilitation theory is aimed at making the offender a law-abiding person by eliminating his criminal intention. When an offender is punished, it causes to deter him from committing further crimes (White and Perrone, 1997). The theories mentioned above have both merits and demerits. Therefore, the basic aims of the theories discussed briefly above need to be discussed further.

The community sentence system emerged due to growing awareness of the unsuitability of imprisonment for minor offences. Community sentences are

implemented in various modes like the parole system, suspended sentence orders, probation orders, attendance center orders, and supervision orders, etc. “community sentences are imposed where the sentencer takes the view that the nature of the offence is not such as to require custody, but that it does require something more than the mild penalty of a binding over or a discharge” (Wasik, 1993:169). The suspended sentence is an alternative mode of punishment to incarceration and the offender is given an opportunity to correct himself while living in the society like other ordinary people. “In Ireland, the suspended sentence emerged as a judge-made deposition in the late 19th and early 20th century” (Law Reform Commission, 2017:9). The suspended sentence was introduced into Belgium in 1888, into France in 1891, and into Portugal and Norway before the end of the 19th century (Peris 2017:9). It was introduced to England by the criminal justice act in 1967. Later it came into effect in the Sri Lankan criminal justice administration system.

Sentencing principles, guidelines, or policies are helpful to determine the appropriate sentence for the offence committed by an offender. In determining the sentence, the principle of proportionality should be kept in mind. In addition, the sentence should neither be exclusively harsh nor frivolously low. "The object of sentencing policy should be to ensure that the offender does not go unpunished and the victim of the crime as well as the whole community is convinced that justice has meted out" (*Purushottam Dashrath Borate v. The State of Maharashtra* (2015)). The judgment of the three-judge bench recognizes the necessity of blocking the occasions where the culprit goes unpunished and safeguarding the public confidence by making the victim convinced. Yet the important fact is that harsher punishment should not be imposed to make the victim gratified. So it is necessary to look into the factors that should be considered in determining the quantum of sentences. "The characteristics of the offender as revealed by his age, conduct, antecedents, other related circumstances as well as the traceability of the offender to reform should necessarily be the key factors in determining the sentence. A judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed" (*Surajith Singh v. Nahar Ram* (2004)). The Indian court has accepted that the purpose of the sentence should be the reformation of the offender. It is considered that undue sympathy in sentencing, and imposing an inadequate sentence cause the collapse of public confidence and it is more harmful to the country's justice system. Determining the appropriate sentence can be achieved with a sentencing policy. The sentencing policy will direct the court to determine the proper sentence, and its length should be capable of evading issues arising due to disparities and shortcomings of the law. Practically, the principle of proportionality can be adopted by considering the points of view of both the public and the offender

when sentencing. The factors, which should be considered by the court when sentencing has been discussed in many cases. "The court determines that the immediate custodial sentence is warranted for the following reasons;

- (1) To mark the gravity of the offence
- (2) To emphasize the public disapproval
- (3) To serve a warning to others
- (4) To punish the offender
- (5) To protect the woman" (*Padmasiri v. Attorney General*. (2017) The first reason mentioned above shows the seriousness of the offence. Imposing severe punishments for serious offences and lenient punishments for minor offences is the primary factor of the principle of proportionality. The second reason is to condemn the behaviour of the offender. The third reason is specifically to deter the like-minded and the others in society. For the fourth reason, the deterrence of the offender is expected. The last reason is solely for the protection of the public. Moreover, considering all the above reasons, the court held that "therefore, in this case, he deserves a long period of imprisonment to deliver a message to all those who have no respect for other person's right to life and property this court never hesitates to use its powers under sections 336 in appropriate cases" (*Bandara v. The Republic of Sri Lanka* (2002)). In this case, it is obvious that the court has intended to use the general deterrence theory.

In the case of *Thelge Pradeep Kumara v. Attorney General* (2017), the court has stated the aggravating and mitigating factors. The subsequent conduct of the accused-appellant has been declared as an aggravating circumstance. But the list of the aggravating and mitigating factors is only for giving reasons for that case. In other cases, the list of aggravating factors and mitigating factors is different from that. *M.L.Pathiraja Samarasinghe v. Attorney General* (2017) is a good example. A common list of aggravating and mitigating factors is necessary rather than preparing a list for individual cases. There must be a common sentencing guideline or policy which includes all the relevant circumstances. Then all the courts of the hierarchy have to abide by it, and this leads to the imposition of appropriate sentences without disparities.

When scrutinized, it is obvious that sentencing principles have been included in the penalties and sentences Act of Queensland. But such a set of principles that can guide the court to impose the most appropriate punishment has not been included in the CCRPA of Sri Lanka.

"The purposes of this act included -

- (a) Collecting the general powers of courts into a single act to sentence offenders; and
- (b) Providing sufficient range of sentences for the appropriate punishment and rehabilitation of offenders, in proper circumstances, and ensuring the protection of the Queensland community is a paramount consideration" (section 3 Act of 1992).

The specific basic purposes of passing the above-mentioned act are codifying all powers of the court under one act to stimulate the court to impose the most appropriate sentence, stipulation of range of sentence to simplify the imposing of the appropriate sentence, rehabilitation of the offender and the protection of the people of Queensland. Section 9 of the said act states the principles which must be regarded in sentencing and that the sentence of imprisonment should only be imposed as the last means. Further, a sentence that allows the offender to stay in the community is preferable under section 9(2). The minimum and the maximum sentence prescribed for the offence committed by the offender and the nature and the seriousness of the offence have to be considered for sentencing.

"The nature of the offence and the seriousness the offence includes -

- (i) Any physical, mental or emotional harm caused to a victim, including the harm mentioned in the information relating to the victim provided to the court under section 179k; and
- (ii) The effect of the offence on any child under 16 years who may have been directly exposed to, or a witness to, the offence; and" (*section 9 (2) (c) (i) (ii)* act 1992).

