

Pathology of alternative sentences of imprisonment in the Islamic penal code adopted in 1392

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Abstract

Modern methods and appropriate alternative sentences to alleviate prison works of social impact Psychological and familial prison of the alternative punishment of prison in law Islamic Punishment Act of 1392, as the letter of the law is manifested .A definitely on track to run and practice with the problems and challenges facing Topic research is to explain and describe the challenges and injuries in penalties That the detainees in the new Penal Code is replaced as punishment. This question that the alternative punishment of prison in our penal system Now the performance is adequate or not? This article describes methods Arguments that try to library resources through the study of literature, Generally related to the topic of alternative sentences instead of prison .So, research topic is analysis, this Paper in two seasons, while introducing new species to punish speech that In the first chapter of penal code adopted in 92 states, and express injuries and

problems in The second chapter, concludes the need for such punishments need Yes, these penalties identify problems and damage, and to provide appropriate solutions And to solve existing problems to be carried out.

Keyword: Punishment, alternative, imprisonment, injury, law

Introduction:

Imprisonment punishment, from the second half of the eighteenth century so far, as an inescapable reality is existed in most countries penal system. They have virtually consequences such as inefficiencies in the reform and rehabilitation of prisoners, especially in the short term imprisonments, Causing offense in the prison environment, and learning crime by new criminals from former criminal, huge economic cost to the countries, including the construction of prisons and keeping prisoners, and mental and health problems in prison and etc, that Iranian Low makers is also In line with overcome the obstacles and problems of the central prison in the national criminal justice system, and under influencing of the recommendations of the United Nations and successful experiences of many countries and also because of inefficiency of reform and treatment programs in Iran and attitude of Head of the Judiciary toward The problem of prison in fiqh, decided to provide and approve social punishment that substituted instead of imprisonment, and finally adoption and amendment of the Penal Code of 1392. These alternative punishments, Of course, in practice and in the execution faced serious problems and challenges. This question arises that applying prison alternative punishments to prison in our penal system is efficient or not? Which certainly with introducing vulnerabilities and challenges and providing sound solutions, will be applicable. In the case of the research history with regard to the adoption of the penal code adopted in 92, So far on this issue and identify vulnerabilities and challenges of alternative punishments Much research has been done. The paper seeks to introducing damages of such punishment and providing sound solutions. Therefore, in this regard, the content is presented in two parts; the first part to prison, prison history and the introduction of alternative punishments of imprisonment under the Penal Code approved in the year 1392, and the second part expresses damages, obstacles and difficulties of alternative punishments.

1. research literature

1.1 The semantics of prison concept

Imprisonment synonyms in Quran are words such as Sejn, Vaghaf, Amsaka, And Hasr. Firooz Abadi in Ghamos-ol-mohitsays: imprisonment means preventing, and Ebn-e Manzour in Lesan-ol-Arab and Johari in Sehad write:

Imprisonment is against freedom. Imprisonment and prison in Moein dictionary have same meaning (Moein, 1382:391,537). Prison is where the accused and convicted hold in it. In Law terminology, Legal imprisonment means deprivation of liberty and sentenced custody in order to implement penalties after a final judgment (Jafari Langroodi,1367:1655). Arrest or seizure is the establishment of another punishment and is example of deprivation of liberty for body. But it is different from imprisonment. First – it is prior to imprisonment and is temporary; secondly - may not lead to imprisonment and the person is under the care and actually spent waiting. On the other hand the seizure is for the accused and sentenced but imprisonment is just for sentenced. In Moein dictionary, arrested and detained are used as synonyms of each other (Moein, 1382: 155 and 324). "Deprivation of liberty of a person or his property confiscated pending clearance in the first person and seizure of property if the second is true." (Jafari Langroodi, 1367: 1445). Chastisement health and reform of the offender's means, the constitution also says that one of the tasks of the judiciary. But the punishment subjugates and humiliates a person. Therefore, Islamic Faqih never considers imprisonment as a means to punish criminals. And only later saw the need and preventive incarceration and deterrence role it serves. The word discipline is punishment, and the so-called religious or degrading punishment, which often religious in origin, its value has not been determined. Punishment by beating, jailing and punishment will be realized. (Al-helli 1420, vol. 2, p. 239). In Article 2 of the Penal Code Act of 1370 that are divided into 5 types of punishments are hudud and qisas, diya, Tazirat and deterrent penalties. Two recent examples of imprisonment.

