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Commentary: What is an adequate punishment for insulting a young girl's modesty?

Is three months' jail a sufficient sentence for insulting a young girl's modesty? The National University of Singapore's Benny Tan discusses.



(Photo: Pixabay/ActiveMedia)

SINGAPORE: In end-October, 44-year old [Tang Chee Leong](#) was sentenced to three months' jail for insulting the modesty of a 10-year-old girl at a public toilet. He had exposed his private parts to her after asking her to pass him some toilet paper in December last year.

This was his fifth conviction for similar offences since 2001. His last offence was in 2015, when he exposed himself to a teenage girl.

Members of the public, and parents in particular, have been understandably riled by what they see as an insufficiently harsh punishment, given the nature of his act, his repeated offences and the fact that the victim was a vulnerable child.

The task of deciding the appropriate punishment in a criminal case is always a challenging and fact-sensitive one. This thus raises the question: What are the possible factors a court may have considered to arrive at its decision?

SPECTRUM OF POSSIBLE PUNISHMENTS

The range of possible punishments Parliament has set for the offence through the Penal Code reflects the severity with which the Government, and by extension, the society views the crime and the proportionate punishment to be meted out.

For insulting the modesty of a woman, the maximum punishment is a fine, a jail term of up to one year, or both.

Performing an obscene act in public without intending to insult the modesty of a woman can be punished with a fine, a jail term of up to three months, or both.

Outrage of modesty or molest is a more serious offence and carries a maximum punishment of a fine, a jail term of up to two years, caning, or a combination of these punishments.

The variations and ways in which a particular offence can be committed requires the court to locate an offender's case within the range set out, based on the degree of harm caused and the offender's culpability.

For instance, an individual intending to insult the modesty of a woman could do so by directly intruding upon the victim's privacy or in a manner that does not. Generally speaking, acts in the former category would be treated more seriously than the latter.

Instances of insulting a woman's modesty without intruding upon her privacy likewise fall along a range, from saying something that insults the victim's modesty, to more severe acts such as exposing one's private parts to a victim.

In the same vein, acts of privacy intrusion could be classified and penalised along a spectrum. A peeping tom would, all things being equal, be punished less seriously compared to an offender who had taken an upskirt photo of a victim.

This considers the fact that not only had the offender used technology to facilitate the offence, but he had also kept a permanent record of his act which may be circulated to the further detriment of the victim.

For this reason, an upskirt video or a video of a victim showering or changing would be judged more harshly still, since a video clip comprises multiple still shots.

In this sense, the exposure of private parts may be viewed as less serious than the taking of upskirt videos, and therefore, in the absence of any aggravating factors, a first-time offender of the former may be let off with a hefty fine of a few thousand dollars, compared to a jail term of at least several weeks for a first-time offender of the latter.

AGGRAVATING AND MITIGATING FACTORS

The punishment imposed must also take into account any aggravating and mitigating factors. The maximum punishment of an offence is usually only imposed on an offender who commits the most serious variation of that offence, with strong aggravating factors.

In a case such as Tang's, the most crucial aggravating factor is the offender's past convictions. In this, a court usually considers three main factors.

First, whether the past offences are similar in nature. If they are dissimilar, a court is not likely to place much weight on them.

Second, how frequent previous offences have been committed, and how recent these previous offences are. If an offender has several similar past convictions from two decades ago, a court is unlikely to give much weight to them, because the offender has stayed crime-free for a lengthy period of time.

In Tang's case, his previous convictions involved very similar offences, and his most recent previous offence took place a year ago.

To ensure that a stronger message not to re-offend is sent to him, the court would have had to impose a punishment substantially harsher than a mere fine of a few thousand dollars.

But how much harsher should it be, then?

A useful though not always determinative guide is the sentence imposed for the most recent similar offence, drawing on the idea that it had been inadequate to stop reoffending and thus a punishment quite a bit harsher than that should now be imposed.

The punishment imposed for his latest offence is about four times his sentence of three weeks' jail in 2015 for exposing himself to a female teenager

A QUESTION OF BALANCE

Ultimately, while sentences are informed by law and guided by prior offences and related cases, the final sentence imposed is a judgment call that the court has to make.

After taking into account circumstances of the case, the court's imperative is to find a sentence that balances deterrence and punishment; that protects the public, sends a clear message about the law and yet does not punish excessively.

It is natural to react emotionally to Tang's sentence, but the court cannot reason based on emotion alone.

As the judge pointed out, the offence comes at a "tremendous cost" to Tang's family, who are the other victims in this affair.

While the offence should certainly not be understated, we should take heart in the comprehensive and calculated manner in which the sentence has been arrived at and meted out.

Benny Tan is a lecturer at the National University of Singapore, Faculty of Law. His areas of research specialisation are sentencing law and practice, as well as criminal evidence and procedural law.

Source: CNA/sl