



INVESTIGATING THE CRIMINAL OFFENSE OF ALTERNATIVE PRISON SENTENCES IN THE ISLAMIC PENAL CODE

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Abstract:

There has been a victim since people came together for group life. By committing a victim of criminal justice, they will move to take action against the crime, and by committing punishment or other responses, they will seek to maintain a disorderly crime resulting from the crime. The historical record of punishing and responding to crime is coincident with the appearance of the first crime. Throughout history, humans have sought to legislate in response to acts contrary to accepted and valuable norms of society, in other words, along with developments in the concept, scope, type and quality, "crime" and "crime" in the recent centuries have taken place, and governments are facing a new delinquency that is complex and different from the past. Faced with "social reaction against crime", there has been a great deal of change as well. With the proving that the prison was unsuccessful in the rehabilitation of criminals, alternative prison sentences were introduced. These penalties are aimed at addressing the many problems of prisons, helping to better offend criminals and reducing the prison population in various forms, such as house arrest, training and medical barracks, suspension of punishment, postponement of sentence, financial penalties, public service compensation, exclusion from social rights and the obligation to stay or stay in a particular place entered the legal system of countries. These educational methods help to facilitate the process of their socialization by facilitating the quick rehabilitation of offenders, by preventing the perpetrator from being able to confront his family with the collapse of the families and pushing them to commit crimes, and by reducing the rate repeating crime increases security and reduces the government's financial burden.

Keywords: punishment, substitute for imprisonment, criminal law, criminal law of Iran

1. Introduction

The implementation of criminal justice has been the subject of human minds since the beginning of creation, and throughout history, criminal law has faced different perceptions and reactions. At any point in time, the concepts of crime and punishment have been subject to fundamental changes, and its formation has been impacted on the basis of punishments. The justice of the people, who at any moment of time, with the imposition of the most severe punishment on the perpetrators, Have been the cause of most of the cruelties and deprivations of these social and criminals who may not have contributed to their criminal acts. But in this frenzy of injustice, there have been free-thinking people who have not endured these oppressions and sought to find a more humane solution. The individualization of the punishments we seek to explain in this study first appeared in the views and views of these freethinkers and evolved throughout history in criminal law and continued to evolve in the late nineteenth and twentieth centuries. It is also flourishing. The perpetrator is no longer the one who takes revenge on him for his obscene and obscene work, but he is trying, with a pathological look at his personality and his knowledge, he will try to reform the society with his treatment and reform. Mutilating, burning, throwing mountains, forcing a person to eat hot lead, poisoning with the worst poison, living in grave and dozens or perhaps hundreds of unpleasant and inhumane forms, all of a variety of forms of dealing with delinquents in the length of many years of human life has been on this planet. From the very beginning, human life has been a crime, and there is no doubt that the perpetrator's punishment was felt. In the beginning, there is a period in which we consider the period of personal revenge that aimed only at revenge on the individual by committing an unpleasant act to society. Here the punishment is used and re-education has not been a part of the legal policy of those times. The punishments that applied to Jermyn were sometimes the worst possible conditions, and in this way no violence was committed (Michel, 2008, 291). Yet, and despite all the efforts of reformists and those who sought to punish the perpetrators of the best punishments in history, the imprisonment not only would not be effective, as initially thought. But they themselves are the cause of many problems in the future. From increased crime rates to economic pressure to the government and innocent people, breaking up families, normalizing offenses, and subsequent professionalizing offenders who are at risk, or even safe, may only be brought to prison for unintentional offenses. And there are dozens of other ill effects. There is also an abundance of crime in prisons themselves.

In general, the prison not only does not prevent the repetition of crime, but also increases the sense of retaliation, and causes unnecessary problems, both at the time of the imprisonment, after it, on the individual and his family, or on society. .

The idea was that imprisonment alternatives would be used and attempts were made to use other useful methods that could serve the purpose of punishment, with the least of problems and problems, rather than inappropriate use of the prison. (Ashouri, 2005, 49). In essence, the goal is to punish and correct the perpetrator with the minimum use of the prison, and to defend the defendant and the community.

