

Comprehensive Research on the ways to Minimize the Disparity of Sentences in Similar Offences in the Malaysian Criminal Justice System

Yichen Pan¹, Wong Jun Hao²

^{1,2} University of Malaya

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ABSTRACT

The Malaysian Criminal Justice System, like many others globally, faces the challenge of minimizing sentence disparities in cases involving similar offenses. This comprehensive research endeavor delves into the multifaceted issue of sentencing disparities, seeking to understand its root causes and to propose practical strategies for mitigation. The paper begins by acknowledging the importance of consistent and fair sentencing in upholding the principles of justice and ensuring public trust in the legal system. It highlights the current disparities observed in the sentencing of individuals convicted of similar offenses, by taking theft cases to shed light on the implications for equity, deterrence, and offender rehabilitation. This research adopts a multidisciplinary approach, drawing from legal analysis, case studies, and empirical data to explore the factors contributing to sentencing disparities. Afterward, it presents a range of potential solutions aimed at reducing sentence disparities in the Malaysian context, which includes setting clear sentencing guidelines; implementing Artificial Intelligence Judgement (AI judgment), and setting specialized courts in the criminal justice system. This comprehensive research endeavor aspires to contribute significantly to the ongoing discourse surrounding equitable sentencing practices in Malaysia, fostering a more fair and transparent criminal justice system for all its stakeholders.

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Corresponding Author:

Name: Yichen Pan

Institution: University of Malaya

e-mail: eshenpan@gmail.com

1. Introduction

In the history of jurisprudence, the origin of law is not primarily aiming at a fair trial, instead, it is a way to safeguard the interests of the ruling class, enabling rulers to better manage society and maintain social stability¹, thereby elevating certain customs to the realm of law. Thus, in early societies, individuals from different social strata were subjected to varying treatment under the law. In cases involving severe offenses that might warrant a death penalty, the nobility class might be exempt from such punishments, receiving lighter penalties or even escaping punishment altogether.

For instance, during the French Revolution in the late 18th century, the monarchy was overthrown, and the revolutionaries aimed to establish a more egalitarian society. As part of this process, the French nobility, who had long enjoyed special privileges and exemptions from certain laws, were targeted. In the Reign of Terror, revolutionary tribunals were established to prosecute those accused of counter-revolutionary activities. Many members of the nobility were brought to trial, and accused of crimes against the revolutionary ideals. Some of these offenses could lead to severe punishments, including death by guillotine. However, the concept of equality before the law was put to the test. Some members of the nobility managed to escape prosecution or received relatively lighter sentences due to their connections, wealth, or the intervention of influential supporters. This resulted in instances where individuals from the nobility class faced varying degrees of punishment for similar offenses.

While the French Revolution aimed to eliminate the privileges of the nobility, the transitional period saw moments where social status continued to influence legal outcomes, reflecting the challenges of transitioning from

a hierarchical society to one based on equality before the law. This historical example underscores how privilege and exemption based on social status could influence legal proceedings, even in cases of severe offenses.

These instances vividly illustrate the phenomenon of sentencing disparity. Yet, this inequality is not solely based on individual identity; in fact, the causes of sentencing disparity encompass multiple factors, including the nature of the law itself and the impartiality of judges.²

It is well-known that sentencing disparity has persisted in judicial systems around the world for a considerable period. Despite advancements in technology and the improvement of legal professionals' qualifications, the reduction of sentencing disparity remains modest. Hence, this paper aims to delve into the fundamental causes of sentencing disparity and analyze methods to mitigate this inequality phenomenon in the aspect of the domestic criminal justice system.

2. Methodology

This research will use a qualitative research method which includes both library research and comparative analysis to conduct and examine the potential ways to minimize the disparity of sentences in similar offences. The researcher is not only limited to the physical aspect of library search but also the online law database such as e-books, online journals, official related websites, and international documents by the United Nations, in order to make more deep and comprehensive discussions.

3. Case Review and Discussion

In this section, the author draws on several Malaysian recent cases related to theft, which is regulated in the Penal Code section 378-382.

¹ Nonet, P., Selznick, P., & Kagan, R. A. (2017). *Law and society in transition: Toward responsive law*. Routledge.

² Baumer, E. P. (2013). Reassessing and redirecting research on race and sentencing. *Justice Quarterly*, 30(2), 231-261.

Figure 1: Case Comparison.

