



The suspension of the penalty on the rights of Iran and France

Alireza Sayebani¹, Abdolreza Mansoori², Mohammad Reza Hooshyar³

¹Assistant Professor of Islamic Azad University, Bandar Abbas Branch, Bandar Abbas, Iran

²PhD student of criminal law and Criminology, Islamic Azad University, Qeshm Branch, Qeshm, Iran

³PhD student of law, University lecturer

Abstract: Today, reprieve, known as one of the alternative or intermediate punishments. To perform probation, many countries have taken effective steps in amend the non- dangerous offenders with establishing the appropriate institutions. Reprieve is: ' the punishment that determined by the judge. will not perform completely or slight. Its result in full exemption, if the suspension is terminated. This study based on investigation of context and concepts of reprieve in both Iran and French. We used literatures and gathering all informationd and studies in this area; also Iranian and French laws. According to results of investigation in absence of real probation in Iranian laws, absence of coherent and feasible organizations to implement suspension in law and in return different type of probations, delay in verdict with test in French laws and distributed organizations of implementation of moratorium in Iran, must establish the targeted and integrated probation organization in Iran. About suspension in Iran, a firm conviction for one year inhibit suspension, but French laws don't mention any precedent that inhibit suspension. Probation area in French Laws is correctional custody for one year, but in Iranian laws with restraints in crimes sentenced area and its prohibition with exception of common crimes, that have non- religious inhibits, bodily " there's no area for probation and judges and proxies unable to probate ". regarding to fine, French laws can only probate penalties in simple ways, and legislator allow not the judge to suspend in fines and in pave a fine it can suspend alone but it's not involved with other convictions. After probation in French laws, judge can order to increase the probation period or perform part or whole punishment, but in Iran after probation, judge must sentence whole punishment.

Keywords: probation, Iranian Criminal law, French Criminal laws.

INTRODUCTION

New theories have been represented in criminal and punishment, Due to evolution at late decades in law-penal courses. These courses, recommend decriminalization in several social deviations instead of hard and heavy punishment. Nowadays, visions of certainty and absolutism in penalties, because of study in social realities is a changed vision, which indicate punishment in reduce of criminal phenomena, it's an incomplete and failed pattern. Therefore, the primary goal of penalty is amendment instead of punishment. Punishment is the last way against criminality, so, need to use penalty, until criminal one be punished in other ways. Government use leniency in punishment and remove repressive criminal policies to amend the criminals, until, no need for penalties or harm for society in petty crimes. Procrastination established along the leniency – based policies and more support to non-dangerous criminals. This institution is a leniency tool, that courts can use It to amend the criminals. Now there's a question:" which situations need to postponed the sentencing criminals? Also, what are based theoretical supports of this institutions? In this study, investigation of law and criminology aspects of Iranian and French criminal laws, due to this institute was not involved in other literatures.

Probation in Iranian laws

Probation, first have been forecasted in public penalty laws and approved in 1304 during articles (47-50) and as simple suspension. In 1307, legal revision named " law of probation states" restraints the probation situations down to 27 crimes and in 1346, " suspension of run penalties" in 18 articles approved. Prison acts approved due to session 273 in 7/2/1361 in former supreme judicial council instead of in-hand regulation. (Goldozian, musts in public criminal laws, p ,397). Subsequently, probation ran out of its legitimation and forecast in articles 40 in Islamic punishment law adopted in 1361. Finally, probation based on articles 25-37 of Islamic punishment law adopted in 1370, now all binding.

Kind of probations

In Iranian criminal laws, suspension consist of two types: simple suspension and probation. (Shambiati, public penalty law, V2, p 440) in some other countries, probation have more types. For instance, in French laws, there are four types of probations: 1) simple suspension, 2)suspension with test (help and inspection), 3) suspension with community service commitment, 4) delay in sentence with test. (Guston, public penalty laws, v, pp 828-856). It seems probation in third and fourth types of French laws, despite of different in perform and territory, actually both, are care suspensions and the fourth type is sentence suspension, which in addition to pursuit suspension and probation, have been forecasted in French criminal laws, not to be part of the probation alone. From common law countries, like England, USA, and Canada, there's advanced problem in probations too, and execution institutes have been established to inspect and control these kind of probations. (Ashoori, Prisons alternatives, pp291-321; Ancel, social defense, p 103).

Terms of sentencing postponed

" after accused is found guilty, and consideration of individual, family, social, precedency and situation in crimes , in case of few conditions, sentence will suspend for 6 months to 2 years" , due to articles 40 of Islamic punishment laws.