Therefore, the general concept of alternative punishments is contemplated and can even include conditional release. In fact, according to some experts, their aim is to immediately reduce the number of prisoners and convicts (Goudarzi and Moghadadi, 2005, 76). Of course, in contrast, there are two categories: 1) alternative penalties and 2) social penalties. They consider cases such as probation and suspension of punishment as the first category, and penalties such as community service are considered as part of the second category.

2. Characteristics of penalties

2.1 Inherent or painful

It may be said that this property is the first and oldest attribute that humans have for punishment. The punishments, torture and severe torture that have been committed since the days of the past to the perpetrators have come to this day. Today, many lawyers also consider that the offender is responsible for the security and guilty (Sine's, 1974).

2.2 Trait (scandal)

This attribute is a distinct and distinct distinction of punishment from nursing and educational measures. Jurists consider it criminal to dismiss the perpetrator so that those who have a reputation and social character and have a special place in society have committed a crime of their honorable dignity.

2.3 Characteristic to be specific

This attribute is one of the results of a social contract because people, by virtue of a social contract, aim only to give part of their freedoms to a high-ranking official, the legislator. Determining the penalties for general and specific crime prevention is also quite effective since, on the one hand, the people of the society set off with full knowledge of the crime and the amount of their punishment and, on the other hand, they have committed a crime with full respect for the amount of the punishment. Do not consider the reaction of the society as a kind of oppression and impunity in their own right. However, if the society punishes them other than the specified amount, there is a certain sense of dispossession and imprisonment that might lead them to commit crime (Ashouri, 2003).

2.4 Attribute of certainty

There should no longer be any way to revise and change the punishment when the criminal proceedings were terminated and a judicial sentence was issued against the offender. With this feature, the punishment of hedging measures can be cleaned up. Habitat and education measures are applied to those who are in a dangerous state and, since they have a therapeutic aspect, are also subject to change, but the sentences are punishable after the final stage and there is no way to reconsider them. It comes in and is not convertible. Based on the principles of dialectics (security, certainty), the higher

the degree of certainty of punishment, the more security of the community will increase, and in the same way, if the degree of certainty of punishment can be increased, it can be as high as its rate (Ashouri, 2003).

2.5 Principles of deterrent punishment theory

From time immemorial, punishments were more suited to this goal, which was a deterrent and meant that punishing a perpetrator would teach the perpetrator a lesson that, if repeated, the punishment would be more severely punishable against him and it gives the promise to others that they will be punished if they commit a crime. Bentham believed that the suffering and punishment suffered by the perpetrator would give everyone the message that if he committed the crime, the same suffering is awaiting him. Therefore, general deterrence is the main purpose of punishment, and according to the deterrent theory, punishment is only for acts that have not been performed in the past, but for the future, since its implementation has led to the perceived punishment of both the perpetrator and the witnesses (Waldi, 1999). In fact, it causes both deterrence and general deterrence. The increase in crime rates at the community level and the increase in the frequency of repeat offenses reveal the absurdity of every double punishment, namely general and special deterrence. Because the implementation of punishments such as execution at the community level provokes hidden psychological complexes in people who are the subject of crime, it increases the crime rate. Is there a deterrent to punishment for prison? Apart from the fact that the imprisonment of the head of the family, the children, and especially the mother, have been subjected to various social deviations and the prisoner himself will be a criminal offender in the criminal offense, the statistics and various investigations confirm this claim everywhere. If the perpetrator and his family feel unjust in punishing the community, they certainly will seek revenge against the community and will act dangerously. Although the commission of crimes does not lead to such motives in society, we conclude that the practice of punishment today is based on deterrence, losing its supporters and can not only punish the perpetrators