Case Law	NGU SHU KHAN v. PP [2019] 1 LNS 1723	AZRA AHMAD ROSLI v. PP [2019] 1 LNS 548
The accused person's name	NGU SHU KHAN	AZRA AHMAD ROSLI
Offence	Theft of one handbag containing one power bank, and cash of RM200.	Stealing 5 units of iron drain covers, the estimated loss is approximately RM300.
Law	Section 379 of the Penal Code	Section 379 of the Penal Code
Age bracket	Adult	Adult
First-time offender/ repeated offender	first-time offender	first-time offender
Sentencing result	15 months' imprisonment from the date of arrest.	10 months' imprisonment from the date of arrest

It can be seen clearly that the basic background of these two cases are similar. Both of the offenders are first-time offenders, they are convicted in the same year, the value of the stolen items is similar, they are all adults and they face the same charge under s.379 of the Malaysian Penal Code. However, there is a 5 months disparity in sentencing which causes both of the offenders to receive unfair treatment.

Apart from that, there is a recent case law in which the Sabah High Court revised a theft case sentencing and decided to reduce the sentence from 13 months jail term to 1 month.³ All these case laws have shown that the occurrence of disparity in sentencing is a common problem in the Malaysian criminal justice system.

There is no doubt that the sentencing of criminals should fully obey the suitable law, which is s379 of the Penal code: whoever commits theft shall be punished with imprisonment for a term which may extend to seven years or with a fine or with both. Thus, any sentencing that is within 7 years

imprisonment to the offender does not violate the law. However, there is such a huge sentencing range given to the judge, and leaves judges a huge discretion on the sentencing aspect in the criminal justice system.

By analysis, it can be observed that the primary reason for disparate verdicts in similar cases lies in the differing application of retributive and rehabilitative justice philosophies. In the criminal justice system, there are two theories in sentencing criminals: retribution and rehabilitation. Retribution is one of the aims of sentencing which concerns an eye for an eye and a tooth for a tooth. It helps to prevent future crime and helps to remove the personal desire to take revenge against the defendant.⁴ On the other side, the rehabilitation theory prevents future crime by correcting a criminal's behavior⁵. The method for rehabilitation includes educational and vocational programs.⁶ This means that the prisoners will be required to attend several rehabilitative programs, like community service, instead of staying in the prison for a

³ Sentencing disparity: Judge reduces shoplifter's sentence to one month Daily Express, 2019. <https://www.dailyexpress.com.my/news/145680/sentencing-disparity-judge-reduces-shoplifter-s-sentence-to-one-month/>

⁴ Criminal law, University of Minnesota Libraries Publishing edition. (2015). The Purposes of Punishment. <https://courses.lumenlearning.com/suny-criminallaw/chapter/1-5-the-purposes-of-punishment>.

⁵ Samuri, M. A. A., Kusrin, Z. M., Awal, N. A. M., Nor, A. H. B. M., Hamjah, S. B. H., & Ab Rahman, Z. B. (2013). The rehabilitation theory in adjudicating child offenders and its application in Malaysia. *Asian Social Science*, 9(15), 156.

⁶ Study.com. (-). Prison Rehabilitation Programs. <https://study.com/learn/lesson/prison-rehabilitation-programs.html>.

long time. Moreover, the prisoners will receive counseling under the program and they will be guided and educated by the counselor. Apart from that, the prisoners will also be sent to several companies to work. All these companies will take this program as cooperate social responsibility. This program will provide the prisoners a new chance to live and can ensure that the prisoners will learn some life skills so that they can earn their own living after they are released from prison.

Currently, due to the heightened awareness of human rights, many developed countries, notably the United States, the United Kingdom, and New Zealand, have begun to prioritize and enhance their rehabilitation-focused sentencing programs. This shift towards rehabilitation is based on the recognition that it offers a more effective approach for addressing the underlying causes of criminal behavior. This progressive approach not only aligns with the principles of justice and human rights but also reflects a broader societal commitment to reducing recidivism and fostering the reintegration of offenders into their communities.

However, in Malaysia, the judges prefer to adopt the theory of retribution, which can be seen through the previous case of *Ngu Shu Khan v. PP*, the judge held that in order to prevent the rampancy of theft cases and to promote the public interest, the learned judge adopted two aggravating factors and imposed a heavier sentence to the offender. On the other hand, in the case of *Azra Ahmad Rosli v PP*, the judge preferred rehabilitation over retribution in which the learned judge imposed a less severe sentence on the offender due to the offender's background being poor, and two of his children still studying in school. By considering those mitigating factors, the learned judge decides to reduce the sentence. Thus, all these factors have resulted in a disparity in sentencing.