A significant difference in Queensland law which is not included in the Sri Lankan law is that Queensland law takes into consideration the mental and emotional damage in addition to the physical damage. The effect of the offence on a child victim under 16 years exposed to offence or as a witness to the offence also must be considered. Under Sri Lankan law, such damage on a child under 16 years as a witness is not considered. Even though assistance and protection of victims of crime and witnesses, act no 4 of 2015 stipulate laws relating to protection and rehabilitation of the victims and witnesses, no law stipulates that the physical, mental or emotional damage to a child should be considered as an aggravating factor. But the exposure to a criminal offence or a violent act may cause significant damage to the mentality of a child victim or even a child as a witness. Therefore, Queensland people have paid special

attention on child care. The damage, loss, or injury caused by the offender, his character, age, and intellectual capacity are the facts that should be considered in sentencing. The appropriate sentence is determined by considering both the aggravating and mitigating factors existing with the case. Further, Queensland law permits to take into account the degree of assistance given by the offender to law enforcement agencies in the investigation. Time spent in custody before being sentenced, sentences already imposed, but have not been served are also stated as the factors of sentencing. If the offender is under a community order, the facts contained in the report submitted by the correction officer, such as the degree of compliance to the order during the period he is out on bail, the offender's undertaking to attend the rehabilitation programme, his successful completion of the programme, and his relationship with the community are considerable matters of importance to a proper sentencing method. The sentencing procedure is supported by sentencing principles codified in Queensland law.

5. Methodology

Selected area for the study

The tendency to commit offences recurrently and be reconvicted among the offenders during the operational period of the suspended sentences in 2015, 2016 and 2017 with special reference to Kurunegala and Kegalle Districts is the area for this study. Of the offenders given suspended sentence during the above-mentioned period, the statistics of the offenders who violated the conditions of the suspended sentence by committing a subsequent offence during the operational period were gathered from the Magistrates courts of those two districts for analysis and description in this paper.

The population of the study -

The offenders who had violated the conditions of the suspended sentence by committing another offence during their operational period were the population of this study. The data about the offenders who had served suspended sentences in 2015, 2016, and 2017 were collected from the fingerprint registers of the magistrate's courts of Kurunegala and Kegalle Districts. As the co-author of this article was attached to the judicial service of Kegalle at the time of conducting the research, these two districts were selected to collect the required data. When an offender is convicted for an offence punishable with imprisonment, the offender's fingerprints are taken, and his particulars are entered into the fingerprint register. In the data collection process, two categories of offenders who had been passed suspended

sentences were excluded, viz. drug addicts and those involved in motor accident cases. This was done for at least two reasons. Drug addicts commit the same offence over and over due to their addiction. They do not have any criminal intention (*mens rea*) in the commission of their offence but the consumption of illegal drugs. Because of their addiction and compulsion they cannot get rid of their wrongful behaviour without the guidance of a proper rehabilitation program. In addition, the accident cases were ignored for they are offences with no criminal intent, and the offender has strict liability. The cases on which the suspended sentences were passed in 2015, 2016 and 2017 for the offences committed with criminal intention were counted. Thereafter, the cases of violation of the condition of the suspended sentence by committing a subsequent offence during the operational period were selected. Of them, the cases which had been passed sentences either suspended or custodial were selected. On receipt of the previous conviction certificate, the fingerprint register is normally updated regarding the subsequent convictions by the court officer. In the circumstances of not being updated inadvertently, then the case record was referred back to check for accuracy. Because when the conditions of the suspended sentence are violated, consideration of a suspended sentence for the subsequent offence depends on the discretion of the court. Therefore, there is a possibility of passing either a suspended or custodial sentence for the subsequent offence. Therefore, in collecting accurate data on violations of the condition of the suspended sentence imposed previously the cases which were imposed by both suspended and custodial sentences should be examined.

The sample of the study

A systematic sample of 57 offenders was selected from a population of 577 offenders. In the circumstance of any unavailability of a selected person or refusal to participate in the interview, the next person in the list was fixed into the sample population.

Data collection method -

The certified copies of the charge sheets, the previous conviction records and the journal entries relating to the sentence passed on the offenders of the sample population he was taken from the relevant courts. When a person is convicted, fingerprints are taken by the court and call for a record of the previous convictions before passing a sentence. If the offender has been passed a suspended sentence previously, the certificate of previous conviction indicates that suspended sentence as a previous conviction. The two lists are based on the data collected from the records of the magistrate's courts of Galgamuwa, Maho, Nikaweratiya, Kuliyaipitiya,

Hettipola, Wariyapola, Kurunegala, Polgahawela, Rambadagalla and Pilessa in Kurunegala district and magistrate's court of Kegalle, Mawanella, Warakapola and Ruwanwella in Kegalle district. Then the percentage of the number of the offenders who had violated the conditions of the suspended sentences out of the total number of the offenders who were passed suspended sentences of the relevant period was calculated. In order to gather qualitative data for analysis, the list prepared subsequently was used, and in this research, it mainly focused on the offenders with violation of the conditions of the suspended sentences which had been imposed previously.