2.6 Concept of imprisonment alternatives

Before we look at the concept and the subtle concept of substitution, we examine the various perceptions of criminal policy from the beginning to the moment it has attracted the attention of criminologists and lawyers. For the first time, Enrique was one of the founders of the realization school, which introduced the term "criminal substitutes" into criminal law. In his opinion, these successors should become the main tools of social defense because "the poison of poison is considered a victim of social factors." In other words, "criminal substitutes" are precautionary measures and social defense. Both at the community level and in the judiciary (Jan, 1986, 174). Examples of these alternatives include creating broad streets in cities, night lighting, helping to reduce thefts, or creating insurance and social assistance schemes for the poor in order to prevent loneliness and fraud for the poor. Following Frey, Philipogrammatiks, the founder of the Society for Defense, offers a new interpretation of the concept of

replacement policy, and that he believes that, firstly, he should replace the authorities (victim-based) with socialism (based on personal thoughts). Secondly, the wind laid the signs of individual socialism and its degrees as an act rather than a crime. Thirdly, the social protection measures that are appropriate to the needs of each crime are replaced by the appropriate punishment (Senior, 112). Mark Ansel also believed in an alternative policy within the framework of criminal law. He is meant to replace the same replacement sentences that are anticipated to avoid the consequences and consequences of imprisonment. In this way, Ansel introduces a precise and precise substitution that we will consider in this study. Jean-Paul Natal also refers to the precise concept of replacement policy, and uses the term "substitute punishment." Comparing the term "criminal succession" of Frei with "substitute punishment", P. Natal believes that "a comparison based on appearances suggests that there is a kind of agreement and a kind of difference between these concepts. The consensus is that both have a role and task of succession, and although the scope of the punishment.

The successor is wider than the realm of criminal substitutes, but their nature is the same. The difference lies in the fact that custodial deputies abandon punishment and instead put in actions with a criminal attribute, but substitute punishments, instead of the punishment for the release of the year, reveal other punishments ... They also say: Here, the appropriate substitute punishment is the first alternation that would be imposed instead of a short-term prison sentence, such as the suspension of care and the suspension of the enforcement of the sentence, which the judge allowed to determine. The punishments that could be called "succession punishments", such as the work done in favor of a society inspired by the British social service system, and the day's fine imposed on Scandinavian systems, would remove the legislator from short-term imprisonment and replace it (Legislative Substitution Policy) (Walidi, 1974, 288).

3. Replacement types

3.1 Legislative replacement

In the replacement of this concept, the legislator, in view of the criminal policy of a country, and also using punitive doctrines, especially in the context of the imprisonment, which the disadvantages and harmful effects of this punishment are clearly revealed today, and the criticisms of this punishment have anticipated solutions and practices as substitutes for imprisonment, taking into account criteria such as the severity and significance of the offense and the personality and personality characteristics of the perpetrator before, during, or after committing a crime, etc. Legislative action, the policy of replacing the law of imprisonment is said. For example, the conversion of the sentence of imprisonment into a fine under Article 3 of the Law on the Collection of Some Revenues of the Government and its Consumption in certain cases approved in 1994, the suspension of the enforcement of the punishment of the subject of Article 46 of the Criminal Code, etc. are the effects of legislative replacement policy which are anticipated to eliminate the harmful effects of imprisonment. Although the choice and the status of alternative judicial procedures are in fact the power of the legislature, the difference is that in the replacement of the judiciary, the

judge is obliged to replace the penalty instead of the sentence of imprisonment. For example, paragraph 1 of article 3 of the law on the collection of certain state revenues and expenditures in certain cases, approved in 73, but in the replacement of the judiciary, the legislator, while maintaining the sentence of imprisonment, authorizes the judge to proceed, if the conditions are met and the principle of the individualization of the punishments, Replace custody instead of imprisonment (Mirzakhanelou, 2010, 47).