1.2 History of imprisonment in Islam

At the time of the Prophet (pbuh) and Abu-Bakr there was not today's imprisonment for the accused or sentenced in a prison tight places. But at that time, imprisonment was released from custody the person and avoid capture him; Prisoners of war maintained in the places next to the mosque that called Hazyreh and since at the time of Omar the number of population was growing, aspecial prison was used to hold the wrongdoer "(Vaeli, 1362: 226). Dr. Vahabe Khalili writes: "Muslims in early Islam were not allocated a place to imprison and enslave. And because at that time there were not extensive social status, prisoners temporarily held in the mosque or were divided between Muslims, Since the Muslims had sincere cooperation with their government. Ibn Hazm Zaheri writes: "All agree that Prophet of Islam had not prison." (Zaheri, never has, vol. 9, p. 383). Umar ibn al-Khattab to have amounted to four thousand dirhams of Safwan buy a house and imprisoned. (Shvkany, it has: 305) The first person that made prison in Islam was Ali ibn Abi Talib (AS) and his Caliphs before were imprisoned in well. (Tabassi, 1382: 616). Sabegh-Barbari said: "I saw the prison, it was made of straw. People were in and out of the hole. So Ali (AS) heard it from plaster and brick building which he said: "Do not you know me alertness rather than beneficial (He: 614) .So, the start date of establishment of the Covenant of Umar Islam in prison and a testament Ali ibn Abi Talib is uncertain, but a prison that Umar founded (and later called prison "Arm" was called.) was in Mecca And prisons of Nafe and Makhys was built on the orders of Ali (AS) which is located in Kufa. Of course, another explanation is possible and it is for this that Imam Ali (AS) was the first special building was created as a prison but what did Omar was buying a house to another location and used it as a prison.

Corporate history goes back to the fourth century AD that prison was divided into three types based on the types of crimes:

- 1 special prison for those who had been imprisoned for non-payment of debt.
2. Prison for thieves.

3-prison for the rest of the wrongdoers. (Vaeli, 1362: 229).

1-3 Punishment alternative to imprisonment

Punishment alternative to imprisonment and utility services Perhaps the most important achievement of the new Penal Code was enacted in 1392. Before this, only on the basis of former Article 17 of the Penal Code (enacted in 1370) judge could accused, deterrent punishment to a fine closure of business, license and deprivation of social rights and accommodation and prohibit certain point or points or stay at certain points, and condemn them. . However, it could never lead to a single judicial procedure and only in certain cases, judges in sentences juvenile offenders were sentenced to plant trees or pervasive Quran. But a more serious implementation of the new law, a new space for Non-custodial sentences and reduce prison population Criminal justice was on.

Etienne implementing Article 79 of the Penal Code was approved by the Cabinet in September 1393 and based on Article 2 of the Regulations, a free public service was divided in six categories as follows:

A . Training activities include literacy training, scientific, cultural, religious, artistic, sporting, technical and vocational and life style education and basic skills.

B . Health care and treatment including diagnostic and therapeutic treatment, rehabilitation, midwives, auxiliary nurses and nursing, elderly care, the disabled and children, counseling and psychotherapy, environmental health and addiction treatment.

C. Technical and professional affairs, including serving in plants, factories, industries related to receiving institutions and their technical departments.

D. the receiving bodies of services, including guard and janitor, cleaning public places, the preservation of green spaces and urban parks and horticulture in those places, public transport and state of repair and cleaning services and sport facilities and Parkbanan.

E. Labor affairs include workers in the sectors of construction, road building, mining, fisheries, pastures, dam construction and other development projects owned by the recipient institutions.

F. Agriculture, livestock, forestry and rangeland affairs including tree planting, gardening, harvesting, poultry, aquaculture and agro-industrial enterprises and institutions in recipient institutions affiliated to them.

