



The Principles of Sentence Reduction: Escaping Punishment or Administration of Justice?

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Abstract: *Law has impacts on victims and criminals. It is important to analyze its effects and consequences. The research focuses on the principles of sentence reduction in the white-collar crime of cheating public at large collected and organized through study of appeal cases. Often, the convicted appeals for a reduction in sentence. This research aims to highlight those grounds which make the grant or refusal of appeals legally justified, formulate the principles of reduction and analyze their positive and negative effects on the victims and the offenders. It is upon the individual how, according to the circumstance before sight, he implements the derived principles and reaches his individually special conclusion. This research is basically a confined document related to the principle of granting and refusing the reduction in the sentence of criminals for cheating the public at large.*

Key Words: White Collar Crime, Principle of Sentence Reduction, Cheating Public at large

Introduction

The right to appeal is a fundamental right available to the party to a case through which a request is made for a formal change to an official decision of a court. The appeal works in case of error correction, clarifying and interpreting law and reduction of sentence. In this research, the main focus is on the principles of sentence reduction in the white-collar crime of cheating the public at large (Shapiro, December 1980).

The definition of white-collar crime has not been yet agreed upon by scholars. It includes a wide range of crimes and felonies for example; theft, fraud, misuse of property, embezzlement, breach of trust etc. Generally, White collar criminals are individuals who are highly educated, wealthy and influential people in society. According to recent research one-third of the population is a victim of these crimes. These crimes affect the public, government and organizations (Sajid Bashir, 30 December 2011).

Sentencing a criminal is a difficult task. It has a severe impact on the offender, the victim and the society. There is very little training in the aspect of

determining the sentence for an offence in the legal system. The offender has a fundamental right to appeal for a reduction in sentence. In deciding a sentence, there should be a balance between retribution and compassion for the offender (Hewitt, February 2016). In such cases, the decision of sentence should be made with equity and the seriousness of the case shall also be made in reference to the sentences previously given in such cases and not totally abiding by the will of the public (Luedtke, 2014).

Being the most reported white-collar crime, cheating the public at large is the main focus of this research. This particular crime has been chosen for research because it involves money and sentiments of people so consequently, it deals with the interest and welfare of the public at large. Therefore the reduction of sentences for the offenders of public is of great legal importance as law and justice are there to protect the rights of people (Podgor, 2006-2007). There is no prior and such confined research available on the contents of decisions made by the appellate courts in such cases. Therefore this research will be putting forward a concise study of similar cases of cheating public at large

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which will analyze whether the criminals were favoured by law or not (Sajid Bashir, 30 December, 2011).

Therefore this research is going to formulate the basic principles of sentence reduction and also discuss the principle of *Culpae poenae par esto* with the Islamic perspective of sentencing, which will define the divine law in sentencing a criminal. The principle of *Culpae Poenae Par Esto* (Fellmeth, 2021) resonates with the Islamic law of *Qisas* and establishes the same ground of proportionality to punish the individual. This research will conclude the effect of these grants on the offender and the victim. The doctrinal method is used to study different appeal cases and extract the grounds and reasons on the basis of which their appeal for reduction was granted or dismissed. Such reasons will then be studied in relation to each other and their merit and legality will be analyzed to answer whether they are for administration of justice or just for escaping punishment.

It is important for legal practitioners and students during their course of interaction with this field and cases. Formulating principles of sentence enhances the possibility of review with regard to sentencing judgments. This will contribute to an even sentencing practice which will ultimately lead to just and comprehensible sentencing judgments (ZAHID, Dec 2017). This just practice of sentencing is necessary to achieve public acceptance of the justice system in particular of the reduction in sentence verdicts of the criminals of cheating the Public at large.

The Principles of Sentencing

Where the law provides for the sentence for an offence to protect the rights of the victims it also provides certain rights to the offender. The offender has a fundamental right to appeal for a reduction in sentence. There are many cases of cheating the public at large where the convicts appeal for a reduction of sentence with different reasoning (Harry R. Dammer). In some of these cases, the courts grant the appeal while in others are dismissed. There are too many questions to consider when applications are filed to reduce the sentence of an offender of white-collar crimes. Specifically, if we talk about the crime of cheating the public at large, a variety of variables participate in deciding the grant or refusal of such appeals. Therefore a judge must be fluent in the principles that are necessary to be considered in such cases (Correia, 2015). It is obvious that every case varies with different circumstances therefore every case requires different criteria that must be pre-evaluated to avoid at the moment confusion, and delay and to make a just decision (Luedtke, 2014).