Sentence handed

Main sentence due to new law of Islamic punishments, based on 4 types named: limit, nemesis, blood moneys and sanctions, which probation sentenced only in sanctions. Definition of sanctions in this laws is: " sanction is a penalty with no limit, nemesis or blood money and it modify due to law in religious crimes or continuous crimes. Type, quantity, quality of perform and principles of mitigations, suspension, elapse and other sanction sentences modify by law."

It seems legislator defines sanction from its amendment aspect and from his prospect, criminal get closer to this aim, by sentence postponed. In other words, it amendment more than other punishments. For this reason, nemesis with purpose of justice and limit with purpose of criminal intimidation does not involved in probation.

Penalties of six to eight

Sanctions divide in eight grades, due to Articles 19 of Islamic punishment laws. Lowest grad of sanctions is in eight grade and the highest is in first grade of this divisions. For sentence postponed, legal punishment must consider, and court can probate it, if it consisted in six – eight grade of new laws. So it court can't postpone the sentence in order to 1-5 grade of new law. Every type of penalties not as high as six grade, can be postponed by the court.

Mitigating factors

Mitigating factors are one of the sentence postponed terms, due to clause A of Article 40. Court can postpone the sentence, if authenticate the criminals have one of the mitigating factors. Mitigating factors are established in Article 38 of new law, and have incarcerate aspects like the old Islamic punishment law. This factors are as follows, and court is required to stipulate them:

- Remission criminal by complainant or private claimer.
- Effective cooperation of culprit in recognition of co-respondents, discovering the reasons or objects that used in criminal scene.
- Confession before pursuit or effective confession during the investigation.
- Penitence, good reputation or special situation of accused like disease and aging
- Accused effort to reduce crime effects or his attempt to redress.
- Low damage to damaged one or its results.
- Poor intervention of cooperators in occurrence of crimes.

Also, Remission of complainants or private claimer in non- remission crimes, is another mitigation factor. Because, in remission crimes, the postpone will sentenced, if private complainant remise the criminal. (khaleghi, 1390)

Criminal effective cooperation must force in crimes that criminal involved in, not overture or help to overture other crimes. Accused must effort to redress the effects of crime before sentence, so the court can mitigate his penalties and probate him.

Forecast to reform perpetrator

The aim that we consider in every punishments is to reform perpetrator and admonish him about his crimes. otherwise, may penalties make criminal more dangerous. The judge must recognize that probation have more reform aspects than prisoned him, due to rate, perpetrator incentives, severity and his proceedings in reduce the crime effects. For this reason and have better decision, judge have to know all aspects of the case and criminal family situations. Criminal's hope for sentence postponed, result to redress and gain damaged satisfactions and have high importance in decrease the crimes effect. (Article 39)

Absence of effective penal backgrounds.

Absence of effective penal backgrounds is another conditions in sentence probation. Penal backgrounds is :'' sentence must be in one of the primitive or revisal courts and objection period must passed. The sentence must be as a result of intentional crimes and does not involved non-intentional crimes. This code is about effective sentence in waver of Article 40: " effective sentence is a sentence, which according to Article 25 of this law, exclude guilty of social rights, due to perform order". In order of this code of effective penal proscription that legal punishments are: nemesis, life imprisonment, mutilation, which its blood money is half of the whole blood money, deportation and fourth grade prison, whip some, mutilation, which its blood money is half of the blood money of victim or less than that and/or fifth grade prison.

Moratorium in France

In some countries, what suspended is the sentence, but in France, execution of sentence is suspended, so sentence must document in criminal assemblies, and publish in review, which submitted to the judicial authorities. Suspension is not the payment of loss in benefit of private claimer (Article 736 of France ADK), suspension leaves lack of capacity, prohibitions and rights collapse of convictions in the testing of suspension time period (clause 3 of Article 736 of France ADK).

Conditional release of prisoners in France

Conditional release is the entity, that allow judicial authorities to release the guilty for the rest of his/her imprisonment due to good manner.

First Advantage of this entity, is to reform prisoners as soon as the judge could have imagined; secondly, surveillance possibility of guilty since he/she get free, so his/her can easily return to society. Conditional release was always a leniency.

Territory parole

1- For the depriving penalty freedom

According to Article 729 of France code of criminal procedure, parole related to depriving penalty freedom, without considering its nature or duration.

Even permanent punishment can use paroles. However, from the beginning of its founding, correctional custody and public criminal (5-10 years) can use paroles. According to Article 730 of code of criminal procedure, justice minister and penalty judges can conditionally release the prisoners.

Parole does not consist of secure measures of deprivation of liberty like: child care in complexes or alcohol addicts under treatment in institutes; however, always, this actions are revisable, in case of the economic interest of beneficiaries.