The sample population was 10% of the entire population, and the entire sample population was interviewed on the questionnaire to collect data. Data collection from the offenders was done over various aspects included in the questionnaire such as persuasion for the perpetration of crimes, awareness of the consequences of the suspended sentence, personal information as dependents of the family, their age, approximate income per month, education and the drug addiction of the offender. As people are normally willing to declare their income; they were questioned on the monthly expenditure. All the magistrates of both districts including several lawyers were interviewed to gather data on the shortcomings and lacunas of the justice administration system. In addition, the explanation of the court on its effect and purpose as well as the consequences of violation related to the offenders given suspended sentences were observed. It was necessary to examine the shortcoming and lacunas of the system for the purpose of reformation of law. It was necessary to process all the primary data collected in the field. Before data was processed a consistency checkup was done to see the compatibility of answers elicited to the questionnaire as the answer for one question could be entirely different when compared to the answer to other questions. If an erroneous answer is used as data, the researcher may come to fallacious inferences. When data is collected, some questions may remain unanswered by the interviewee. Though the interviewer always tries his best to elicit a response by placing questions tactfully, a few persons may not remember some facts such as the date of first conviction. Therefore, it has to be taken from the previous convictions records. Some do not state the total number of previous convictions, and this has to be checked with the previous conviction records. In the circumstances of no reaction to any question, the data processing was made by the imputation of the mean.

When the behaviour of the offenders was examined, most of the offenders had a tendency to commit offences against property, for example, theft, robbery, housebreaking, criminal misappropriation etc. Therefore, it was necessary to see

whether there was any relationship between the offenders' income and the perpetration of the crime. Some offenders have committed offences against the human body, for example - simple hurt, grievous hurt, kidnapping and outrage against women's modesty. Some have committed offences against the environment, for example, illicit felling of trees, transport of timber without a permit, and illegal sand mining. Why could those offenders live peacefully as law-abiding citizens in society? What were the factors that persuaded them to commit such crime? When a rehabilitation program is designed, the identification of the factors that persuaded the offenders to commit crimes becomes important. Besides, the offenders under the suspended sentences have a tendency to commit further crimes owing to the shortcomings of the system. It should be examined whether the way of enforcing the law concerning the suspended sentences has achieved its aims of introduction to the Sri Lankan judiciary system. If the offenders are expected and trusted not to violate the conditions of the suspended sentences, they should be aware of the conditions, and the consequences of violation. As the last stage of data processing, data classification was carried out. All the data collected in the field was processed in order and subsequently classified. The research was designed to identify the reasons to commit crimes repeatedly. The questions about the income level of the offenders, the number of convictions, the awareness of the concept of the suspended sentence, the consequence of the violation of the suspended sentence, and their participation in the rehabilitation program were administered into groups. Though the data was classified into groups, the groups were not subjected to coding as the data entries were made manually. For data entry, an entry sheet was used.

6. Results and discussion

The total number of the offenders given suspended sentences and the total number of violations of the conditions of the suspended sentences by committing another offence district-wise prior to the research.

Table 1: Total number of suspended sentences and violations

Districts	2015		2016		2017	
	Sos.	Viol.	Sos.	Viol.	Sos.	Viol.
Kurunegala	469	147	405	126	488	135
Kegalle	172	57	181	56	208	56
Total	641	204	586	182	696	191

Note: Sos: Sentence Ordered to Suspend, Viol: Violation

Source: field research 2019

Age, Education and criminality -

The total number of offenders interviewed was fifty-seven, and they disclosed their age at the commission of the first offence. The collected data was analyzed to find the age range of the offenders commission of their first offence punishable with imprisonment. The age range of the offenders who were so inclined to commit crime was deduced as it was obviously important to find solutions to prevent them from committing further crimes. The Arithmetic Mean of the age of offenders having a tendency for committing crimes was 27 years. It was obvious that they had committed the first offence at a young age. The data collected on the education of the offenders indicated that their education prevailed from primary education to the level of bachelor’s degree.

Table 2: Educational qualification of the offenders

Level of education	Number of offenders
Grade 1 - 5	04
Grade 5 - 8	14
Grade 9 - O/L	22
Up to A/L	08
Vocational training	06
Diploma holders	01
Graduates	02
Total	57

Source: Field research 2019

The above table indicates the pervasion of the offenders in all categories of the education levels. 70.17% (n=40) of the offenders have studied up to O/L. But the table does not elucidate the fact that persons with education above a certain level do not commit crimes as offenders with low educational levels as well as with high educational levels have committed offences. This sample population is representative of the population of the country to a great extent as most of the people in the Sri Lankan society have completed secondary education. When analyzing the data of Table 2, it becomes obvious that the propensity for committing crimes among the offenders who have studied up to the ordinary level remains high.

Criminality and offenders' bond with the family and society -

The criminals unlike law-abiding citizens cannot live freely in society for they are taken into custody, and if found guilty, they are punished. If their family life gives them pleasure, they would refrain from committing crimes as it causes them to deprive of their freedom to live with their family. Furthermore, a good relationship

with the family makes them think of the respect of family members. The relationship with the family affects criminality. Therefore, the data on the nature of the family relationship of the offenders were analyzed to see whether there was a relationship between family ties and criminality. Twenty-one unmarried offenders, 15 married offenders, eight divorcees, three widows and widowers, and ten offenders separated from their spouses were in the sample population. Sociologically, human beings are gregarious, and kinship is considered an important factor contributing to the prevention of crimes. While 23 offenders had no relationship with the family, 21 had a poor relationship. Whereas 13 offenders had some bonds with their families. 77% of offenders had no good relationship with their families. The other 23% of offenders had committed crimes while maintaining family ties with their families. This relationship consolidates the fact that strong family bonds would discourage the individual from committing crimes. However, the family ties do not completely eliminate the criminal intentions of the offenders. Some of the offenders who had a good relationship with the family have committed crimes. The offenders who did not maintain a good relationship with their families indicated a high susceptibility to commit crimes.