Through examining these two cases, it is obvious that different judges will take different considerations before they impose a

sentence. It should be highlighted that both judges in these two cases do not do something wrong because it is their power and discretion to impose a sentence after considering all the factors. However, judges are all mortal, they may be indirectly affected by some internal factors. For example, the judges' family, educational background and their working experiences. All these factors will directly or indirectly influence the decision by the judge.

4. Suggestions

While there are no entirely identical cases, as each case is unique with its own set of circumstances entailing various factors that may aggravate or mitigate the punishment, requiring judges to make comprehensive judgments, for similar cases, there should be similar sentencing outcomes. Thus, if judges hold different opinions towards similar case law, the disparity in sentencing cannot be minimized.

With this, the author will launch three ways that are feasible to be implemented to minimize the disparity in sentencing: (1) Setting Clearer Sentencing Guidelines; (2) Implementing Artificial Intelligence Judgement. (3) Setting Specialized Courts for Certain Crimes.

Sentencing Guidelines

There is a long call for reforms from the Bar Council of Malaysia to tackle the issue of disparity in sentencing by using the sentencing guidelines⁷. This issue came to a peak, especially during the period of Covid-19. Due to the economic crisis across the globe, a lot of people in Malaysia cannot afford the hardship. The 'white flag' activity is the most significant event that shows how the people in Malaysia suffered huge distress during the pandemic. They lose their job and sources of income because of the implementation of the lockdown. With this, they are forced by the severe circumstances to commit theft, so that

⁷ Malaysian Bar. (2012). Case for sentencing guidelines. <https://www.malaysianbar.org.my/article/news/legal->

[and-general-news/legal-news/case-for-sentencing-guidelines](https://www.malaysianbar.org.my/article/news/legal-and-general-news/legal-news/case-for-sentencing-guidelines).

they can afford their families⁸. There are several theft cases that grabbed the public attention through the sentencing that had been imposed by the court. For example, the stealing of milo packet cases. A single father from the needed family commits theft and steals Milo from the grocery and has been convicted to imprisonment for 3 months. The other mother with criminal records also during the period of Covid-19 steals Milo from the shop and has been convicted by the magistrate for 14 months imprisonment. Meanwhile, the other unemployed man was sentenced to jail for 15 days in 2016 for stealing the milo also.

All these cases have caused doubt to the public. First is the phenomenon of disparity in sentencing that has been passed by the court. Second is the severe punishment for minor crimes. The activists and public show their dissatisfaction with the outcome of the judgments and have urged the court to give compassion before the learned judge imposes a sentence⁹.

This shows that due to the lack of a systematic approach, the disparity in sentencing will not only cause the miscarriage of justice, but it will also cause the public to lose confidence to the judicial system because the public has no idea on how a sentencing will be imposed by the court. To resolve this matter, the use of sentencing guidelines can reduce the risk of disparity in sentencing. This approach has been recognized by the former Minister of Law, Dato' Seri Mohd Nazri Abdul Aziz. In the dialogue on establishing a Sentencing Council in Malaysia in 2013, he admitted that providing sentencing guidelines to the learned judges will help to reduce the disparity of sentences meted out by the courts. However, this must be done in a

lawful manner in which it cannot affect the independence of the judiciary and must respect the power and discretion of the court to impose a sentence¹⁰.

By using the sentencing guidelines to solve the issue of disparity of sentence in theft cases, it is of great importance to establish a Sentencing Council in Malaysia. The Sentencing Council is an independent body that aims to serve judicial independence and promote consistency in sentencing. For example, the Sentencing Council in the United Kingdom was established in 2010¹¹. This Sentencing Council is part of the bodies from the Ministry of Justice. The appointment to the Council is made by both the Lord Chancellor and Lord Chief Justice in the UK. In the Sentencing Council of the UK, there are 14 members and most of them are former judges, police, and experts in criminal justice¹². It should be highlighted that this independent body is held responsible to the Parliament. The Sentencing Council has a statutory requirement to take advice from the Parliament and if they are called by the Parliament, they have to appear before the selected committee from Parliament to answer the request.