2- Granting parole conditions

First, sentenced must spent part of his punishment (Article 729, clause 2 and so on). This extent in temporal sentence is half of the punishment period and about repeated offenders is two –thirds of this period. However, as far as justice minister is concern, mostly, this period is three-fourth and in few term, is equal to two – third of punishment. Since, judges took the parole authority, course had changed in favor of prisoners. About permanent criminal custody, parole will sentence after 15 years. The basis of this values, is not the punishment, rather, it's the punishment that guilty should bide.

Secondly, convicted to a term of hedge, at all time, unable to use parole.

Thirdly, convicted should represent (Ensure serious social readjustment) (Article 729, clause 1, code of criminal procedure).

Fourthly, convicted should accept the terms, which recommended to him/her. According to Article 531 of France code of criminal procedure, he/she can expressly deny and use not the parole.

3- Formalities parole

In this case, initiative proposes are with penology and punishment execution judge (Article 730, clause 3), the case established in terms of purposes of penalty execution judge, and after gain interest of penalty execution commission. This commission involved penalty execution judge, county attorney, principle of prison institute and said individuals in Article 117-1, code of criminal procedure. Also, a parole advisory committee exist, which commenting on its delaying, accepting or reject. According to rejection, the next propose may comment after a year. This committee consist of two judges, inspector general of prisons, presiding judge of the private amnesties and penalty execution by justice ministry, a judge from principle of prison, proxy of defense ministry in military affairs, penalty execution judges, an employee from staff society of prison administration for foreign service management and a member of bar association.

Final decision of parole is with the justice minister (Article 730, clause 1) and in case of acceptance, a ministry decision will issue this case. Penalty execution judge can decide about the parole date with some limits (Article 732)

2- about punishments lower that 5 years

In this case, penalty execution judge decides, due to gain interest of the penalty execution commission (Article 73, clause 2), whether justice minister granting parole and penalty execution judge must modify these terms: remuneration, term of issue or maintain freedom and also nature and duration of auxiliary and regulatory measures (Article 732).

- Parole effects

Punishment parole does not remove the myth of conviction, convicted temporarily exempt from remain punishment, but supplementary penalties remained. Exemption of penalty execution, issue with terms, if this terms observed not, so its withdrawn (Article 731 and 732, code of criminal procedure). We illustrate this term in three sections: specific conditions, assistance and regulatory measures.

1- Private conditions

Some of these conditions dedicated to parole regim like :depist whole or part of saving in probation committee, army recruitment, expelled from boarders, previous test somicolonial; the other conditions are as same as suspension, that some of them are positive (donations and cotribution in home cost) and negative (same conditions like experimetal suspension + commitment not to engage in some professional activities).

2- Auxiliary movemenst

The aim of these social reformation movements and specially, family and professional readjustment of the defendant, these movements are: helping mentally and where, appropriate material and done by probation committee, and its like aids that convicted to experimetal suspensio regime used (Article 46-122, code of criminal procedure).

3- Surveillance movements

Inhabitance in place, that modified by parole

Reply to summons of execution judge or probation proxy

Let the proxy to visiting and give him the demand informations

Giving the career change data to the proxy

Gain authorization before judge, while these changes can prevent the implementation of his/her commitments

Gain authorization before judge to change the inhabitance or moving more than 15 days or travelling aboard.

- Duratioan and end of parole

1- Duration of parole

I the past, duration of parole was until the end of usual deprivation of liberty that involved in this regime. From reformation of the code of criminal procedure, this regime will continue after the duration of punishment (Article 772, clause 2 of the code of crimial procedure).

About permanent imprisonment, parole duration will be a minimum of 5 and a maximum of 10 years (Article 732, clause 3, correction of code of criminal procedure, july 17, 1970). Parole duration may not limit, if an individual sentenced to the irreducible punishment of general criminal imprisonment (Article 4-720, clause 4).

2- End of proabtion

Termination of parole

Termination of parole, that result to terminate the exemption of the defendant from the punishment – it assumed in three assumptions:

First : in case of imposed conditions or lack of imposed measures.

Second: in case of evident abuse

Third: in case of new conviction (Article 733 of code of criminal procedure)

Albeit, decision of termination of parole in all conditions mentioned above, is optional to the authority who sentenced the parole.

Termination formalities are different from the justice minister to justice judge(Article 733 of code of criminal procedure), in spite of urgency of the penalty execution judge of accommodation parole, refer to authority(Article 733, clause 2).

In spite of, justice ministry be the authority, who sentenced the probation, it will takes place by recommendation of order execution judge and minister decisions. One can suspend termination, if the order execution judge be the authority, who sentenced the parole.