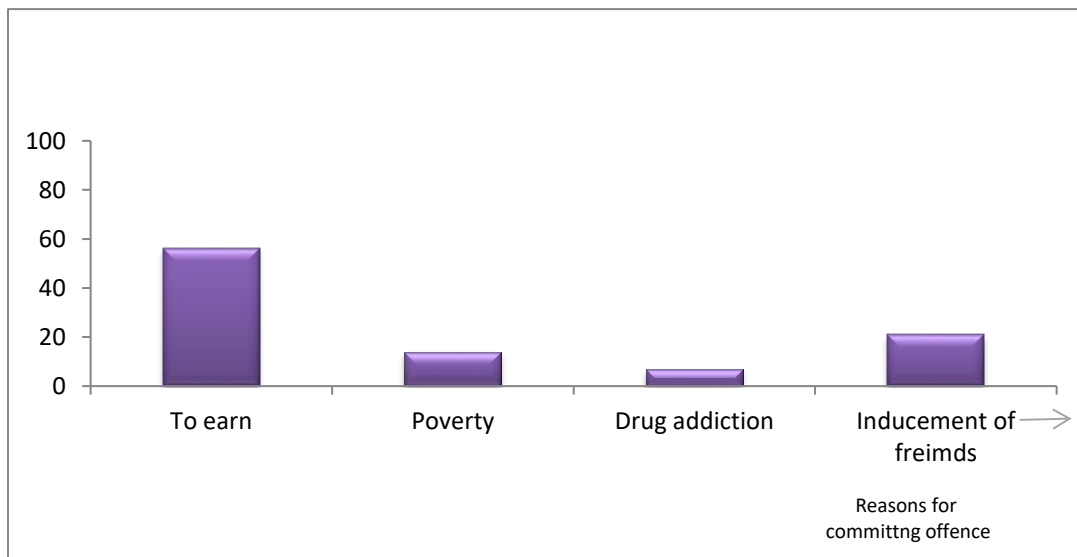
As already stated human beings do not live in segregation for they are gregarious. Generally, they maintain a close relationship with their family members to a certain extent, a relationship with the neighbors can also be seen. When they live in a certain area for a long time, they build up a relationship with the other residents in the area. In analyzing the collected data on the offender habitations, it was found that 38.59% lived in their own houses and 14.04% of the offenders lived in rented houses whereas 19.3% lived in shelters with the permission of their owners. While 21.05% of the offenders were the inhabitants of quarters or lines, 7.02% of the offenders resided in unauthorized shelters. The quarters or the lines were the temporary shelters constructed for the labourers of the estates. Such quarters or lines are found in coconut estates of Kuliypitiya, Hettipola, Wariyapola, Kurunegala area and rubber estates of Ruwanwella, Mawanella, and Warakapola area. Those quarters or lines are provided to the labourers working at the estates, and most of them work there on a casual basis. All other inhabitants, other than those who lived in their own houses were temporary inhabitants. Thus, it was obvious that 61.41% of offenders were temporary inhabitants.

14% of the offenders who violated the conditions of the suspended sentences passed previously by committing another offence during the operational period were females and 86% were males. Before the conviction, 47 offenders were employed in permanent employment and the other ten offenders did not have permanent

employment. After the conviction, the situation had changed only 21 offenders have permanent jobs, and the other 36 offenders are not permanently employed. While 63.16% of the offenders are not permanent employees, the other 36.84% had permanent employment. When the offenders were further interviewed, it was revealed that the number of offenders who lost their permanent jobs was 36, and as a percentage, it was 63.16%. Later out of them fifteen offenders had found other permanent jobs. However, fourteen offenders out of those who found new permanent employment could not earn as from their previous employment. Before the first conviction, 17.5% of the offenders did not have permanent jobs, and the other 82.5% of the offenders had jobs. But after the conviction, 26 offenders had lost their permanent occupations. The offenders who did not have permanent jobs were engaged in odd jobs to meet their day-to-day expenses.

Graph 1: Crime Causation of the offenders

Source: Field research 2019



As Graph 1 indicates, out of 57 (100%), 32 offenders (56.14%) had committed offences for pecuniary purposes. Though one offender (1.75%) had committed the offence for the feeling of antagonism towards the victim and 14.03% of the offenders (n=8) had committed the subsequent offences owing to poverty. 21.05% of offenders (n=12) had committed the subsequent offences under the persuasion of their friends. The ultimate intention of committing crimes as a means of earnings and committing crimes due to poverty appears be the same, but there is a difference between those two categories. The perpetuation of crimes due to poverty means the offenders do not have money to buy essentials to make their day-to-day living whereas and those who commit crimes to earn money can meet their day-to-day expenses. 7.02% of the

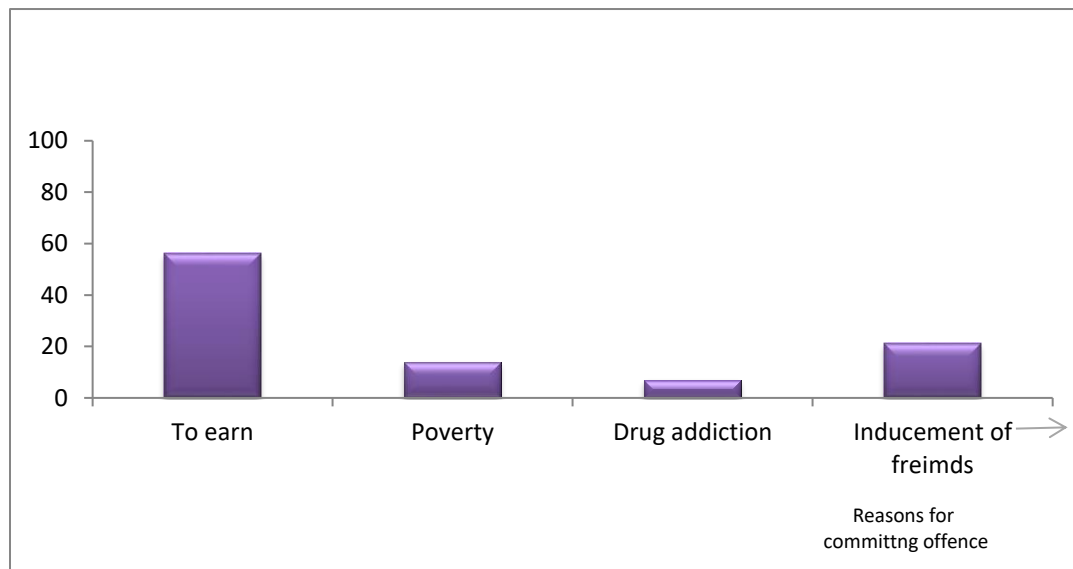
offenders (n=4) had violated the conditions of the suspended sentence by committing another crime as a means of making easy money to buy drugs. Although the offenders who were found guilty of keeping drugs in possession were excluded in the research as mentioned above, 7.02% of the offenders (n=4) had committed crimes due to their drug addiction. Drug addicts commit crimes mainly to earn money to purchase the drugs for their consumption. Two categories of the offenders committing crimes with pecuniary aims can be identified; those who commit crimes because of poverty and to meet the expenses of their daily life, and those committing crimes solely to purchase drugs. Depending on the intention of the criminal act, that these two categories vary.

