ALTERNATIVE PUNISHMENTS OF IMPRISONMENT IN IRAN

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ABSTRACT

Present research has been done with critical subject and studying the social punishments replaced with prison with the aim of studying and surveying the freedom depriving punishment in comparison with other punishments and basics and fundamentals of acts of replacement of prison punishment. Prison punishment like many of punishments has been created by the effect of man's thought and operation. This punishment has been used for keeping the accused and suspected prisoners and punishing the criminals. The present role of punishment of prison appeared more when prison punishment considered as the replacement of the hard physical punishment in order to decrease the severity of punishments and it could fix its place as a main punishment in different society. But its delicacies revealed in accessing to the aims for which it has been considered; Increasing of crime repetition and economical and social problems were of bad effects of this punishment. For this reason the thinkers reached many doubts in using this punishment. Different plots and thoughts have been suggested for removing the bad effects of the prison either the ones which have been plotted for improving the prisons or the ones which have been expressed for replacement of this punishment. In Iran, due to de prisoning movement, various numbers of social punishments such as public services, cash penalties and depriving from some public rights have been proposed.

KEYWORDS: Jail, Prison, Punishment, Replacement, Punishment, Public Services, Physical Punishments, Freedom Affray Punishment

Section 1

Prison punishment place in criminal schools

Chapter 1

Prison punishment place in criminal schools

During the time, the thinkers have expressed their thoughts and ideas and as a result of these thoughts the punishment guarantees have been created and revolted and some of them have been omitted from criminal systems and there isn't any sign of them. Prison punishment has been created by the effect of man's thought and performance like many of punishments. This punishment has a long record and has played different roles in different times, it has been used for keeping the accused and suspected people for committing a crime for one time and for punishment of criminals, and etc in the other time. The present role of prison were used when it was considered as a replacement or alternative option for serious physical punishment [12].

After a while, this punishment changed, different critics expressed about it and its side effects became more revealed, the punishment which was considered as an ideal punishment criticized by the thinkers and those who believed harmful effects for this punishment and presented different methods for improving or omitting it [12].

First issue: Prison punishment in utilitarianism

By appearing of utilitarianism, the concept of punishment in lawmaking movement in 19 century changed and this thought became strong that the final aim of punishment is protection from social utilities rather than providing moral considerations.

Montoskio, John Zhak Russo, Ce zar Bekaria and Germi Bentam were thinkers that established utilitarianism.

Montoskio believed that the reason of appearing and increasing of crimes are lack of executing correct punishments and so if the punishments are fixed and reasonable and executed, they will be effective in decrease of the crimes [2].

John Zhak Russo believed that the punishments must not accompanied by truculence, but we must see that what is the main aim of punishment and then we must behave in a way that the desirable result can be obtained [3].

Russo considers the social utility of punishment from social point of view not from criminal person point of view and he has a difference for some degrees which and considers the criminal personality [9].

Cezar Bekaria was of the first ones that attracted the minds to the necessity and utility of punishment.

He believed that the punishment must make soul peace of people in the society and avoidance from
disturbing to them and remain in necessity border and he believed that in executing the punishment, the its legality must not merely considered without observing social necessities and for this reason we must avoid the law maker from moving away from the aims which the society considers for the punishment and it is not the severity of the punishment which prevents the future crimes, but the certainty of the punishment that can prevent from future crime, Therefore the punishment must be necessary and certain in order to be useful for the society and considers the freedom affray punishments for punishment of heavy errors suitable [15].

Utilitarianism gave much importance to recognition of the crime and didn't do with recognition of the criminals and didn't pay attention the criminal's personality absolutely as Anricoferi says, at that time the human being knew the justice but the justice didn't know the human being, the believing in short time prison which it is one of the reasons of crime repetition and moral sins of the criminals, was one of disadvantages of this school [10].

Based on the ideas of Utilitarianism thinkers the crimes and punishments organized under certain principles and regulations and legality, equality, personal principles of punishments were recognized and freedom affray punishments were put in regulation and order [15].

Second issue: Prison punishment in equalitarianism.

Amanoel Kant and Joseph do Mester are considered from the founders of this school. The attitudes and ideas of this school are based on constant moral principles. Kant denies any ultimate originality such as utilitarianism of Bentam and considers the crime harmful and the criminal is a one who violates from moral commands and disturbs the moral order of the society and the punishment is a compensation for a disorder which appears in the society and establishing this order is the only suitable means which absolute equalitarianism orders and must be imposed to the criminal without considering any utilities and punishment is a situational effect of an action which the criminal has done and the loss is not compensable, except by executed punishments.