3.2 Judicial replacement

This concept is what Jean Pincus called "short-term prison punishment alternatives." Judicial substitution means that courts or those judges have the power to anticipate alternative alternatives instead of issuing sentences in the course of determining the punishment, taking into account the severity and severity of the offense and the social circumstances and circumstances of committing the crime and the peril of the perpetrator. Such a replacement may include the suspension of the enforcement of the punishment under Article 46 of the Criminal Code or paragraph 2 of the Law on the collection of certain state incomes and expenditures in certain cases approved by the lawmakers 1995 that the legislator has given the judge authority or imprisonment or use alternatives. Alternatives may actually be based on the judge's will to set aside a prison sentence or sentence and term of imprisonment. As a result of conversions, there is a choice between two possibilities that may simultaneously involve a sequence of different situations, such as the imposition of imprisonment at the beginning, and then the release of the convicted person from prison at a later stage "(Najafi Ebrandabadi, 1995, 378).

4. Objectives and benefits of alternatives

4.1 Goals

In choosing and implementing alternatives, we can say that different goals are involved, among which are:

1. Fixing or reducing the impediments to imprisonment. This is a general objective, including all the misconceptions involved in imprisonment; for example, the widespread use of imprisonment increases the prison population, increases economic costs, etc. By using alternative prisoners is hoped that the prison population will be reduced or the arrival of the perpetrator prevented the criminality of the prison. And to prevent prison culture from being accepted and punishments will be the same.
2. Redeeming the convicted society and in order to prevent the harmful consequences of imprisonment, namely, the disruption of society, it will be possible to obtain the methods of family members and friends and society or to return to its profession and profession. Therefore, alternatives are a new way of reforming criminals who commit minor offenses and are capable of social rejection.

3. Better implementation of justice. Considering alternatives to imprisonment does not mean abandoning jail and other traditional punishments, but an attempt to perfect them and diversify the criminal options that judges possess, in which case justice is better enforced because judges for different offenses and criminals They have better options, so the prison should only be applied to convicted offenders whose freedom endangers public safety and security and has little hope of reforming them and re-establishing them in society.
4. Recovering damages caused by crime. Because it is entered into the order of the community and does not cover financial losses, but rather non-financial, in the case of the victim. (Formerly, 54).

4.1 Benefits

1. The use of jail as the last resort and the use of alternative punishments on a broad scale not only guarantees the security of the community, but also eliminates the source of many crime and corruption in prisons.
2. It prevents families from collapsing and avoids children.
3. Helps the economic cycle of the community and prevents workers from spoiling.
4. Eliminates a field for repeated crime (formerly).

"We must not doubt the use of successors to the Freedom Day when their successors have a better outcome," says Raymond Giessen, a prominent French lawyer for alternatives. (Giessen, 1994, 284).

In the end, it should be said that substitutions of imprisonment are, firstly, more effective because of defects in prison. The constructive correction of the condemned community is not eliminated. Because the imprisonment of the accused not only delayed the process of reformation, it seems to be unjustified due to its high costs. Secondly, it is fair to say that if it is possible to limit the release of the perpetrators to the perpetrators of their perilous crime by foreseeing a series of punishments, the insistence on sentencing to the imprisonment is unfair. Thirdly, because they allow judges to apply appropriate and effective measures to him depending on the type of offense committed, the personality of the offender and the probability of committing a crime (Sarajeh, 2011, 116).

4.2 Criminology of alternative prison sentences

Today, the practice of imprisonment is applied in most countries of the world as a major punishment for the purpose of reforming and treating and re-socializing against the perpetrators, but now this penalty, if only slightly enough, has been able to meet the corrective and rehabilitation goals of the punishment, but in most cases It has been unsuccessful and self-perpetrated, causing repeated crime at the community level and making perpetrators more dangerous in terms of crime rates (Goudarzi, 2003, 112-108). Following the failure of the criminology to reform and treat and criminalize the prison, its high economic costs and the density of the prison population, etc., there are grounds for rethinking the sentences of imprisonment from different countries, followed by international institutions such as the United Nations (For example, the Tokyo Rules)

and the Council of Europe. In the case of imprisonment, it has been tried to use it as the last resort, and its alternatives have gradually been developed (Najafi Ebrand abadi, ex. 4).