According to Article 4 of the Statutes of the Ministry of Health and Medical Education, Education, Youth and Sports, Cooperatives, Labor and Social Welfare, Culture, Science, Research and Technology, Agriculture, Roads and Urban Development, Interior, Industry, trade and mines, Energy and Petroleum, organizations and institutions and administration functions can use free services of Punishment alternative to imprisonment. The free public service to monitor performance convicted, sentenced the receiving institution, in addition to compliance with security considerations about using convicted, shall also monitor the performance of convicts introduced monthly detailed report of convicts with explicit comments on startup and how to do Services including hours of daily attendance, absenteeism and delay them any irregularities and failure to perform assigned services and the host and client satisfaction of services provided to fully implement the provisions related to the report. Non-custodial punishment for those working and less than 18 years is 4 hours per day and non-employed and unemployed , 8 hours per day has been shown in a variety of things to do. Of course, using the expertise of well educated and experienced people in the community, other substitute punishments for imprisonment.

4-1 Suspension of chase

Articles 40 to 45 of the Penal Code, enacted in 1392 dedicated to the pursuit delayed that the suspension of petty crimes prosecution in criminal cases are causing congestion prosecutor not to prosecute the crime. Of course, as we know, the prosecutor is obliged to prosecute crimes that they be notified. This is not pursuing prosecution never meant failure. Procrastination can be a way to archive a file or replace other methods of punishment such as reconciliation and healing or treatment of addicts. . The postponement followed the above, in which the perpetrator to do homework supervised postponement that the court is required.

1.5 Probation

Articles 46 and 55 of the Penal Code, enacted in 1392 to suspend its qualitative and low-paid The Suspension of, suspension of the operation also included. In total Suspension of modern alternative to incarceration that apply to "electronic monitoring" Suspension of sentence and supervision instead of incarceration is it a suitable solution. Individual offenders should be Suspension of in line with the instructions that the court has decreed for him, completed in specified period. It can turn an introduction to the locations specified time or sold in the likes of this statement. That the whole purpose of this monitoring practices, impose far lighter punishment than prison. Which is accompanied by resorting to a series of requirements.

1-6 Free Public services (community services)

Free Public services or community services (That Articles 79 and 84 of the Penal Code adopted in 1392) has been allocated to it. Community services as other penalties Roman Empire in past periods instead of prison labor is also common and what is with the consent of the offender to the criminal court suggests, has done work for the benefit of society and, instead of going to prison. And so the criminal needs to do the work, rather than go to prison committed to seeking compensation. Of course, with the quality that free for a certain period at a specified location can be determined that the district court, which in turn had accused the right to proper well being of society. Because, wasting manpower in prison, is economic growth. Most developed countries have

used this method and have had great success in this field. Community services in these countries, large sums of replacing prison sentences to be included.

1-7 Daily fines

Daily fines (fines per day) that Article 85 of the Penal Code Act of 1392 allocated is fine that the daily income of the offender and effective communication and new ways Fines and fair than the former. In the event of non-payment of the fine ultimately sentenced to imprisonment will result in a death sentence and be transferred to the heirs. In the daily fine system, the amount of the fine, to be determined in two stages: in the first stage, the judge depending on the type and importance of crime and in the second stage, the judge was guilty of proportion, determine the daily penalty . The amount of the daily income of the offender and his family to provide criminal charges aside, and remained is deducted as a penalty. The receipt of these fines are more than the former Fines.

1-8 Deprivation of social rights

Deprivation of social rights that Article 64 of the Penal Code, generally referred to it. Deprivation of rights including freedom of people to a specific site curfew, or simply commuting in the range of a certain person (resident or non-resident in a certain area and to refrain from undertaking all or some of the motor vehicles paragraph (b), (e) Article 43 of the Islamic Penal Code 92) . Punishments such as home detention (house arrest) and electronic surveillance, delayed care, probation and even free public services (public work) and considering the fact that every individual has the right to equal and satisfactory conditions of work and to receive equal pay for equal work that Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights in 1966 also refers to it) is also a denial of some social rights are (Niyazpoor, 122: 1387). At the end of the first quarter is noted, the laws of other countries but also other penalties such topics as alternative sentences of imprisonment are currently running. Such as: house arrest, electronic monitoring, training camps, correctional, treatment and mediation (arbitration) can be mentioned. The Islamic Penal Code of 1392 to treat electronic monitoring and mediation in Articles 45 to 55 and 57 to 58 has a short reference. . Home confinement and electronic monitoring as a punishment is considered to be independent. Imprisonment in the home of a series of restrictive sanction is to impose a ban on night traffic to sentence offenders to involve non-working hours at home.