Joseph Domester has similar idea like kant, but with this difference that by Domester idea, the divine and religious ideas dominate on philosophical idea [9].

Based on absolute equalitarianism viewpoint, prison punishment must be executed as an execution guarantee like other punishments without considering the utility which we can imagine [15].

Third issue: Prison punishment in neoclassicism

Although the thought system is not based on a new thought, but its agents have been able to present a new interpretation of the extent of criminal or penal laws and their correspondence with social conditions by linking classic philosophy and utilitarianism of punishment [15].

The thoughts of the founders of this school have been inspired from Bekaria, Bentam, and Kant. The founders of the mentioned school are Gizo, Joferi, luka, and Dresi.

They believe that the society has a punishment right because the punishments are useful and socially essential, but at the same time, they believe that the punishments should not be more than the extent that justice necessitates [4].

Neoclassicists of ten talk about proper punishments which are justice based on them. The punishment must be corrective and curing. The neoclassic idea is attracted by curing- corrective aspect which some of them become specialists in criminology and found prisionism and give more importance to the way of executing the punishment. Although they protect from prison punishment, but they always criticize the prison system [8].

Forth issue: Prison punishment in realism

Realism appeared in nineteen century at the same time with scientific revolutions in the field of humanistic sciences, especially, sociology, psychology, and propagation of philosophical ideas of August cont. The founders were an Italian physician, Cezar Lomberozo, Anricoferi, and Garofalo. It considers the responsibility as physical, mental and social and considers the crime as a deterministic and non acceptable and considers any kind of punishment policies no acceptable based on moral responsibility and considers the dangerous state as reaction measure and social defense and classifies the criminals based on dangerous degree and suggests a specific reaction for each classification [15].

Realism has not an agreement with prison punishment and considers its hazardous effects and considers the prison as crime producer. Lomberzo believes that one of the greatest factors of crime is prison
punishment. Prison punishment depraves the criminals that they can not be improved rather than be improved [8].

Fifth issue: prison punishment in socialism

Following the trying of thinkers in early years of twenty century, the different ideas of classic and realism combined and a flexible and acceptable theory for defence was obtained. In Freedom afferay punishment, the new social defense does not prescribe prison punishment, except in a specific case and consider it as the final method of ant criminal reaction, because freedom afferaying loses its effect. At present the aim of sentence of accused criminal to prison is not exerting disturbance for him/her, but it is guaranteeing peace or security of the society. The reason of disagreement of this school with prison punishment is that prison punishment does not present whatever it claims [2].

Chapter 2

Prison punishment

First issue: Characteristics of prison punishment

Law scholars have considered a numerous characteristics or features for punishments in order to describe the base of punishments and discriminate them from security and training actions. They are:

First: Fear and annoyance

Probably it can be said that this feature is of the first and oldest features that the human beings have recognized about the punishment. Punishments, Persecutions, and severe torments which have been executed about the criminals originated from this feature of characteristic from previous times till today. So, they must compensate their actions by enduring pain and hardness so that the revenge sense of society people alleviate and provide the necessities of moral improvement and returning of the criminals [16].

Second: Rascality

This feature is the obvious and discriminator feature of punishment from security and training actions. The criminal jurists believe that the scandalizing of the criminals is essential because the ones who have honor and social personality and have a specific status in the society may not lose their obtained prestige by committing the crime [12].

Third: Specificity

This feature is one of the social agreement results. Specificity of punishments is effective in general and specific prevention of committing the crime, because the society people regulate their performances by being completely aware of the crime and its punishments from one hand, and since they commit the crime by complete awareness from the rate of punishment, they do not consider the reaction of society as cruelty or injustice against themselves [16].

Fourth: Certainty

This feature is one of discriminating punishment from security and training actions. Security and training actions are exerted to the people who have dangerous states, and since they have cure aspect are changeable, but conviction decree to punishment becomes certain after it reaches to final step and when there is not any reconsideration and it is not changeable [6].

