Development of Sentencing Structure and Policy in Thailand

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Historical Backgrounds

It is believed that Thai people had originated from the south of China before they immigrated southwards along the Mekong and the Chaophaya Rivers and settled in the midst of the Indo-Chinese Peninsula. It was in about 1238 when the Thai Kingdom of Sukhothai was founded after subduing the native Cambodians. In the reign of King Ramkhamhaeng the Great, the first law was written in the form of stone inscriptions. Although the law provided no criminal sanctions, the King had a wide discretion in the imposition of punishment.

After the Prince of Uthong, later King Ramatibodi I, founded a new city at Ayuthia in 1350, the administration of justice was delegated to *Purohita,* or the Chief Chaplain of the King, who assumed the responsibility of the judge and administrator of the law. A system of courts of justice was set up to enforce law and order throughout the realm. The first criminal law which provided penalty was instituted in 1709 in the reign of King Taisa. For example, the Judicial Service Law stipulated, "Whoever bribes the judge . . . etc. . . . shall be punished with a fine double the amount offered" (Section 90), and "The judge who commits adultery with any party in the case shall be punished by double the punishment imposed and shall be removed from his position" (Section 108). Furthermore, Section 46 provided six kinds of punishments to be inflicted upon thefts: (1) death, (2) mutilation of hand and foot or flogging, (3) enchainment, (4) pillory, (5) fine, and (6) execution of a bond.

In the beginning of Ratanakosin period in 1805, King Praphudayodfa, the founder of Bangkok, appointed a Royal Commission to revise the law of the land. The commission compiled the penal and civil law into a Code known as the "Law of the Three Great Seals." The Code concerning criminal offences stipulated very harsh punishments such as to hit the head until bleeding, to put a heated iron into the head so as to make the brain burst out, to use a sharp chisel piercing from mouth to ear and hooking up until the blood comes out, or to push a big coconut into the forcibly opened mouth.

The modern and humanitarian law reform started in the reign of King Chulalongkorn (1868–1910), one of the greatest and most enlightened kings of the Thai monarchs. He promulgated the Penal Code of 1908 which was later revised in 1956. The latter owed much of its form and inspiration to the French, Italian, Indian, and Japanese Penal Codes. Under the new Code, five modern forms of penalty were recognized: (1) death, (2) imprisonment, (3) fine, (4) confinement, and (5) forfeiture of property. In addition, the Code provided safety measures such as relegation, prohibition to enter a specified area, execution of a bond with security for keeping the peace, detention in a hospital, and prohibition to carry on certain occupations.

Developments of Sentencing Structure and Policy

1. Purposes of Punishment

Historically, retribution and deterrence appear to be widely prevalent purposes of punishment. Widely condemned as they are, no one raises real doubt as to the reality or the necessity of the protection of society. Further, the rehabilitative treatment of the offender is the purpose most frequently discussed and applauded today. For example, imprisonment as widely used punishment is eventually a

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method by which an offender will be cut off from the community for a certain period and rehabilitated in order to be a good citizen in the community after his release. Thus sentence passed by the Court must be appropriate so as to make the offender conscious of his guilt and to have a good attitude towards society.

2. Severe Punishment

Severe punishment alone cannot be effective intimidation to the potential criminal. As a matter of fact, harsh punishment under the old laws did not improve crime trends. Nevertheless, current punishment for many offences is still very severe in this country. For example, the punishment for the offence of corruption committed by government officials was imprisonment for a term not exceeding seven years and a fine not exceeding 14,000 Baht, under Section 149 of the Penal Code. The punishment was later raised to death, life imprisonment, imprisonment for a term of five years to 20 years, or a fine of 2,000 Baht to 40,000 Baht. Similarly, Section 20 of the Narcotic Act was revised and the punishment against the person guilty of selling or distributing heroin or possessing heroin for sale or distribution was raised to imprisonment for a term of five years to life and a fine of 50,000 Baht to 500,000 Baht.

However, these two offences did not show a remarkable decrease despite the rigorous punishment actually imposed. Statistics reveal that there were 66 corruption cases in the Criminal Court in 1958, and 65 cases in 1959 when the law was amended to increase the penalty. However, they also reveal that the number of such cases increased to 82 in 1960. Heroin cases showed similar trends. In 1960 there were 514 heroin cases but in 1961 when the maximum punishment was increased to life imprisonment the number of the cases decreased to 146. However, it increased again to 430 cases in 1962 and has been increasing every year. These facts may indicate that the occurrence of crimes cannot be stopped or reduced effectively by severe punishment alone.