Through the study, certain principles have been gathered that have been taken into consideration by the concerned courts in reducing the sentences of the appellants. These principles, under which the sentences are reduced, are explained below;

Period of Sentence Already Undergone

This is the most common principle applied in so many appeals. In such cases, the appellant appeals for a reduction in sentence on the basis of time duration already undergone by him in prison or in the agony of the trial (Allah Raka v. The State, 2020). This ground is claimed with the reasoning that the offender had suffered through the exhausting judicial prosecution period, therefore it compensates for the sentence he shall be undergoing so his sentence shall be reduced to such time period as has been passed during all such trials. Also, the consistent view, taken by the court, in similar cases plays an important role in reducing the sentence because the court takes reference to previous cases of similar circumstances and sees what has been ordered before (Rashid Minhas Vs NAB, 2021).

Failure of Majority

This claim is used in cases where a bulk of complaints have been received against the criminal and these shall be all proved in order to be given the sentence that had been awarded to the criminal. So when the majority of the complainants failed to prove their case against the appellant and the appellant appeals for reduction the court usually orders in his favour to reduce the duration of the sentence because the number of complainants is reduced (Mukhtar Alam v. Fazal Nawab, 2020). This view is taken with the intent of giving relief to the offender on the ground that the number of complaints that were received and the number of complaints that were proved have a considerable difference, hence favouring the reduction in the overall sentence of the offender (Rashid Minhas Vs NAB, 2021).

Principle of Proportionality

The principle of proportionality commonly known as the principle of *Culpae Poenae Par Esto*, means that the sentence should be according to the mode, manner and nature of the crime committed. This principle is used twofold. This principle sometimes allows the appeal for reduction or sometimes dismisses it. In cases where the appellant appeals for reduction, this principle is used in the way that the sentence that had been awarded is far more severe than the crime that had been committed by the appellant (Rashid Minhas Vs NAB, 2021). When the sentence is not equivalent to the crime committed either in a natural manner or

mode then the court would grant the appeal for reduction provided that the minimum sentence given by the law should be maintained (Abdul Hameed Vs NAB, 2018) (Morgan, 2010).

Pay Back of Embezzled Amount

This ground is used for relief in cases where the appellant had already returned the embezzled amount involved in his crime as ordered by the court that awarded him such a sentence. The appeal is thus made because the appellant had paid back the embezzled amount of the victims (here public at large) so he becomes entitled to the reduction in sentence. The court grants such appeals because the looted amount is already paid back to the victims as a way of relief received by the victim and the penalty paid by the criminal. It sometimes also includes the fine applied by the court as it seems just and equitable (Najam Us Saqib Vs NAB, 2021). The purpose of a sentence is to make the offender pay back the harm he had caused to the victim therefore the return of such an amount lessens the gravity of his offence so the sentence is therefore reduced as a fine is also included with it (Rashid Minhas Vs NAB, 2021).

The Character and Previous Record

It has been observed that this ground for appeal is invoked in cases where the appellant is new to the world of crimes, in this case, white collar crime of cheating the public at large. So the appellant tried to convince the court in his favour that he had committed this crime first, likely having not such serious criminal intent as is required for the severe punishment that had been awarded to him (Luedtke, 2014). This particular ground had been seen to be invoked along with the ground of age that the appellant is young and has his whole life ahead to become a better human being and that the crime had been committed by him in the nuisance of his young mind (Bakht Munir vs. The State, 2020). Conclusively the sentences have been reduced on the ground that the appellant is the first-hand offender therefore he had a clean record and it was just this one mistake therefore he should be dealt with leniently under the law and should not be awarded with harsh sentence (Bennett et al., 2016). This reason is usually accompanied by other among the above reasons as solely it does not have such merit (Rashid Minhas Vs NAB, 2021).