Use of alcohol and other intoxicating drugs and criminality

The habit of the offenders to use liquor, heroin, and cannabis Sativa L (ganja) is frequent. Twenty-four offenders consumed liquor, and 12 offenders (21%) were addicted to heroin. Both cannabis and liquor were consumed by 11 (19.25%) and 10 offenders (17.5%) who did not consume any of the above. Thus, the percentage of the offenders who took liquor and drugs was 82.4% (n=47). The monthly expenses of the offenders were in the range of 15000 to 45000 rupees. The arithmetic mean of the expenditures of the offenders was Rs.25921. But those who were addicted to heroin spent 1500 - 2000 rupees per day, and there was a gap between their income and expenditure. They had to spend money to fill the gap between income and expenditure by any means. The families of 28.07% (n=16) had other sources of income, but the families of 31.57% (n=18) offenders did not have any income other than the offenders' income. However, 40.35% of the offenders (n=23) (the majority of the offenders as a category) were not aware of the plight of their family economy as they had very poor or hardly any relationship with their families.

The data collected in this research on the number of convictions of the offenders and the lapse of time between the first and the last offence committed by the offenders were analyzed to examine the degree of their tendency to commit crimes. Their tendency to commit crimes is depicted as follows.

Graph 2: Number of previous convictions of the offenders



Source: Filed research 2019

The above graph 2 indicates the number of offences committed by each offender, and those who have committed three or more crimes are considered recidivists. Every offender had committed more than two crimes, and 51 offenders had committed three or more crimes, and as a percentage, it was 89.47%. This indicates their propensity for committing crimes, and whatever the reason was they had committed offences regularly. Twenty-five offenders out of the sample population had pending cases. As a percentage, it was 43.85%. This shows up the offenders' regular practice of committing crimes. The circumstances of committing three or more crimes by an offender, as a percentage remained 89.47%. The percentage of the offenders having pending cases to be heard was 59.64%. The same offender committing three or more crimes corroborates the fact that some offenders have a high degree of tendency for criminality, and the high rate of pending cases of the offenders, as mentioned above, aggravates the situation. It indicates that their tendency for committing crimes persistent in their lives.

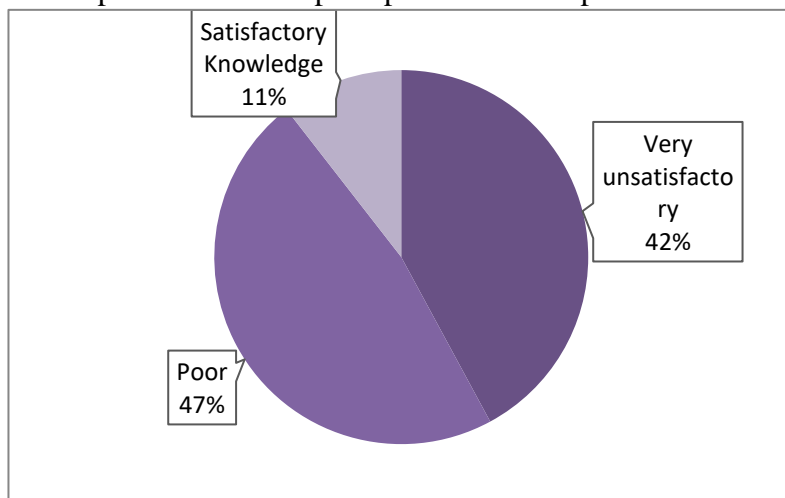
Further, the period of susceptibility of the offenders for committing a crime is also a crucial factor in criminality. While 33.33% of the offenders have committed crimes during five years, 38.59% of offenders have committed crimes during the period of over five years or below ten years. The criminal conduct of the other 28.07% of the offenders has prevailed over ten years. When a person keeps committing crimes for an extended period, the criminal intention gets fossilized in his or her mind and the perpetration of criminal acts gets generalized. Moreover, the stigmatization of

individuals for committing illegal acts regularly and labelling them as criminals by the people of society cause to catalyze their criminal behaviour. When introducing correctional programs to the offenders, those programs must be aimed at eliminating the offenders' criminal intention.

Awareness of the Offenders about the implementation and the gravity of the suspended sentence

It will be a great misconception if the legal system expects that an offender, once found guilty of an offence, and his imprisonment suspended for a certain period, will not commit further crimes through fear of drastic penal actions. To achieve the aims of implementing a suspended sentence, the offenders must be aware of the consequences of violations of the conditions resulting from committing another offence during the operational period of the suspended sentence. Graph 3 below reflects the awareness of the offenders on the consequences of such violations.