In 1969, the revolutionary government under Field Marshal Thanom made proposals that the Courts should impose a severe punishment on the offenders, and that sentences should not be reduced even when the accused confessed his guilt, despite Section 78 of the Penal Code, "Whenever it appears that there exists an extenuating circumstances, the Court may reduce the punishment to be inflicted on the offender by not more than one half." While these proposals aroused much discussion about the amendment of the Code, it was agreed in a seminar that there should be no amendment as to reduction of punishment.

3. Discretion of Court

One important factor that the Court should take into consideration in passing a sentence is the possibility of an offender to become a good citizen. Section 56 of the Penal Code asserts that the court may, when punishment imposed by the court will be an imprisonment for a term not exceeding two years, and when the offender has not been punished or has been punished only for the negligent or petty offence, suspend the sentence after taking into consideration his age, behaviour, intelligence, education, training, health, condition of mind, habits, occupation and environment, and then release him with or without conditions so as to give him an opportunity to reintegrate himself into community within a period of not exceeding five years since the date of the judgment.

On the other hand, the court has power to increase punishment by one-third or one half, as the case may be, if the offender commits crime again. And if the offender commits crime for the third time, the court may also impose relegation, a kind of safety measure on him. Relegation is the keeping in custody of a habitual criminal, i.e., a person who has been sentenced to relegation, or has been sentenced at least twice to imprisonment for a term of not less than six months. The court also has power to order that the offender shall be prohibited to enter a specified area for the period of not exceeding five years after the expiration of his sentence.

In many cases, the Thai Court has difficulties in passing appropriate sentence since the minimum punishment of some

offences is quite high. For example, there is a case where the accused gave a cigarette containing heroin to his friend who wanted to try and asked for it. Since punishment for the offence of distributing heroin is imprisonment for a term of five years to life imprisonment, the court must imprison him for at least five years. Even if the accused pleads guilty, the court can only reduce the term of imprisonment by one half to two years and six months. Besides, a suspended sentence cannot be used in this case, even when the court is of the opinion that it is appropriate to give the accused a chance to reform himself outside the prison wall.

4. Disparities in Sentences

In recent years more criticism has been directed at disparities in sentences. The sentence imposed for the same offence and by the same court should be desirably the same as much as possible. However, it is difficult to implement this principle in the practice, since no case has identical fact, and since the courts may consist of many judges with different ideas in passing sentence for a certain offence.

In order that a sentence for the same offence will be consistent, and at the same time the court's discretion is not hampered in passing sentence, the Thai courts have a list of standard sentences measured by the past practice of sentences and other relevant factors. For example, the standard sentence drawn up by the Criminal Court for the offence of perjury is one-year imprisonment, while such offence is punishable by imprisonment for a term not exceeding five years and a fine not exceeding 10,000 Baht. This list will be more complete if drawn up after thorough consultation among the judges of the court concerned. However, it is important to bear in mind that the list is merely a confidential guideline. Thus it is not compulsory rule to which the court must adhere in passing sentence.

Current Roles of Court

The nature of present day crime differs very much from that in the past. While juveniles quarrelled with one another and engaged in a fight with their fists or at most brass knuckles, they now use explosive bottles or plastic bombs. Crime is well organized, well planned, and more audacious. Today, Thailand is facing the problem of how to suppress crime, especially theft of motorcycles, cars, beasts of burden, Buddhists images, and antiques, cutting down timber without license, drug abuses, as well as juvenile delinquency. Although strict measures are employed by the authorities to check the occurrence of crimes, the crime rate shows upward trend every day. At present, it is the duty of the courts or the judges to (1) restore peace and order, (2) punish offenders, (3) protect innocent persons, and (4) decide cases in accordance with justice recognized by the public.

The crux of the matter is that, in order to exercise discretion correctly, courts must have informations about the causes of the crime, the nature of the accused, and other relevant circumstances. In the juvenile court, the Observation and Protection Center is legally responsible for making inquiries and supplying informations. In other criminal courts the situation is totally different. The accused is the one who will give the information to the court. However, the information given by the accused is often just an excuse to avoid punishment. In this connection, Thai courts can neither collect information by themselves nor consider the facts which do not appear on the records of the trial. Therefore, there should be a law which imposes the duty upon investigating or other officers to collect such information and supply it to the court.

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