Second issue: Pathology of prison

Prison punishment is one of the punishments which is not able to play its role. While it has some advantages but it has some disadvantages. Punishment justice, is an essential and sensitive point of social constitution and prison is one of the most important structures that is used for keeping social peace, put this punishment has been changed into a criminal school and crime repetition [15]. The most important disadvantages of prison punishment have been mentioned in this issue.

First: Bad effect on prisoner's personality

The prisoner has many opportunities for using of thought and imaginative power inside the prison. If this power is not used in positive and correct direction, surely it will have been used in misdeed and contrary direction and committing a crime. From the other hand, it must be emphasized that the prison affects deeply on prisoner's soul. This effect probably will remain many long years after prison. Since the execution of punishment makes some effects such as anxiety, mental depression, humility, fear, amazement, and etc, so these effects can be long time [14].

Second: Crime generation

The environment of prison decreases the success possibility of improvement actions. In group prison due to relation of professional criminals with other criminals, they transfer their experiences in access of others and
each criminal learn his or her special and skillful lesson for the others, and after releasing from the prison he or she continues his or her crimes better and more skillful than before by having oneness and new organizations [3].

Since the prison condition is in a way that obeying from the law and regulation does not teach, and escaping from the law and regulations and the way of committing new crimes are taught, unskillful criminal change into skillful and professional criminals, some believe that when the criminals enter the prison are like a snake bitten people, but when they exit from the prison become python.

Therefore the correction aim of short time prison punishment due to lack of enough time is not accessible from one hand and long time prison punishment has the danger of not consistent and adaptiveness of the criminal with the society after releasing from the prison. It in creases the repetition of crime in group prisons due to different kinds of criminals and individual prison destroys the social nature of criminal's personality, so the reformations which have been done in prison, minimize the effect of fearing aspect and being prisoner destroys the returning to honorable life hope. For this reason some criminals prefer living in prison to hard life outside of the prison [5].

Third

Contradiction with individuality of punishments prison punishment results in disconnection of prisoner's relation with ordinary life and his or her family. These punishments are imposed to relatives, especially, his wife or her husband and his or her children and results in disorganization of family focus and puts the prisoner in an artificial environment which is really anti social environment. It also imposes many economical and spiritual pressures to the relatives and as a result of these pressures, poverty and ashamed of prisoner's families are produced indirectly.

At this time, not only the criminal but also the others will be in poverty [7].

Fourth: Economical dimensions

Economically, the prison punishment makes undesirable effects on the prisoner and his or her family, and judicial organization. Prison punishment causes the prison to lose his or her job and it will make problems in living field of the prisoner and his or her family. The society loses one of its labor force and it has to in cure many expansions for keeping the prisoner in the prison. These expansions are imposed to the government and results in rising of expansions of the government and the expansions of the society will be risen. The society will also incur the expansions resulted from economical problems of prisoner's family. If the society wants to provide many possibilities in access of the prisoners it must incur many expansions.

Fifth: Non efficiency

The aim of late 18 century thinkers that had considered some kinds and degrid for punishment prison, was that the mentioned punishment must have a warning aspect. The 19 century thinkers believed that the individual prison could provide the necessities of shamefulness of the prisoner and help him or her make a decision for continuing the honorable life in future. But, the fact is that all of these hopes have been gone away and the prison has been changed into a crime repetition school from the beginning [15].

Section 2

Replacement punishments of prison

Chapter 1: Explaining the thought and design of replacements of prison punishment.

The base of paying attention to designs of replacement of prison punishment can be found in the first critics which have been listed for prison preference. Although these critic provided the causes of studying the design of freedom affray punishments, but Anricoferi was the first person who explained it with designing the replacement punishment. He proposed a wide set of replacement punishment which was paid attention in the society level and in judicial organizations and became the preventive and social defense actions [12].

Different kinds of replacements of prison in punishment justice system of Iran will be studied in this chapter. Traditional kinds of prison replacement and modern kinds of prison replacement are studied.

First issue

Traditional kinds of prison replacement By traditional kinds of prison replacement we mean those groups of designs that have been proposed in punishment justice system of Iran since making law in order to decrease the number of prison population and avoid from damaging effects and have legal validity now. They are
First: Conditional Freedom

Conditional freedom is an opportunity which is given to the prisoners before finishing of the conviction period, providing that the prisoner shows suitable and desirable behavior and obeys the orders of the court, he or she will have absolute freedom [1].