Epilogue

These are the principles that are used commonly in the appeals of the crime of cheating the public at large for a reduction in sentence. Appeals involving these

principles are usually granted by the learned judges on the basis of reasoning explained with each principle.

Where the Sentence is not Reduced

As the grounds that permit the grant of the appeals for reduction in sentence, there are grounds that justify the refusal of such appeals for reduction. These grounds state the reasons why such appeals shall not be granted or do not have merit at all. They play an important role because they draw a wall between the reliefs that may be given to the criminal through the right of appeal. The inspection and evaluation of these grounds is significant to analyze the circumstances where the appeals are most likely to be rejected by the court.

Following are the principles that are considered under the appeals of reduction which do not allow such reduction based on the reasons explained thereunder;

Principle of Proportionality Culpae Poenae Par Esto

As discussed above, the principle of proportionality having two-fold use is applicable in both grant and refusal of appeals of reduction in sentence. Here, this principle is invoked by the learned judges to reject the appeal because the crime committed by the appellant is of such gravity that resonates with the gravity of the punishment rightly awarded to him through the honourable court (Mukhtar Alam v. Fazal Nawab, 2020). Therefore it determines the gravity of offence with mode, manner and nature and where the nature of crime is so severe or the mode used for committing the crime is heinous and greatly affects the public and the government to a larger extent than the sentence, being proportional to the crime, shall not be reduced (Austin-Campbell, 2020). Thus the court upheld the sentence against whatever reason the appellant put forth (Rashid Minhas Vs NAB, 2021).

Interest of Society

The crime of cheating the public at large involves a number of people. Therefore, in these cases, specifically, the judges have to consider the impact, their judgment, of the appeals for a reduction in sentence, shall have on the public. Therefore the interest of society is an important consideration in appeals of reduction (Morgan, 2010). The crime committed that is necessary to be punished in the interest of society, shall be punished severely to establish deterrence in society with the aim to limit the further commission of offence by other potential offenders and to solidify the faith of the public in justice and judiciary (Rashid Minhas Vs NAB, 2021). It is

important that judges, in such cases, look for the balance between taking lenient views toward the offender and maintaining peace and justice in society. Therefore most of the cases of cheating the public at large are dealt with under this principle to be ordered justly according to the current needs of the society (Luedtke, 2014). 0

Nature and Amount of Offence

The cases of cheating the public at large are serious offences involving money, sentiments and trust of people, and the offenders play with all of them. Therefore in deciding these cases justly, the judges have to consider the nature, manner and mode of the offence i.e. how it has been committed, what means or methods had been used, what instruments were used and what amount of money is involved (Haugh, 2014). These variables play important roles in the rejection of the appeals of the sentence as these are evaluated to see whether the appellant is the right candidate for the sentence reduction or not. These criteria shall be thoroughly practised to order justly in the favor of the victim as well as maintaining a balance between the rights of offenders and the rights of victims (Bakht Munir vs. The State, 2020). It has been observed in cases where heavy amounts are involved and where the nature of the offence is severe affecting the public and economy of the state, no reduction is usually granted (Rashid Minhas Vs NAB, 2021).

No Reduction of Fine or Confiscation of Property

This is a well-settled principle in appeal cases of cheating the public at large. The fine attached with a period of the sentence is not reduced and the court never reverts the order of confiscation of such properties made or purchased through the embezzled amount of the crime. Therefore where the courts show leniency towards the appellant in the above cases with the reduction in sentence, the fine and the punishment of confiscation of property is never set aside or reduced (Hewitt, February 2016). This is because, in the offence of cheating the public at large, the convict has built up properties through corruption and corrupt practices which not only violates the victim's right but also harms the country's economy at large (Manzoor Ahmad Akhtar Vs The State, 2020).

Epilogue

The principles derived for the grant of appeals of reduction of sentences and for its rejection in the crime of cheating the public at large show how different cases are dealt with differently. This derived principle has the value of precedents and is now confined to a single

document for easy access and one-click knowledge. They set out a coded guideline in the administration of justice for the judges and legal researchers as well as students. They establish the legal justification for the grant and refusal of the appeals of reduction in sentence. Through these one can easily understand the reasoning behind such appellate judgments.