Concerning the practical and theoretical factors affecting the design of substitutions, it should be said: since the 1960s, there has been massive condemnation of prison sentences, mainly because of problems such as criminality of prisons, rising crime rates, and rising public spending, leading to the imposition of illegitimate sentences of imprisonment and the finding of alternatives to it has been. In this chapter, we will first consider the legal legitimacy crisis practically and then the theoretical non-legitimacy about it in the light of criminal developments and criminological theories.

4.3 Invalid practical factors of imprisonment

In this section, we will address the shortcomings and defects that the opposition to the imposition of imprisonment has required to replace it. The term of imprisonment is no longer effective today, and its harmful effects are more than the benefits and benefits of its execution; therefore, suitable alternatives for imprisonment are anticipated until alternatives can eliminate the detrimental effects of imprisonment, or its effects decrease (Ashouri, 2002, 9-7). These reasons are part of the objectives of imprisonment, which implies that the imprisonment has failed to meet the goals of reform, treatment, intimidation and restraint.

Another part of these reasons is the role of imprisonment and the way it is carried out. In other words, the prison environment and the conditions governing it, "the criminalization of the prison-economic costs, health problems, and psychological problems" -stimulates opponents the idea of creating alternative methods suitable for imprisonment.

In other words, these make prison sentences fail to meet that mission and goals, for example, the criminal nature of the prison environment, population density, and lack of space have resulted in the failure of the reform program and treatment in prison.

5. Conclusion

Considering the research questions and analyzing relevant information, we can conclude that:

Today, statistics and studies have shown that the death penalty is faced with a crisis and inefficiency in practice. The following reasons:

First, the punishment for the liberation of the year has not been successful in meeting its missions and goals (intimidation and inhibition of special and general prevention and reformation and rehabilitation of criminals). Because the statistics have shown that part of the prison population is repeat offenders (repossession of prison sentences by imprisonment after release from prison).

Secondly, in the light of some of the problems and disadvantages of imprisonment and the prison system, it is widely unnecessary to use the punishment for liberty.

The disadvantages and inconveniences are: criminalization of the prison environment, conflict with the principle of personal punishment, the cost of prison, the health problems in prison, the prison population density and the lack of suitable space, the psychological impact of imprisonment on the prisoner and the disappearance sense of responsibility.

The punishment of liberation on the one hand, has a different place among the penal schools. With the explanation that, firstly, the founders of the classical schools are in favor of imprisonment, so that the neoclassical school was introduced as the founder of the science of the administration of prisons. Most of the concern for classical schools has been to improve the way prisoners have been executed for reforming and rehabilitating criminals. But at the same time, it should be said that the neoclassical school introduced a fine as a substitute for short-term imprisonment in terms of the disadvantages of short-term imprisonment. Secondly, the founders of the School of Exercise and the School of Social Defense (new) have been trying to reduce the scope and intervention of the punishment for liberation, with the explanation that Frei and Lamborghou are opposed to punishments in general and in particular with the prison, in terms of its harmful and inhuman effects. They have foreseen the imposition of imprisonment only for a specific category of criminals, and are trying to anticipate alternatives such as suspension of punishment, conditional release of unforeseen offenders. So that it can be said that the first effects of substitute sentences of imprisonment should be sought in the thoughts and beliefs of the school of thought (nineteenth century). Marcel Anselme also criticized the imprisonment in extenuating circumstances only in exceptional cases, in cases of increasing violence and terrorism, and as a last resort, and suggests the use of "prison substitutes".

On the other hand, firstly, classical criminologists emphasize the aspects of the correction and treatment of criminals in prisons or short-term imprisonment for unforeseen and incarcerated perpetrators, in terms of deficiencies in prison sentences, such as population density, existing health problems In prison, and so on.

Secondly, criminologists of social reaction were opposed to short-term imprisonment in terms of the failure of criminology based on reform and treatment, as well as the role of social agents and bodies of crime control, such as the treatment of employees and prison officers with prisoners in the production of diversion and crime. The intervention of the government and the official bodies in the fight against crime, as well as the demand for the settlement of crimes outside the formal institutions and through peace and reconciliation, instead of being guilty of imprisonment.

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