The question which is proposed is this that if the conditional freedom can be considered as of designs of prison replacement or not? It can be said that the dominant idea is that conditional freedom can be considered as of prison punishment replacement in the widest concept if it is accompanied with supervision and control, if not so, saying a replacement word to it will be faced with problems [13].

Conditional Freedom is limited to freedom affray punishments such as temporal and life imprisonment. Conviction to prison punishment is the condition of using conditional freedom, whether the mentioned punishment is a criminal legal punishment which the convicted person against with has been convicted or it has been replaced with other punishment which the court has issued based on the law or regulation [15].

This case that if a person convicted to life imprisonment for the first time can use conditional freedom of not? Is one of cases that the law has been silent?

The article referring to conditional freedom of prisoners which approved in 1958 determines that the convicted to life imprisonment may use conditional freedom after passing 12 years imprisonment.

The objection for this article is that the life imprisonment is life time and is not limited to a certain time, so we can not determine its half, so the conditional freedom is not imagined about the convicted to life imprisonment prisoners, unless the lawmaker express in an obvious case [13].

Lack of prevision of supervisory and control designs and the acting organization during conditional freedom is of the other objections. The prevision of such a design can play a suitable role in decreasing the repetition of crime, because one of the philosophies of conditional freedom is the correction, curing and making readaptability of the criminal and as a result it is prevention of his crime repetition. There fore when we van consider conditional freedom as one of programs and strategies of prison punishment along with designs such as supervisory reprieve in punishment system of Iran that is accompanied with doing the determined orders from the court by the criminal and controlling and supervision of the criminal and doing exactly the orders by a supervisory and control organization, but since such provisions related to conditional freedom are not seen in Iran, so based on current laws and regulations of conditional freedom, can not be mentioned as a real prison replacement in punishment justice system [13].

Second: Reprieve of punishment

Reprieve of punishment is stopping the punishment of the person who has been convicted to preventive punishment if he of she does not commit other crime in a certain time and obey from the orders of the court in that time his or her conviction to punishment will be cancelled [1].

One of the punishments which can be reprieved is prison punishment and we can prevent from entering the convicted to prison prisoners by this reprieve of punishment reprieve of prison punishment prevents from the effects of crime generating effects of prison on the criminals, releases their families from disorders resulted from imprisoning the breadwinner and from other corruptions which they may be faced with them [15].

The reprieve of punishment is considered one of the programs of prison replacement- not as a real replacement and independent punishment in punishment system of Iran when it is accompanied with supervisory designs. If not so, the philosophy of such a subject (readapt ability of the criminal and his or her correction) which is of the aims of prison replacement will be questioned.

Therefore lack of supervisory designs causes that we can not mention it as a real prison replacement in punishment system of Iran, although the aim of the lawmaker is not executing the punishment, especially, imprisonment in order to decrease the prison population and re-adaptation of the criminals [13].

Third: Cash punishment

Cash punishment or cash penalty is one of the punishments which have been used during long years, Its origin relates to a reasonable decision to ending personal
and private revenges and considered as against personal property and can be used as one of the prison replacements. The most important prison punishment replacement from the beginning of punishment law making of Iran which proposed in 1905 was cash punishment. Although cash punishment is considered a suitable reaction against property punishments, but as a prison punishment replacement, has been used for avoiding from prison corruptions and its expansions and obtaining a revenues for the government [15].

The problem in executing cash punishment is that the convicted person imprisoned if he or she is not able to pay it and it causes that this punishment to lose its effect as a traditional punishment from one hand and as a prison punishment replacement from the other hand.

In other hand, prevision of temporary arrestment due to inability to pay cash punishment differs from the main aim of lawmaker, avoiding from short time prison punishment and its effects and consequences, and as a result with the laws or regulations such as receiving some of government revenues and using cases. For preventing from such difficulties it is better to previse and support other strategies such as daily cash or installment of cash punishment.

**Second issue: Modern kinds of prison replacement**

This group of strategies includes the replacements which have been proposed in law systems of the world during the resent decades, but they have not legal validity and reliability in punishment regulation of Iran. The most important examples of modern kinds are deprivation from social rights, supervisory duration, daily cash punishment, and social based services [10].

**First: Deprivation from social rights**

Legal prohibitions such as disunion from governmental, and private institutional occupations, prohibition from involving in a certain jobs, prohibition from driving, deprivation from transaction with governmental organizations, and etc have been mentioned in Islamic punishment laws and regulations as complementary and subordinate punishments.