The Principle of Culpae Poenae Par Esto and Islam

What is the Principle

This Latin maxim Culpae Poena Par Esto is a well-established maxim in the West that is frequently been used in the administration of justice. This legal principle had been used both in the grant of appeals and its rejection. The maxim is translated as "Let the punishment be proportioned to the crime". This means that the sentences must be proportionate and equal in extent and mode to the gravity of the offence and the degree of responsibility of the offender. This principle is significant as it establishes equal grounds for the punishment to that of the crime committed (Fellmeth, 2021).

When the principle is applied in cases where allegations are related to corruption and corrupt practices (white-collar crime), the appeal of reduction in sentence shall be considered on the basis of the amount misappropriated or the mode and manner in which the people have been cheated or deprived of their hard-earned money. So if these variables are proportional or equal the sentence shall not be reduced but when the punishment is more severe than the offence, making the variable unequal, it can be thus reduced subject to the discretion of the court as it deems fits (Rashid Minhas Vs NAB, 2021).

The concept of the sentence has to be considered by the Court after the conclusion of the trial with reference to the crime in question. However, the changing need of society sometimes requires serious consideration of the principle that serious crime merits serious punishment to foster deterrence. The court has to draw a line between serious offences with graver, social ramifications and less serious offences (Luedtke, 2014).

Islamic perspective

In the divine book, the Holy Quran, Allah SWT has ordered to punish the wrongdoer with the sort of punishment that is equivalent to the crime that he has committed. This principle is commonly known as Qisas which means retaliation in kind, eye for an eye or retributive justice (Nyazee, 2003).

This proportionate punishment has been discussed in Surah Al-Bakarah, Surah Yunus, Surah Al-Haj, Surah Ash-Shura and Surah An-Nahl, whereby it has been settled that punishment must be commensurate with the offence and not more. The ayahs from surah Al-Bakarah have been regenerated here, for reference, as follows;

In Surah Al-Bakarah Allah SWT said that;

O you who believe! retaliation is prescribed for you in the matter of the slain; the free for the free, and the slave for the slave, and the female for the female; but if any remission is made to anyone by his (aggrieved) brother, then (the demand for the bloodwit) should be made according to usage, and payment should be made to him in a good manner; this is an alleviation from your Lord and mercy; so whoever exceeds the limit after this, he shall have a painful chastisement (178).

These ayahs established the principle that the one who committed sin shall be punished in the same way he had sinned termed as Qisas in Fiqah. The crime shall be reciprocated by the punishment so for example if he had murdered he shall be murdered. The law of Qisas is an established law in Pakistan and has been used in so many cases usually involving murder. However, the main point that is necessary in reference to this research is that Qisas reciprocates the punishment of the crime as the principle of *Culpa poenae par esto* does. Hence the nature and extent of the crime shall be compensated through the nature and extent of the punishment that shall be given to him (Nyazee, 2003).

Culpa Poenae Par Esto and Qisas in Islam

As explained above, the principle of *Culpa poenae par esto*, famous in the West, is similar to the law of Qisas in Islam. They both relate in the way of resurrecting the nature and extent of the crime through punishment. Therefore, the grant of the appeal of reduction in the sentence of the criminal is not legally justified under these principles, for the reduction is not an appropriate reciprocal for the offence that has been committed and that has caused harm and suffering to the victim.

Here, the crime of cheating the public at large is the highlight. So the criminal had violated the rights and sentiments of a no. of people. Therefore in such cases and particularly under these principles, the reduction is not possible and one will always refuse such appeals. Through Qisas also, the victims' sentiments will be favoured and the sentence ordered for the criminal shall be upheld by the appellate court (Nyazee, 2003).

Epilogue

The principle of proportionality in the field of sentencing and appeals against sentencing is famous as the principle of *Culpa poenae par esto* in the West and as the law of Qisas in Pakistan. They both are the same in their meaning to the extent explained above though having a solid difference as being a human-made principle and being the divine law. However, both have their own significance. These laws are subject to the discretion of the judge, the facts and circumstances of the case and the effects and will of the victim.