2. Analysis of findings

2-1 Pathology and the problems of alternative sentences instead of imprisonment Articles 64 to 88 of the Penal Code Act of 1392.

Naturally, any attempt by governments to replace jail sentences machine guns enclosing the terrible effects that usually cannot be seen. . Of course, in this regard the efforts of legislators ,the approval of such alternative prison sentences as punishment laws in this regard have been detailed evaluation takes time. In this chapter appreciated the efforts of the (proper policy in this regard would certainly prevent the disintegration of families and psychological damage will be doubled offenders and families of prisoners) and to review and identify the problems and barriers to alternative penalties paid imprisonment.

2-1-1 Pathology investigate impediments and problems of punishment and probation supervised postponement execution of punishment, imprisonment as an alternative punishment in Articles 40 to 55 of the Islamic Penal Code of 1392.

The biggest problem in the implementation of the punishment (supervised postponement and suspension of execution of sentence) already exists in the Iranian legal system It is our justice system has no central registration database for the registration valid sentences of supervised postponement and suspension of execution of criminal offenders (Farajiha, 1387: 22). Mentioned sentences, Upon issuance shall be recorded in the central system and in a way, All branches of the courts and the prosecution service that provides instant access and execution of orders, especially branches around the country is possible and feasible. So that using the national number or profile of an individual offender or his fingerprints so that access to that sentence will be available in any point of the country. Because these orders if you are not registered central system with instant access, functionality and will not be deterred. Upon sentencing the perpetrator to suspend the execution of the

punishment or delaying care, should be provided in the judgment tasks one by one so that the court has determined to serve. Therefore, during the period of suspension if the offender is convicted of a crime in any of the cities in the nation, (BC usually argue under Article 52. Year 92) or the Court ruled as not followed the prescribed duties (Article 50 p. M. Of . year 92) when the warrants are issued. But nowhere is not registered and access to them is not possible, as if suspended sentence There is not that we want to apply. In most cases, the courts and tribunals and bodies of execution of orders and issuance of such sentences on offenders are unaware. And in practice the sentence, but will not run. Not because somewhere and someone other than the accused himself is not aware of it. The infrastructure and facilities should be provided in such a way, to actually close the loophole offenders and recidivism them, and with this action we deterrent effect of such sanctions. On the other hand, the lack of the necessary human and financial resources and lack of coordination between the institutions responsible for the implementation of inadequate enforcement training, cannot be an accurate measure to assess the effectiveness of these alternatives is obtained. (Gholami, 1383: 104). It should be noted, need to know, all the countries that have succeeded to some extent in the implementation of such penalties, Certainly the beginning of the reform and providing the necessary infrastructure and then to impose such punishments have acted as a substitute punishment for imprisonment. Another problem could be the lack of official observers rather than the worker, as someone who commands his report done or not done due issuance of sentence by the court .Because the court only report breaks verdict or sentencing the worker.

2-1-2 - Pathology and investigate the obstacles and problems of punishment of deprivation of civil rights, alternative punishment instead of prison, under Article 64 of the Islamic Penal Code of 1392.

As mentioned in the first chapter penalty of deprivation of civil rights, to focus on the opportunities and stripping tool for the right positions causing offense, merely seek to reduce recidivism rates, and the impact on the character and role in the rehabilitation of offenders are offenders re-education. These penalties merely are the culprits stripping. And criminal's psychological problem does not go away. For example, electronic surveillance is used only in specific control and punishment of criminals. In addition culture need not, and this tool alone is not enough to solve the problem of prison. Should be used in conjunction with other tools Grdd.az the other hand, the punishment for a crime, judges require accurate identification of criminals and filing personality is guilty problems. The criminal deprivation of social rights as the main punishment for some crimes without the context of public culture largely accepting of alternative punishments to prison as punishment, the public opinion ambiguity makes. After such a culture should be involved in criminal justice planning, which public opinion to accept the penalty of deprivation of civil rights. But Iranian society and culture for the deprivation of social rights offenders as an alternative to prison penalty cares? According to Iranian should sanctions as an appropriate response and even decisively, as a substitute punishment for imprisonment regard to the aspect of the deterrent aspect of deprivation of civil rights criminals have. Public opinion also embraces the implementation of such penalties are applied. The death penalty is not a problem in the construction stage, so that cannot run them. (Niyazpoor, 1387: 128).