It means that the judge uses these punishments in addition to the main punishments for completing if it is necessary.

However, today based on studies and revisions, these punishments have been accepted as the main punishments as replacements of short time imprisonment in intentional punishments and the imprisonments resulted from unintentional punishments in many modern and developed countries. Social punishment bill of prison replacement has proposed 12 cases of kinds of social deprivations as suitable prison replacements and authorized the court to de private the convicted person from social rights for a certain time [1].

**Second: Supervisory duration**

Supervisory duration as one of prison replacement entities includes giving freedom to a criminal under supervision and control of supervisory officers instead of prison punishment in a certain time for preparation for returning to social life [13].

Conviction of all convicted to prison has not reasonable justification. The studies indicate that the prison has not corrective, and training operation for the criminals from one hand, and the presence of these criminals in the society is not dangerous for other citizens from the other hand. So the more justified thing is that instead of imprisoning these criminal and stricken them to inevitable damages of prison, supervise and retrain them in the society and among other citizens which has been proposed in article 14 of punishment bill of prison replacement [13].

**Third: Daily cash punishment**

For decreasing the disadvantages of cash punishment, the way of exerting it has been changed in some countries.

In this way, the convicted person can pay the cash punishment based on the committed crime, revenue, and other possibilities and conditions as divided section. This punishment has been taken from Scandinavian countries punishment system [1].

Unfortunately, about daily cash punishment like the supervisory duration, any regulations are not seen in punishment laws or regulations of Iran from the beginning of lawmaking. The providers of the bill, articles 25-27 mentioned to daily cash punishment by extracting from the laws of other countries for the first time. The court is sues the order to payment of daily cash punishment based on the convicted person's revenue and considering the living expansions and the severity of committed crime as the following.
a: The number of payment days of daily cash punishment is 10-180 days in the crimes which its legal punishment is lash or maximum 6 months imprisonment, and 180-360 days in crimes which the maximum legal punishment is more than 6 months to 12 years imprisonment which will be determined according to determined legal punishment.

b: Maximum amount of daily cash punishment is \( \frac{1}{4} \) of daily revenue of convicted person [13].

**Fourth: Social based services (public services)**

The other one of prison punishment replacements is engaging in public services. The convicted person does public services in stead of enduring the prison for a time which is determined for him or her. The public services is of new social guarantees.

This punishment not only lacks the dangers and disadvantages of prison, but also promotes the economical, social, cultural, and training developments. Doing public services by the convicted person is not synonym with unemployment and compulsory works, it is for retraining and correcting the convicted person. Some actions have been done by law and judicial development assistant of judicial power about public service punishment and descriptions and conditions related to this punishment have been expressed in cases 19-24 of social punishment bill of prison replacement.

**CONCLUSION**

Studying of variations in criminal science indicates that imprisonment punishment has not been accepted by the societies and governors as the main punishment in many years ago, but they used it for temporary keeping of the ones who were waiting for trial and executing the court order or as a policy for enforcing the convicted person for paying the punishment. Imprisonment punishment was replaced with physical punishments in order to decrease the severity of punishments and it could fix its place in different societies as the main punishment, but its efficacies appeared in accessing to the aims which have been considered for it.

Increasing of crime repetition and numerous economical and social problems or difficulties were of its bad effects. The correction of prisoning is not able to remove these difficulties, so the thinkers doubted about using this punishment. Different plans and thoughts have been proposed for removing the bad effects of imprisonment.

According to the statistics which indicate that the crime repeaters constitutes a part of prison population, so this indicates the inefficiency of prison punishment. Although in criminal law of Iran, strategies have been proposed as imprisonment punishment replacement of even avoidance from it from the beginning duration of law making, but these strategies have not been enough coherence, and specified criminal policy is not seen in organizing in criminal system of Iran. These strategies are limited in criminal law of Iran and they include some cases such as repleive of punishment, conditional freedom, changing of punishment, deprivation from social rights, and cash punishment. In current laws or regulations of Iran specified organizations with special officers and specified authorities have not proposed for executing these strategies.

The other methods of replacements, such as public services, daily cash punishments, and etc. could give more varieties for this policy and help more in observing the correspondence principle and individualization of punishment.

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