Effects of Reduction in Sentence

There are two views prevalent for the punishment of offenders of cheating public at large. First is that if judges were anchored to a more reasonable punishment level from the beginning of their sentencing process judges would have less need to deviate from those sentences. Punishment would become more equal and more predictable, meaning that both fairness and deterrence would increase while the opposing viewpoint notes that this "one-size-fits-all methodology of sentencing white-collar offenders seriously diminishes consideration of the individual offender, the nature of the offence, and the level of protection needed to satisfy the public's interest (Luedtke, 2014). It also emphasizes on the rehabilitation of the criminals with their deterrence. It is important to know that white-collar crimes, generally affect the whole country, its economy and its citizens at large (Podgor, 2006-2007). The offence of cheating the public at large, the highlight of this research, is the offence that is specifically related to the violations of public trust and money. The offender violates the trust of the public at large and takes their money illegally against what they've trusted (Luedtke, 2014). Therefore this offence has serious effects on society. Taking a lenient view, while dealing with such offenders, also affects society as well as the criminals. This section will provide the effects of taking a lenient view and punishing the criminals as hard as it can be, under the law, on the public and on the offenders.

Lenient View

Taking the lenient view in punishing the offender means reducing the punishment of the offenders subject to the circumstances of the case. This lenient view would be taken with respect to restorative justice. The aim is to discourage the offender and rehabilitate him to make him a better person who can live among the people and fear disapproval and exclusion from society (Shapiro, December 1980). This is done so that the offender and others do not become revengeful and get hardened by the severity of judicial punishments (Luedtke, 2014). This leniency, however, has certain effects good and bad on both of our subjects.

Effects of Reduction on the Offender

The positive effect is that the offender fears the exclusion from the community and thus becomes a good person. The public would not lose any human assets and the offenders would have a soft corner for the judiciary as well the society. Therefore they will fear committing any offence specifically this offence and refrain from doing it (Sajid Bashir, 30 December, 2011).

The bad impact however is that leniency will make the offenders habitual because it will be easy to get out of the judicial process and as well as the sentence thus be reduced. The offenders will commit the offence at their convenience and will not fear the law at all (Podgor, 2006-2007).

Effects of Reduction on the Society

The positive impact on society will be that society will become a better place for all human beings irrespective of the offender or the victims. Everybody will be treated equally and everybody will have the chance to become better (Correia, 2015). The restorative capacity of justice will form a soft and lenient corner in everybody's heart for the judiciary. The offender's family will not be left alone and will not suffer. The victim will have their share of fair dealing also (Luedtke, 2014).

The bad impact however will be that the society will lose their faith in justice as the offender will always be out and about just on the basis of the lenient views. The victim will never be satisfied because the offender's sentence got reduced and it became easy for him to be out of the law while the victim suffered a lot because of him mentally as well as physically (Luedtke, 2014).

Non-Lenient View

The non-lenient view in punishing the offenders depends on the severity of the offence committed. The judges take such a view because the offenders not only violate public trust, and play with their money but also destroy the economy of the state. Therefore it is very common to treat the offenders with the utmost severity under law as possible. This has impacts both on society as well as offenders in both good and bad ways (Correia, 2015).

Effects of Refusal of Reduction on the Offender

The merits of severity in punishment and not subsequently reducing the punishment are that the offenders will be deterred and they will fear the law before committing any offence. Not only the offender

will be afraid but the society and the minds capable of such acts will be afraid to commit such offences because of these harsh principles and non-reduction of the sentence. Therefore the crime will be ultimately reduced (Luedtke, 2014).

The demerits however are that the offenders and their families will have revengeful feelings against the law and the society. These feelings have the capacity to grow and become a threat to the public at large. The offenders will be hardened by the severe punishment and non-reduction in the sentence after appealing. These refusals of appeals will harden them and they will then be committing more offences of an even more severe nature (Correia, 2015).