2-1-3 Pathology and investigate the obstacles and problems of penalty free public services (public work), as an alternative penalty of imprisonment under Article 64, 79 and 84 of the Penal Code of 1392.

Of course, now apply this punishment, taking into account the cultural and socio-economic situation and the implementation will be difficult. It should be answered to the question, whether the culture of our society is now ready to accept that a man who until yesterday was in prison because of crimes they had committed in the prison punishment, in today's busy society activity, which leads to the growth of the economy and society? Regarding the philosophy imprisonment of the offender, deterrence, and rehabilitation be reformed his life. Do not apply this penalty has no effect in preventing recidivism by offenders or not? Is the person affected by this kind of punishment is to punish and correct or not? If found guilty, sentenced to community services agencies, such as the mayor or well-being or entity, or other location, of course, the following Should be taken into account, and also be considered in the formulation of regulations: Work, education, sentenced, public utility type of work, duration of work, how to monitor the convicted terms of quality work, ability to perform the work assigned by the convicted and sentenced dynamic , Ordering a person in a state that has the expertise to do it, (for example, a person who has technical expertise or medical ,his own job or in green areas or cleaning

passages to be appointed) training people in those institutions that have direct contact with the convicts somehow involved in this., Established or designated regulatory authority to impose local organizations Better implementation of punishments, how to file a criminal character, how to submit the necessary reports to the judicial authorities, and related steps to encourage or beaten during the execution of criminal penalties, whether or not judges as a moderator, and ... Therefore, criminal justice practitioners in drafting the law of this penalty should consider all the above issues. And detailed studies undergraduate and take advantage of the valuable experiences of countries such as France that have succeeded to some extent in these cases, pay more attention. (Iranmanesh and others, 1387: 101). At the end of the second quarter of Pathology daily fines must be said that many of the judges of the courts daily fines as an alternative to imprisonment or probation not consider targeted. And believe in daily fines alone are not criminal chastened by the amount of the fine; taking into account the deterrent effect will be low. (Ashouri 1382: 388). According to the powers of judges in determining the amount of a fine is best when sentencing afford the economic situation sentenced to a fine attention, because, in the absence of the ability to pay the fine, the fine is determined to actually be arrested and sent to prison accused. (Shams et al., 1386: 54).

3- Conclusion

Policymakers and managers of the criminal policy by public opinion and the media, always subject to enormous pressure from the ping rate costs have criminal justice programs and policies. Due to public expectations in dealing decisively with the perpetrators and the lack of retributive aspects of the punishment (imprisonment of alternative penalties) the penalties than other programs are ineffective to charges of criminal justice. Scientific and accurate assessment of the damage requires extensive research executives from a range of institutions, executives, staff executive agencies, authorities are responsible for sentencing judges, community members, victims and all those who may have different views on the criteria to be successful penalties, should be consider and with the design of integrated programs, to solve problems and take steps to be taken in order to implement alternative sentences in prison.

Suggestions:

Culture and infrastructure and information through the media (especially dire the situation in prisons and prisoners are more vulnerable in the face of professional criminals, new entrants to prison. Prisons and prisoners are more vulnerable in the face of professional criminals, new entrants to prison Suspension system registry to record and access information quickly suspended the country's total issued in all the trials and branches. The better the system through fingerprint criminals, such as criminal records inquiries, both suspended and postponed record and access information in real criminals through fingerprint system is possible. Regulatory and judicial institutions established electronic infrastructure development and skills training necessary to staff the executive agencies for implementation of alternative punishments. And using criminals in large-scale cultivation of Mines and Technology governmental or industrial companies, rather than engaging in delinquent with the consent of the municipality and well-being.

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