Secondly, the Sentencing Council must come out with a sentencing guideline and the court must follow the guidelines when imposing the sentence. The courts in the UK have been bound by the Sentencing Act 2020 to follow the sentencing guidelines that has been passed by the Sentencing Council. Under s.59 of the Act¹³, it is the Courts' duty to follow the guidelines. However, the court can choose not to follow the guidelines only if there is a need in the interest of justice. Offences can be committed by different ways and there are different factors that need to be

⁸ MalaysiaKini. (2022). Have compassion when sentencing those with hardship.

<https://www.malaysiakini.com/columns/629818>.

⁹ Focus Malaysia. (2022). 'Stealing Milo when you are desperate to survive – why punish?' <https://focusmalaysia.my/stealing-milo-when-you-are-desperate-to-survive-why-punish/>.

¹⁰ Malaysian Bar. (2013). Dialogue on establishing a Sentencing Council in Malaysia. <https://www.malaysianbar.org.my/article/about->

[us/committees/criminal-law/dialogue-on-establishing-a-sentencing-council-in-malaysia-5-mar-2013](https://www.malaysianbar.org.my/article/about-us/committees/criminal-law/dialogue-on-establishing-a-sentencing-council-in-malaysia-5-mar-2013).

¹¹ Sentencing Council. (-). About the Sentencing Council. <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/>.

¹² Sentencing Council. (-). Sentencing Council Members. <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/sentencing-council/>.

¹³ Sentencing Act 2020, s.59.

considered by the court before they arrive to the sentence. Sentencing guidelines provide judges a guidance that show factors that should be considered by the court. These factors include the harm that has been caused to the victim, the blameworthy of the offenders and others. In the UK, the sentencing guidelines are used by the Magistrate Court and Crown Court. Different offences will have different sentencing guidelines. If there are no specific guidelines for the offences, then the court can rely on General Sentencing Guidelines, the judgment from the Court of Appeal and refer to the previous similar case law. There is also a special sentencing guideline for the sentencing of youth offenders.

To set out a sentencing guideline for certain crimes like theft, it is crucial to separate the criminal act of shoplifting from the offence of general theft. In Malaysia, there is no specific provision that governs the criminal act of shoplifting. It falls within the category of Theft under the Penal Code and is governed under s.379 Penal Code¹⁴, the general theft. As aforementioned, the sentencing for general theft is too wide, the maximum sentence for shoplifting could be 7 years imprisonment. This is one of the reasons that cause disparity in sentencing and severe sentences. 'Separate the criminal act of shoplifting with the offence of general theft' means the criminal act of shoplifting will not be governed under s.379 Penal Code. When it comes to the sentencing guidelines, there will be two guidelines that govern the offenses. First, is shoplifting and second is general theft. This is because most of the time, the considerable factor for both crimes is different; thus, the separation will provide the court with a precise guideline to arrive at a sentence.

For example, in the UK when the value of the stolen items exceeds £200, it will fall under the offence of general theft in which

the offender can be punished with imprisonment for a maximum of 7 years¹⁵. If the value of the stolen item is below £200, then it is an offence of shoplifting and the court may impose a sentence for imprisonment not exceeding 6 months¹⁶. Those statements in legislation are only in common law countries, but also in civil law countries, like China: according to Article 264 of the Chinese Criminal Code, if theft involves a relatively large amount (more than 3,000 RMB), the maximum penalty is not more than three years of fixed-term imprisonment. However, if theft involves a huge amount (more than 30,000 RMB) or if there are other serious circumstances, a sentence of 3 to 10 years of fixed-term imprisonment shall be imposed. If the amount is exceptionally huge (more than 3,000,000 RMB) or if there are exceptionally serious circumstances, the maximum penalty can be life imprisonment. ¹⁷

Thus, those sentencing guidelines launched by legislators will reduce the risk of disparity in sentencing and will also avoid the severe sentence that will be passed by the court to those who are in need. In order to strengthen the law, it can be suggested that the law should also include the sentence for repeat offenders, and if a person commits shoplifting twice or more, the court should impose a heavier sentence.

Under the sentencing guideline, the court has to follow several steps before they impose the sentence. These are the following steps that must be taken by the court¹⁸:

First and foremost is to determine the category of offences. Under the offence of theft from shop, it can be categorized into 3 types by focusing on the culpability of the offenders. If the offender takes a leading role in the offence, has a well-organized plan and there is significant use of force, then he/she will fall within Category A – high culpability. If the offender takes a less active role, has some degree of plan, and has used limited

¹⁴ Penal Code, s.379.