Effects of Refusal of Reduction on the Society

The merits of refusing to reduce the sentence of such offenders in society are that society will have immense faith in the judiciary. The implementation of the law will be phenomenal. The rate of crime will be reduced. Peace will be maintained. Before attempting such an offence a person will give a million thoughts to it. Society will have justice and they will eagerly follow the law (Podgor, 2006-2007).

The considerable demerits are related to the family of the criminal. They are likely to be filled with rage and hatred towards the judiciary. Also, the criminal will be affected by all these hateful emotions and can become a potential threat to society by advancing his rage and feelings of revenge (Luedtke, 2014).

Epilogue

The effects of the refusal and grant of appeals show how the orders can affect the lives of different people. These effects are necessary to be kept in mind in the administration of judgment because so many lives are dependent on it. The impacts of such orders regulate the discretion and legal power of a judge.

Through these, we can evaluate the reasoning behind the refusal and grant of appeal of reduction.

Recommendations

This research is based on what principles are considered during cases of appeals of white-collar crimes to reduce the sentence of the criminals and principles involved on the basis of which those appeals are refused. From time to time, with the increase of white-collar crime, the circumstances and the interests of society change. Therefore continuous research is essential to keep updating such principles. This update will keep the justice system efficient and trustworthy (Correia, 2015).

The training of judges with respect to dealing with the principal involved in the white-collar crime of cheating the public at large plays a key role in the administration of justice. The judges shall be well versed with the already formulated and known principles and shall be trained to become efficient in deriving new principles with the need of the case. This will only be possible with constant research and analysis of crimes, cases and the effect it asserts on society. The law is a societal need so it shall be in the interest of society and shall be dealt with this consideration of its public effects (Austin-Campbell, 2020).

These types of training courses shall also be organized for legal students and practitioners so that they can develop an understanding of law, judiciary their legal and societal aspects. Moreover, with these training courses, they would become practically able to analyze situations and confidently give judgments with valid arguments and reasoning. These courses will develop their analytical skills and with the constant study of these types of research, they will become more mindful about such serious topics (Morgan, 2010).

This research is confined to the crime of cheating the public at large and consists of cases that are countable in number. Hence such large research is necessary to form an efficient justice system that will have good impacts on the public and the criminals to strike a balance between the two.

Conclusion

It has been observed that there are conflicts of opinion between the grant of the appeal of sentence reduction and its refusal. This debate depends on the ongoing circumstances of the case with reference to principles derived through different cases. The orders of grant and refusal of such appeals depend on the judge's discretion which is exercised under the principles. These principles help the judges to arrive at better judgment.

However in my opinion the appeal for reduction shall not be granted at all. This is because the crime involved is cheating the public at large and has the

worst effects on the public as well as the government. These criminals have outdone themselves in violating the laws, playing with the trust and money of the public which destroy the economy of the country overall. Therefore the reduction in their sentences, subject to any of the principles cannot justify their acts or their rights to reduction because they are criminals and the victims have not just suffered a monetary loss but are humiliated mentally as well as physically. The non-reduction will not only be a lesson for the criminals themselves but will also be a deterrence for the individuals having such criminal potential or such a mindset. Therefore I am not in favor of grants of appeal for the reduction of sentence. Moreover, the grants with such principles including age factor or being a first-time offender or already suffering through the judicial process all seem to be just excuses to get away from the legally justified punishment granted by law. These are, strictly speaking, just the modes of escaping punishment and not some exercise of rights or justice in my opinion. I find them very disturbing because the criminals being criminals have committed crimes, made innocent people suffer loss and agony, made the whole country humiliated and then started empathizing themselves in the shadow of right and restorative justice.

However, this is just my opinion, on the other hand, my thorough research shows that grant of appeals for reduction can also have a decent impact on the rehabilitation of the offenders and it is also justified under the law by the way of exercising the rights of criminal being human themselves and having fundamental rights. Therefore it is kept in consideration and judges grant such appeals in circumstances that validate the claims of the criminals.

This research can further be advanced by other interested researchers as this crime is increasing day by day and so does such appeals. It is very essential as it connects law, judiciary public and offenders on a deeper level. I am sure that with the passage of time, other principles can also be evaluated through the research of such cases. Therefore it is beneficial in the legal field.

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