



A Criminological Study of the Law on Reducing the Punishment of Penal Servitude Approved in 2019

Taleb Pourmoghadam¹, Saeed Qomashi^{2*}, Hossein Moltafet³

1. PhD student, Department of Criminal Law and Criminology, Qom Branch, Islamic Azad University, Qom, Iran.
2. Associate Professor, Department of Criminal Law and Criminology, Kashan University, Kashan, Iran (corresponding author).
3. Assistant Professor, Department of Social Sciences, Shahid Chamran University of Ahvaz, Ahvaz, Iran.

Abstract

In most of the countries of the world, violation of laws and regulations is considered as an abnormality and causes social blame followed by punishment. Many people of the world consider imprisonment of the perpetrators of serious crimes to be the most appropriate punishment. For example, in 1966, a survey was conducted in England. What do you think is the most common and desirable punishment? 67% have identified prison as the most desirable punishment. Also, in the idea of criminal justice and individualization of punishments, prison sentences also pursue other goals, such as punishing and reforming criminals, in addition to intimidation. However, although these punishments have met the goals of the theory of correction and rehabilitation of criminals in some cases, they have not been successful in most cases.

Although the views of criminologists are often not in agreement with the application of prison sentences and strongly consider the negative aspects of the punishment of deprivation of liberty to be ineffective or, in the most optimistic case, less effective in curbing the crime rate, but the serious criticism made by criminologists towards the Law of Reduction The proposed punishment of custodial imprisonment is why this project has focused its goal and mission solely on reducing the population of prisons in any way possible, and because in order to achieve the goal, which is a logical and reasonable thing in its place, A method used that creates an extreme approach and pushes the rules towards impropriety is flawed. And this itself leads to the fact that society is not seriously supported in the face of delinquency.

In this research, we believe that the developments that followed the approval of the Law on Reducing Imprisonment 2019 as a new institution in the criminal laws of Iran; Let's examine and study from a criminological point of view that it has caused the reduction, conversion or cancellation of the punishment of imprisonment.



Keywords: crime, legal criminology, punishment and penal servitude.

Introduction

Basically, in the past centuries, prison was not recognized as a punishment, but the penal movements in the 18th century sought to modify the punishments. And prison, which was considered a milder punishment than other punishments and was not considered the main punishment until this time, was gradually introduced as the main punishment in the criminal legal arsenal of the countries. The thoughts of criminological thinkers such as Beccaria influenced the legislation after the Great French Revolution in 1789. And gradually, many heavy punishments were eliminated in the legislations after this era, and prison entered the laws of the countries as the main punishments. (Dachek, Hadi, 2019)

In our country, if we review the criminal laws, we see that the provision of prison sentences in the set of codified laws is almost a hundred years old. For example, if we study the laws since the adoption of the General Punishment Law, which was approved in 1304, we can see that from the very beginning, the idea that it is necessary to make reductions in the application of prison sentences (such as what is stated in Article 45 of this law) has been foreseen from the very beginning. In fact, the legislator has been looking for a solution that can prevent people from going to prison, especially for short periods of time; That is, the idea that we should use imprisonment in a minimal way is not related to recent years, but has been raised since the beginning. The reason for this issue should be sought in the goals of this type of punishment. Since the punishment of imprisonment has been legislated for two main purposes. Its first and main goal is prevention. in such a way that it prevents others from committing similar violations by creating public intimidation. The second purpose of prison sentence is to rehabilitate, treat and return the criminal to the society. But we see that both of these goals have met with failure and failure during the time when the judicial system of the country has been continuously using this type of punishment and has not achieved the desired goals. (Khaberonline interview with the deputy judge of the Court of Administrative Justice, August 10, 2018, Khabar code 165442)

The number of prisoners in our country is more than twice the capacity of prisons and the physical per capita required for prisoners is lower than the standard. Therefore, in such an environment, correctional and health standards cannot be applied well to the prisoner, and the rehabilitation program for the prisoner will also face problems.

Also, according to the reports and statistics provided by judicial officials in interviews with the media; In general, around 150 to 200 thousand Tomans are paid daily for the maintenance of each prisoner; And this figure imposes nearly 5 million per month and more than 50 million tomans per year to the public budget of the country. Therefore, even if we have a purely material view of the prison issue, we can see that this type of punishment should be reconsidered as soon as possible and the necessary policies should be adopted in this regard.



Therefore, it is natural that the legislator, when he sees that the purpose of the punishment legislation has not been fulfilled, thinks to correct this approach and process with the approach of reducing or converting the prison sentence or applying other institutions. Examining the current situation also shows this fact.

Therefore, in order to solve this problem, the legislator has approved the law on reducing the punishment of penal servitude approved in 2019 by carrying out fundamental reforms in the Islamic penal code of 2012 and the approach of reducing or replacing the punishment of imprisonment. This law, which was approved in the form of a two-prompt and hasty plan, seems that it is not aimed at decriminalization of criminal titles, but its goal is to reduce the criminal population in prisons; Therefore, in terms of targeting, the aim of this plan is to focus on reducing the population Penalties are prisons.