¹⁵ Theft Act 1968, s.7.

¹⁶ Magistrates' Court Act 1980, s.22A.

¹⁷ Interpretation of the applicable law in handling criminal cases of theft. S.1

¹⁸ Sentencing Council. (-). Sentencing for theft from a shop.

<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/theft-from-a-shop-or-stall/>.

force, then he/she will fall within Category B – medium culpability. For those who commit the offence without planning, are ordered by someone to commit the crime, have not caused harm to others and suffer some mental disease, they will fall under Category C – lesser culpability.

After considering the culpability, the court will have to consider the harm. The word 'harm' refers to emotional distress, damage to property, and effect on business and others. If the total value of the stolen item is above £ 1000 (high value) or the value is medium value, but the offenders have caused significant harm, then they will be categorized under Category 1. If the value of the stolen item is between £200 - £ 1000 (medium value) or the value is lesser value, but the offenders have caused harm, then the offenders will be categorized as Category 2. If the value is below £ 200 (lesser value) and there is no harm, then it falls within Category 3.

Furthermore, the guidelines will show the range of imprisonment term according to the relevant categories. The guidelines will consider both Category A, B and C with Category 1, 2 and 3 to come out with a reasonable range. There will be a guideline for fines also. The judge must impose a fine by considering the aggravating factors and mitigating factors in the cases, which may include the income of the offender and the seriousness of the committed offence.

Moreover, the court will consider the cooperation from the accused. If he/she gives a full cooperation to the investigators or the prosecutors, then the sentence might be reduced by the court. If he/ she pleads guilty, then a lesser sentence will be imposed by the court. Apart from that, the court will adopt totality principle to decide the sentencing period, if the offender commits more than one offence or is currently serving a sentence (consecutively/ concurrently). Then, the court will decide whether there is a need to

compensate or others, and it must provide reasons for their decision. The reasons must be written down by the judge. Finally, the judge should consider whether or not to grant bail to the accused.

All the steps above provide a systematic way for the judges to impose a sentence. This helps judges to make a decision efficiently. This is because the judges do not have to refer back to the previous case law, this may save time and cost. Other than that, it will reduce the disparity in sentencing which will promote certainty and fairness to the criminal justice system.

In the research from the Sentencing Council, which shows that the sentencing guideline has promoted confidence in the public, especially for minority groups. They are of the view that the sentencing guidelines give a transparent approach for the public to be aware of the ways that how a judge imposes the sentence and it helps the judges to give a fair sentence¹⁹.

Implementing Artificial Intelligence in the Sentencing Process

Recognizing the potential perception of gross unfairness arising from the unequal treatment of offenders convicted of similar crimes, which could erode public trust in the criminal justice system, the introduction of AI technology into the sentencing process holds the promise of delivering fair and equitable sentences. The incorporation of computer technology into the sentencing procedure has been a contentious legal issue dating back to the 1980s and 1990s, marked by the advent of 'Sentencing Information Systems.' Proponents have asserted that "computerized sentencing is superior to judicial sentencing." However, some researchers have countered that the introduction of Artificial Intelligence to address sentencing disparities may have profoundly negative consequences that may need to further concern for the realities of sentencing.²⁰

¹⁹ Sentencing Council. (2019). Public knowledge of and confidence in the criminal justice system and sentencing: A report for the Sentencing Council. <https://www.sentencingcouncil.org.uk/wp->

<content/uploads/Public-Knowledge-of-and-Confidence-in-the-Criminal-Justice-System-and-Sentencing.pdf>.

²⁰ Yichen Pan. International Human Rights: Challenges and Solutions for Intelligent Judgment in the AI Era, *The Malaysian Current Law Journal*, [2023] 1 LNS(A) lvii

From the author's perspective, translating sentencing into a computerized system is far from straightforward, and AI is unlikely to entirely replace judicial decision-making in sentencing, due to both technological limitations and ethical considerations. Simultaneously, the utilization of AI technology in the sentencing process offers tangible benefits, aligning with the integration of science and technology into the judicial system, which is a response to evolving societal dynamics. Considering the fact that unequal treatment of offenders of similar crimes is likely to be perceived as grossly unfair, which may undermine public confidence in the criminal justice system, the introduction of AI technology into the sentencing process in the criminal justice system can help judges deliver fair and equitable sentences.