Graph 3: Offenders perception of the suspended sentence



Source: Field research 2019

Graph 3 above reflects the offenders' perception of the suspended sentence and the consequences in case of any violation of it. The awareness of 42% of the offenders (n=24) in this regard is very unsatisfactory. They did not know that, and 47% of the offenders (n=27) had poor knowledge about the suspended sentences. Only 11% (n=6) offenders had a satisfactory understanding of the consequences the other 89.48% of the offenders (n=51) did not have an acceptable level of understanding of the suspended sentence. It is not very effective to examine the data on the gravity of the suspended sentence. Yet to achieve the research objectives, it is necessary to analyze the data on the awareness of the gravity of the suspended sentence. These

figures holistically indicate that more than 90% of the offenders did not possess any satisfactory knowledge on the way of implementation and the gravity of the suspended sentences. In order to minimize the violation of conditions of the suspended sentence by committing further crimes during the operational period, it is necessary to make them aware of the consequences of any such violation. The total number of offenders given suspended sentences during the period of 2015 - 2017 in Kurunegala and Kegalle Districts was 1923, and of them, 577 offenders had violated the conditions of the suspended sentence imposed previously by committing another offence during the operative period. The procedural law of Sri Lanka prescribes that the purpose and the effect of the suspended sentence, the consequences of the violation of the conditions of the suspended sentence by committing another offence during the operational period be explained to the offender. As the crime records indicate, the violation of the condition by committing another offence during the operational period remains at 30%. It is necessary to see whether the purpose, the effect, and the consequences of the violation of the conditions were adequately explained to the offenders because the doctrine of suspended sentence is to deter the offenders from committing further offences by making the offenders fear the implementation of the sentence of imprisonment which has already been suspended.

The data collected in the field disclosed that 52.63% of the offenders (n=30) were unaware of whether the purpose, the effect, and the consequences of violation of the conditions were explained to them. The other 48.37% of the offenders (n=27) were of the opinion that the purpose, the effect and the consequences of violation were not explained to them. But the all magistrates of Kurunegala and Kegalle Districts emphasized that the court explained the purpose, the effect and the consequences of violation. A careful observation of the way this explanation was made revealed that this all-important explanation of the suspended sentence and its consequences is usually done within ten or fifteen seconds by the interpreter. Within that very short period, the interpreter explains it so rapidly that ordinary people cannot grasp the message properly. This is to be further discussed below.

As stated earlier, the aim of a suspended sentence is to deter the offenders from committing further offences by making them fear the implementation of pronounced imprisonment, which has already been suspended. If the offenders are explained about the purpose, the effect and the consequences of any violation of the conditions, the offenders may be afraid to commit further crimes due to the drastic penal actions. Of the fifty-seven offenders five declared that they feared committing further crimes during the operational period of the suspended sentence. As a percentage, it is 8.77% (n=5). All others represented the group of "not fear" and "unaware". 35.08% of the

offenders (n=20) did not fear committing further crimes under the suspended sentence. 56.14% of the offenders did not feel any sense of fear of any drastic penal action. Thus the 91.23% (n=52) of the offenders had not feared committing crimes within the operational period. Therefore, the deterrence of offenders with drastic penal actions, which is the main characteristic of a suspended sentence for preventing offenders from committing further crimes during the operational period, seems to be ineffective. The offenders who were interviewed at the research had even committed two or more offences. When an offender is found guilty of another offence committed during the operational period of the suspended sentence imposed previously, the suspended sentence can be implemented, and the sentence for the subsequent offence can also be imposed. But only 22.8% of the offenders (n=13) had been imposed custodial sentences. 26.32% (n=15) of the offenders had been given only suspended sentences, and 50.88% of the offender (n=29) have been imposed suspended sentences with fines. However, 77.2% of the offenders (n=44) had been passed suspended sentences after which they came out and lived among the other ordinary people in the society.

When a large number of offenders found guilty of an offence with a suspended sentence gather in society, the necessity for concentrating the convicted offenders into an effective rehabilitation program emerges as social security has to be ensured. Thus, the availability of rehabilitation programs for the benefit of these convicted persons and their participation in such programs were examined in the form of a field survey during the data collection of this research. In the field survey, it was detected that no convicted offender punished with a suspended sentence had been referred to any rehabilitation program conducted by a competent authority. All the interviewees confirmed that they were not referred to any rehabilitation program. Moreover, the discussion with the Magistrates confirmed that there was no such mechanism to refer the offenders to rehabilitation programs. Further, the victims were aggrieved by the criminal conduct of the offenders, and the offenders continued their criminal behaviour due to their inability to understand the rights of others who have every right to live in the society without being aggrieved by the unlawful acts of another. 66.67% (n=38) of the offenders have not understood that they have committed an act that is generally condemned by civilized society. Another 25.56% (n=14) of the offenders found guilty of a subsequent offence committed during the operational period of the suspended sentence have understood the gravity of their wrongful deeds. Though 8.77% of the offenders (n=5) have understood the gravity of the criminal acts committed by them, they continued their previous behavior as they did not have proper guidance for attitudinal changes. Although, there is an officer in every court to supervise the offenders under the community service orders, the

offenders who have been imposed suspended sentences are not monitored by any competent officer. All the convicted offenders are merely reintegrated into society without any correction. Hence, the reoffending rate of the offenders with suspended sentences during the operational period remains high because such offenders are being reintegrated into society without any rehabilitation. This has become a serious issue that has arisen concerning the way suspended sentences are implemented in the legal system of Sri Lanka. All Magistrates and the lawyers agreed that though the criterion to be considered to determine a suspended sentence for the offenders has been stated under section 303(1), no criterion has been stated under section 303(13) (iii) and (iv) to suspend the sentence wholly or make no order regarding the suspended sentence which is in operation.