Criminal termination

In the past, parole termination of defendant, was performed due to what extent from his probation, but now, according to Article 733, clause 3 of code of criminal procedure, this duration could be lower than this period; justice ministry with gain interest of penalty execution judge and with him- if sentenced to probation- modify this duration.

Abolute freedom

Defendant will certainly free, if there was no termination after the end of probation(Article 733 , clause 4), but conviction remained in his/her criminal assembly and for suspension probability and also identify duplication ad lack of capacity, will be taken into account .

Discussion and conclusion

Including those, which can have positive effects and decrease criminal rates in society, is suspension in sentence ad expelled of penalty. It should be note, rather than everything must consider preventive models, due to, variety of cultures in modern society and economical and political conditions.

Former judge of country's supreme court talk about suspension or alternative punishments: " the truth is, that current judges have criminal observation to guilts and verdicts, and not prepare to sentence alternative punishments and/or suspension in verdiction. So execution of such these sentences, demand culturization in judiciary; Therefore, impossible to suspend in sentence and alternative punishments, in current conditions for judiciary."

Sources

Ashouri, Mohammad(1386). Code of criminal procedure, v 1, eight edition, Tehran, SAMT, 1382. Prison alternatives or interconnection penalties , Tehran, University of Tehran.

Aghaii, hosein,. (1390). Public criminal law (according islamic punishment bill). V2, Tehran ,Jangal-e-Javedane.

Mark , Ansel (1375), social advocacy. TRAN: Mohammad Ashouri and Ali Hosein Najaf Abrand Abadi, third edition, Tehra: University of Tehran.

Ardabili, Mohammad Ali. (1386). Public punishment law. V2, 19th edition, Tehran: Mizan.

Guston , Stephanie and george Levasar, and Bernard Bolouk (1377). Public punishment law. TRAN: Hosein Dadban, V2, Tehran: Alame Tabatabaee university.

Bohlander, Michael(1389). German punishment law. Trans: Asli Abbasi , Tehran; Majd.

Pinatel , Jean(1365). Alternative pealties and criminology. Tran:Ali Hosein Najafi, No.6.(legal and judicial studies). Abrand Abadi, Hagh Magazine.

Tavajohi, Abdolalli.(1391). General pleadings of criminal law course. Masters (second semester) , university of Tehra(Qom pardis)

Jamshidi, Alireza(1382). Dilect of criminal policy for law judicial tribunal bill.

Kids and Teenagers. Judicial law and order magazine. No. 45

Attorney, Perikh(13889). Criminal psychology. 8th edition, Tehran: SAMT

Newbore, David(1389). Criminal justice system and the structure of courts in America. Tran: Hamid Reza Qara guzlo, first edition, Tehran :MAJD

Gilian, Douglas,(1383). Child rights to wrongdoing: criminal responsibility and minor imature. TRAN: Nasrin Mahra, journal of theology and law. No. 13

Raijian Asli, Mehrdad(1381). Withdrawl strategy or limiting the scope intervention of criminal law and Its place in Iran. Journal of judicial and law , No.41

Rezaee, Gholam Hosein(1389). Suspension and postponement strategies in criminal procedure. Tehran, Mizan.

- Mohammad , Sadeghi. (1384). Crime restriction ignorance. Correctional journal, No.74, Introduction to suspension in Iran, France and German Laws. T119
- Goldoozian, Iraj, (1386). Islamic Criminal law annex. 8th edition , Tehran, MAJD
- Lootermi, Lorance(1387). France general criminal law. Trans: Mahmood Rooh al amini, 1st edition, Tehran, Mizan.
- Moein, Mohammad(1387). Persian lexicon, 5th edition, Tehran, Amirkabir.
- Najaf Abrand Abadi, Ali Hosein(1382). From classical school to restorative justice. 9th journal of Razavi university of Islamic sciences. No. 10
- Social based punishments for alternative prison of code of social punishment law. Literatures of criminal reduction strategies in prison, Tehran, MIZAN.
- Noor Baha, Reza. (1386). General criminal law, 18th edition, Tehran , GANj –e –DANESH.
- Niazboor, Amirhosein .(1390). A. deal of criminal procedure. Tehran, Mizan.
- Vald, George Thomas Bernard, Snapis , Jeffrey (1390). Theoretical criminology. Tran: Ali Shojaei, 4th edition, Tehran, SAMT.
- Williams, Frank .P; Marie Leen . D. McSheen. (1383). Theories of criminology. Tran: HamidReza Malak Mohammadi. Tehran: MIZAN.