First and foremost, it may allow judges to effectively understand the severity of previous sentencing decisions: Artificial intelligence algorithms provide sentencing judges with some reliable references. For example, how the other judges handle similar cases, as well as what is the sentencing process and what is the outcome of the case. Through this process, the trial judges who use the AI may have guidance to impose a fair sentence; Moreover, it will truly update itself when new sentencing decisions are entered into the system: it is able to learn and update itself as new cases are fed in. In the process of continuous learning, if the AI algorithm finds that the verdict generated based on the current database is significantly different from the initial verdict, it will automatically consider the new deviation and come out with a new prediction; Besides, AI algorithms can be designed to consider a broad range of factors in a consistent and unbiased manner. This can help reduce disparities in sentencing based on an individual judge's personal biases, leading to fairer outcomes. Lastly, well-designed AI systems can provide transparent reasoning for their decisions, making it easier for judges, legal

professionals, and the public to understand how sentencing determinations are reached.

In fact, the east of Malaysia had already implemented AI judgment in their criminal justice system for certain crimes. In the case of *PP v Denis P Modili*²¹, which is the crime of drugs. The accused was charged and convicted by the Magistrate for possession of 0.01 grams of methamphetamine under section 12(2) of the Dangerous Drugs Act 1952. Punishment for an offense under that section is a fine not exceeding one hundred thousand ringgit or imprisonment for a term not exceeding five years or both.⁹ In addition to the charge under section 12(2), the accused was also concurrently charged under section 15(1)(a) of the Dangerous Drugs Act 1952 as a user of a dangerous drug.

The procedure adopted by the court for the AI sentencing system is that the judge inputs the variables relevant to the sentence, in this case, the court referred to three values "the weight of the drugs, the age of the defendant, and the work record". And then the Magistrate obtained a recommendation of an imprisonment term of ten months with a 'probability of 54.31%'.

Meanwhile, what is worth mentioning is that judges' sentences should not be abducted by AI algorithms; in other words, there is a consensus that sentencing recommendations made by AI algorithms should not be mandatory for judges.

This is because the judicial function of sentencing is not an entirely purely logical process; some legal issues can be resolved using relative logic rules, but existing rules do not fully cover all issues, and in some special cases judges need to interpret or create new rules by judicial policy or requirements, and this process requires uniquely human qualities such as morality, cultural awareness, common sense, etc. Therefore, currently, the sentencing recommendations made by the computer should only serve as a reference for the judge in sentencing and should not be a

²¹ *PP v Denis P Modili* [2013] MU 821

substitute for the judge²².

Setting Specialized Courts for Certain Crimes

When individuals convicted of similar crimes receive markedly different sentences, it erodes public trust in the fairness of the legal system and undermines the core principles upon which justice is built. Recognizing this challenge, many legal jurisdictions have turned to an innovative approach: setting up specialized courts to address specific categories of crimes. These specialized courts, with their unique focus and tailored expertise, aim to minimize the often-glaring disparities in sentencing that plague traditional judicial systems.

The fundamental premise of specialized courts is rooted in the recognition that not all crimes are created equal. Offenses like drug-related crimes, mental health-related offenses, and domestic violence cases present distinct challenges and considerations. These unique complexities require judges and legal professionals who possess specialized knowledge, empathy, and a deep understanding of the underlying issues that often contribute to criminal behavior. Specialized courts aim to fill this crucial gap in the traditional judicial system.

Throughout this exploration, the author will delve into the advantages brought about by specialized courts. Furthermore, it will analyze how they foster expertise, consistency, and fairness in sentencing, while also affording the opportunity to prioritize rehabilitation over punitive measures. However, these courts are not without their challenges and potential drawbacks. They raise questions about resource allocation, potential bias, and the need for continuous evaluation and adaptation. In a world where justice is an ever-evolving concept, the introduction of specialized courts offers a promising path toward minimizing sentencing disparities. This journey will navigate the terrain of specialized courts, shedding light on their role in reshaping the

landscape of criminal justice and working toward the ultimate goal of ensuring that justice is not only blind but consistently and equitably applied to all.