Nevertheless, the observation of the court proceedings confirms that the court has a heavy workload, and the magistrates are trying to dispose of the cases quickly. There are twelve magistrates in Kurunegala District, and four magistrates in Kegalle district.

Table 3: The population of the districts subjected to the research

Districts	Population		
	2015	2016	2017
Kurunegala	1,658,000	1,676,000	1,693,746
Kegalle	861,000	869,000	876,781

Source: confirmation letters issued by the statisticians of two districts.

Congestion of the court due to heavy workload

As per statistics of the year 2017, as shown in Table 3 the total population of Kurunegala District is 1693746. As there are twelve Magistrates' courts in this district, approximately a population of 141145 comes under the jurisdiction of each magistrate's court. Except for the magistrate's court of Pilessa and Rambadagalla, all other Magistrates' courts in the district are busy with the cases, and more than 200 cases are taken up before one magistrate each day. The same situation could be observed in the District of Kegalle. The working hours of the court are from 9.30 a.m. to 12.30 p.m. and 1.15 p.m. to 3.30 p.m. Therefore, the sitting period of the court limits to 315 minutes per day. During this period magistrate has to hear all matters before him. Nevertheless, the courts have been given directions to dispose of the trial cases, which have taken longer than five years, within the next two years. In this situation, the magistrates have to expedite the disposal of the cases. When the trial cases are called before the court, some defence counsels inform that if the court

can consider a suspended sentence, the accused is willing to withdraw the previous plea of not guilty and plead guilty for the charge. Mostly, those applications are entertained by the court, and considering saving the time of the court by the accused person, a suspended sentence is imposed on the accused person. Under these circumstances, the offenders who have committed subsequent offences during the operational period of the suspended sentence can walk out on another suspended sentence. Due to the heavy workload or some other management issues, the court has to operate in this manner and it is a deviation from the expectations of the sentencing philosophy.

The Magistrates were further interviewed to examine whether there is non-availability of a guideline to exercise the provision stated under section 303(13)(iii) (iv) and also to see the relationship of non-availability of the guideline with the variation of the discretion of the judge. All the Magistrates admitted that section 303(1) of the CCRPA has given a guideline to direct the court in what circumstances the imprisonment should be suspended and what factors are to be considered to suspend the term of imprisonment. Section 303 (13) (iii) and (iv) permits to pass a suspended sentence on an accused who committed a subsequent offence during the operational period of the suspended sentence passed previously and allow to make no order concerning the suspended sentence. However, as regards the exercise of the provisions in the above-mentioned section no guideline has been stated. This defect is expected to be overcome by the presiding judge by using his or her discretion. The discretionary power can vary from person to person, and ultimately it causes to pass different sentencing orders. In the field survey of this research, only 21.05% (n=12) of the offenders who violated the conditions of the suspended sentences had been imposed custodial sentences. Among the offenders who were given custodial sentences had committed only two offences. But some of the offenders had been convicted more than five convictions. 78.95% (n=45) of the offenders had been passed another suspended sentence for the offence committed during the operational period of the suspended sentence. Some offenders under the suspended sentences for the offence committed during the operational period of the suspended sentence had perpetrated more than five offences but imposed another suspended sentence, and as a percentage amounted to 15.78% (n=9). When imposing sentences against the offenders, disparities of this nature should be avoided. Therefore, it is obvious that the disparities occur in imposing suspended sentences under section 303 (13) (iii) (iv) and imposing a fine of up to 25000 rupees instead of implementation of the imprisonment, which has already been suspended due to the lack of guideline is another instance.

Another reason for the congestion and the creation of backlog at the courts could be detected in the research. When the situation of the magistrate's courts in the district of Kurunegala is considered some Magistrate's courts have to hear the proceedings instituted by three police stations, but only one magistrate has been appointed to work there, for example, Galgamuwa and Polgahawela Magistrates' courts. The Nikaweratiya court functions as a combined court, and the same judge sits as the magistrate and the district judge. The proceedings instituted by Nikaweratiya, Kotawehera, and Rasnayakapura police stations and the cases relating to the incidents in some Grama niladari divisions of Kobeigane Police area are heard at Nikaweratiya court in addition to the civil matters. The cases of five police stations namely Kuliyaipitiya, Dummalasooriya, Pannala, Giriulla, Narammala, and half of the Katupotha police area are heard at Kuliyaipitiya Magistrate's court. But there is only one magistrate at kuliyaipitiya. But in the jurisdiction of Maho there are two magistrates to hear cases instituted by three police stations. While there are five police stations in the jurisdiction of the Krunegala magistrate's court, two magistrates have been appointed. Both Pilessa and Rambodagalla magistrate's courts have been established only for one police station each. Therefore, both Pilessa and Rambodagalla magistrate's courts have comparatively fewer cases. Therefore, the issue is obvious that is when the jurisdictions are determined, attention has to be paid to the population and the crime rate in the area. Therefore, the disparity concerning the area of the jurisdiction of the magistrate's court causes this congestion. The Magistrates working in the court with a heavy workload are helpless, and they are unable to spend enough time explaining the purpose, effect, and consequences of the violation of the suspended sentence. However, the discretionary power of the Magistrates working at the court with a heavy workload is used basically for the acceleration of disposals. Though the law permits to impose a suspended sentence irrespective of the suspended sentence, which is already in operation, the law does not provide any guideline on how it should be exercised, and this causes to impose a suspended sentence repeatedly.