In the UK, it has implemented specialized courts for certain types of crimes as part of efforts to minimize sentencing disparities and address specific issues within the criminal justice system.²³ These specialized courts are often referred to as "problem-solving courts" or "specialist courts". For instance, the UK has established drug courts in various regions, including London and Glasgow. These courts focus on individuals whose criminal behavior is linked to drug addiction. Instead of traditional sentencing, drug court judges aim to divert offenders into treatment programs and support services to address the root causes of their drug-related crimes. Furthermore, some regions in the UK have established mental health courts to address cases involving individuals with mental health issues. These courts seek to provide appropriate treatment and support for individuals with mental health conditions who come into contact with the criminal justice system. Moreover, specialized domestic violence courts have been established in certain areas of the UK to handle cases related to domestic abuse. These courts aim to provide a more supportive and victim-centered approach while holding offenders accountable for their actions. Last but not least, while not specialized courts in the traditional sense, youth courts are designed to address cases involving juvenile offenders separately from adult criminal courts. Youth courts take into account the unique needs and circumstances of young offenders.

Except for the UK, China, as a fast-developing civil law system country, also implemented specialized courts or procedures for certain types of crimes and legal issues to address disparities in sentencing and ensure more equitable justice outcomes. The specialized courts include

²² Susskind, R. E. (1986). *Detmold's Refutation of Positivism and the Computer Judge*.

²³ Tonry, M. (2012). *Punishment and politics*. Routledge.

youth court; drug court and environment court in order to address disparities in sentencing and ensure more equitable justice outcomes.²⁴

These specialized courts align with a broader trend in criminal justice reform aimed at addressing the underlying issues contributing to criminal behavior and reducing recidivism. They often involve a multidisciplinary approach that includes social workers, counselors, and support services to provide holistic solutions for offenders.

Currently, in Malaysia, there are some specialized courts handling children and youngsters who come into conflict with the law. The primary mission of the Malaysian Children's Court is to ensure the welfare and the best interest of children, including safeguarding their education, health, safety, and family stability. This provision aligns with the International Convention on the Rights of the Child, and this objective is diligently pursued within Malaysia's Children's Courts. These courts typically consist of specialized judges and personnel who have received specific training in child law and psychology. This helps ensure that the court can properly handle cases involving children.

However, in addition to Children's Courts, there should also be specialized courts established based on the nature of the cases, such as those dealing with environmental crimes and drug-related offenses. Environmental crimes and drug offenses often involve complex factors and backgrounds, and they may require the involvement of experts in their respective fields for analysis and assessment. The establishment of such specialized courts contributes to ensuring that cases receive appropriate adjudication and also enhances the accuracy and fairness of judgments."

It's worth noting that establishing specialized courts to handle specific cases

should not be a universal practice. Only certain exceptional categories of cases, such as those involving restorative justice judgments due to the age or background of the parties involved, or cases with unique characteristics like drug or environmental crimes, warrant the creation of specialized courts.²⁵ Other normal cases should continue to be addressed by general courts to minimize the wastage of judicial resources.

5. Conclusion

In conclusion, the comprehensive research conducted on minimizing sentencing disparities in similar offenses within the Malaysian Criminal Justice System has illuminated several key strategies and considerations. Recognizing that justice should be both blind and equitable, this study underscores the critical importance of standardizing sentencing guidelines, enhancing judicial training and AI judgment to mitigate bias and fostering transparency in decision-making processes. Additionally, the implementation of specialized courts tailored to address specific types of offenses shows promise in addressing sentencing disparities effectively. It also brings hope for a future for certain crimes where individual circumstances are given due consideration, and rehabilitation is prioritized over punitive measures.

However, it is imperative to acknowledge that no single approach can provide a panacea for this complex issue. Achieving sentencing equity requires a multi-faceted effort that engages not only the legal system but also society at large. Public awareness, community involvement, and ongoing research are equally vital components of this endeavor.

As Malaysia continues its journey toward a more equitable criminal justice system, these findings serve as a foundation for meaningful reform. By embracing these strategies and fostering a culture of fairness

²⁴ Liu, J. (2011). Overview of the Chinese legal system. *Envtl. L. Rep. News & Analysis*, 41, 10885.

²⁵ Yichen Pan (2023). Critical Analyse of the Exceptions in Resorting to Restorative Justice When Children Come

into Conflict with the Law. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 8(8), e002428. <https://doi.org/10.47405/mjssh.v8i8.2428>

and transparency, Malaysia can aspire to a system where justice is not only delivered consistently but is also perceived as such by its citizens. This comprehensive research underscores that the pursuit of sentencing equity is a shared responsibility, and together, we can build a more just and equitable society for all.

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