Suppose the offender is given a suspended sentence again and again for each and every crime committed during the operational period. In that, it causes to remove the fear of drastic penal action from the mind of the offenders. This situation is contrary to the concept of the suspended sentence which is aimed at deterring the offenders from committing further crimes by making them fear drastic penal actions. The removal of the fear of drastic penal action from the mind of offenders causes recidivism.

No inquiry is held to examine the aggravating and mitigating factors -

The law relating to the suspended sentence permits to consider the aggravating and mitigating factors. But, after the conviction, no inquiry is held to examine the aggravating and mitigating factors. After the conviction, the accused or his attorney can make a mitigating submission. However, in the magistrate's courts mostly, the prosecuting officers do not make submissions on aggravating factors as some courts do not take much time on the cases due for sentencing at magistrate court, the cases are prosecuted mainly by government officers, and some prosecuting officers are not aware of making submissions on mitigating factors as they are not lawyers. When observing the way that the court functions the above facts could be detected. The court relies on the facts stated orally and, on the documents, if submitted by the defence counsel. This creates an unbalanced situation, and the court has to pass sentence on the offender without hearing a proper submission on aggravating factors.

7. Conclusions

Thirty percent of the offenders who have been imposed suspended sentences are reconvicted for an offence committed during the operational period of the suspended sentences. This is approximately similar to one-third of the total number of offenders undergoing suspended sentences. The offenders on suspended sentences are not referred to rehabilitation programs due to the absence of such a mechanism in the system. The offenders on suspended sentences are not monitored during the operational period of the suspended sentence by any authority. When the offenders are reintegrated into society without eliminating their criminal intention, the tendency for recidivism escalates. Further, the ways and means used by the court to raise the awareness of the offenders on suspended sentences are unsatisfactory, and for this reason, the court is unable to fulfill the duty assigned to it by section 304 of CCRPA. In this backdrop, the awareness of the offenders serving suspended sentences, as regards the purpose, the effect, and the consequences of the violations of the conditions of the suspended sentences is very poor. This leads them to commit crimes again during the operational period of their suspended sentence. Those are the main reasons that make the offenders commit crimes repeatedly during the active period of their suspended sentences. Moreover, the delimitation of the jurisdictions of most of the magistrate courts has not been done in a fair and equal manner that most magistrate courts are congested with a heavy workload. For the above-mentioned reasons, most of the magistrate's courts fail to fulfill the duties assigned to them properly, for example, the effect, and the consequences of the violation of the suspended sentence to the offender.

Some other factors affect the recidivism of the offenders on suspended sentences. The susceptibility to crimes over a long period aggravated the criminality of the offenders due to the social stigma attached to being reconvicted. They have committed the subsequent offence during the operational period of the suspended sentence due to their monetary needs, poverty-stricken condition, bad association, and drug addiction. The offenders have committed their first offence at a young age. There seems to be no direct relationship between the offender's education and his or her tendency towards criminal behaviour. However, the propensity for criminal behaviour seems to be high among the offenders who have received education below the ordinary level. Kinship, on the other hand, has served as a diminishing factor of criminal inclination as the family bonds are strong in our culture, yet they do not completely prevent offenders from committing offences. The tendency to commit crimes among the temporary residents is higher than the tendency to commit crimes among the permanent inhabitants of the area. The conviction for a criminal charge affects the offenders' occupation adversely. Drug addicts tend to commit criminal acts to procure heroin for their daily consumption. As mentioned earlier, most offenders given suspended sentences do not fear drastic penal actions for they are not aware of the consequences of violation of the conditions of suspended sentences resulting from committing another offence. This is mainly caused by the unawareness of the effects of violations of the conditions. In Sri Lanka law, there are no provisions to hold an inquiry for sentencing after the conviction and in most cases, only the defence counsel makes a submission seeking mitigation of the sentence, and submissions on aggravating factors are not properly made, and this leads to passing a lenient sentence.

On the other hand, owing to the non-availability of the sentencing guidelines, the use of judicial discretion varies from court to court and this too causes the imposing of lenient punishments. The criteria that should be followed in passing a suspended sentence to an offender who is still in the operational period of his previous suspended sentence imposed earlier have not been stated clearly under sections 303(13)(iii) and (iv). This results in the imposition of a suspended sentence recurrently and this is contrary to the concept of the suspended sentence.

8. Recommendations

As there is no mechanism to refer the offenders given suspended sentences to rehabilitation programmes, the law relating to the suspended sentence should be amended to introduce a mechanism required for such rehabilitation programmes. The lack of guidance to make no order when there is a violation of the conditions during

the operational period of the suspended sentence imposed previously under section 303(13) (iii) and (iv) of the present law should be considered. When introducing amendments to the code of criminal procedure act, these two matters should be focused on.

Before introducing a guideline for the use of discretion of the court, the aims of punishment must be considered and the guideline should have the virtue of preventing the offenders from committing further offences. Suppose the proposed guideline strictly demands the court to implement the sentence which has already been suspended in case of violation of the conditions. In that case, it will not be fruitful because it is not the proper way of using discretion. The guideline must consist of measures to evaluate the degree of the criminal conduct of the offender. Therefore, the following guideline is recommended.

The following guidelines are proposed for the consideration of the court in using judicial discretion to act under section 303(13) (iii) and (iv).

A. Aggravating factors -

- (1) The number of previous convictions that can be punished with imprisonment.
- (2) Whether the offence has been committed by using deadly weapons and premeditation.
- (3) The necessity of the protection of the victim and the society at large.
- (4) Committing the offence during the operational period of the suspended sentence while participating in a correctional programme.
- (5) Whether the victim/victims is/ are in a vulnerable situation and the degree of damage caused to the victim.
- (6) Intention to earn money through committing offences habitually.
- (7) Committing a more serious offence than the first offence.
- (8) The extent of brutality and the brazenness shown in the act of committing the offence.

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