The recent approach of the legislator to reduce the punishment and also to adopt an extreme friendship policy; It has not been aligned with the previous legislative policy governing penal crimes. And although this lack of alignment alone cannot be mentioned as an objection to the recent law, but

This certainly indicates an incoherent legislative policy in penal crimes, which not only does not have the same and uniform process, but also suffers from disorder, deviation and incoherence, and according to each specific time period, separate doctrines and thoughts govern it. Therefore, in explaining the strategic principles of the criminal justice system, it has shown to be ineffective due to the disconnection from the scientific system and the beginning of the trial and error method. (Najafi Tawana, 2016)

Although the views of criminologists are often not in agreement with the application of prison sentences and strongly consider the negative aspects of the punishment of deprivation of liberty to be ineffective or, in the most optimistic case, less effective in curbing the crime rate, but the serious criticism made by criminologists towards the new law It has been suggested that why this project has focused its goal and mission solely on reducing the population of prisons in any way possible and because it uses a method to achieve a goal that is logical and reasonable in its place. which creates an extreme approach and pushes the rules towards impersonality, has problems. And this itself leads to the fact that the society is against the criminal case

Not seriously supported.

In this research, we believe that the developments that followed the approval of the Law on Reducing Imprisonment 2019 as a new institution in the criminal laws of Iran; Let's examine and study from a criminological point of view that it has caused the reduction, conversion or cancellation of the punishment of imprisonment.



Chapter 1: Reducing or converting the punishment of penal servitude

Ever since imprisonment was predicted as one of the main guarantees of criminal executions and freedom as one of the main basic human rights was subject to restrictions caused by punishment, the negative effects of this punishment have always been the attention of experts and criminologists. Correction and treatment as one of the most important functions of this punishment faced serious doubt. (Ashuri, Muhammad, 2014: 38)

Experience, with the help of crime statistics, has shown that professional re-offending happens mostly by people who have a history of imprisonment. (Gholami, Hossein, 1382: 296)

In our country, criminal inflation is one of the important problems of the judicial system; In such a way that nearly 3000 criminal titles are foreseen in various laws. According to statistics, the number of court cases in 1383 has doubled compared to 1364. That is, while in 1364 there was one court case against every 18 people, this number increased to two and a half times in 1383 (that is, almost one case against every 7 people). In some countries, there is one case against every 80 people. (Farahmand, Mojtabi, 1396: 16)

2019 Imprisonment Punishment Reduction Law, while reducing the punishments of some penal crimes (not only imprisonment), most of the concepts and institutions of criminal law or their areas such as forgivable crimes, multiplicity of crimes, repetition of crimes, special cases of initiation of crime and accessory to crime, reduced Punishment, commutation of sentence, suspension of sentence, alternatives to imprisonment, supplementary punishment, system of parole, surveillance with electronic systems and jurisdiction of courts have changed. In this article, we will only study the issue of reducing the punishment of imprisonment, canceling the punishment of imprisonment and changing the punishment of imprisonment to an alternative punishment:

The first speech: Converting indefinite life sentences to first-degree imprisonment

Life imprisonment is one of the punishments that are provided not only in our country but also in some other countries as criminal reactions to criminal acts. In terms of the philosophy of punishment, life imprisonment does not seek to reform and resocialize the criminal, but the approach of this punishment is usually to exclude the criminal from the society. Therefore, it is fundamentally different from other punishments. Currently, among the criminal law thinkers, the application of this punishment has its supporters and opponents. One of the innovations of the law on reducing the punishment of imprisonment is the conversion of all non-life imprisonment sentences in the law to first-degree imprisonment.

In the criminal laws of Iran; There are two types of life imprisonment: one category; Life imprisonment is considered as a type of limitation; For example, the punishment of robbery if repeated for the third time, the subject of paragraph "P" of Article 278 of the Islamic Penal Code approved in 1392 and the second category; Unlimited life imprisonment means



punishment such as bribery, embezzlement and fraud in the form of a network, which is the subject of Article 4 of the law

Intensification of the punishment for the perpetrators of bribery, embezzlement, and fraud, or the punishments of life imprisonment stipulated in the Law on Combating Narcotics and other cases. Therefore, wherever life imprisonment is limited; Like paragraph "p" of Article 278 of the Civil Code, which was mentioned; Subject to material grading

19 of the Islamic Penal Code is not included. Also, considering the first-degree punishment in Article 19, life imprisonments are all considered first-degree. (Bagheri, Yousef, 2019)

According to Article 3 of the Law on Reducing Penalty Imprisonment 1399, Note 6 has been added to Article 19 of the Islamic Penal Law approved in 1392. And according to that, all unlimited life sentences prescribed in the law will be converted into first degree imprisonment. Therefore, at present, the punishment of life imprisonment will be applied only in limited prisons such as involuntary manslaughter and third-degree robbery.

The effects of the new note (Additional Note 6) of Article 19 of the Islamic Penal Code in reducing the punishment of imprisonment:

It is clear that those sentenced to unlimited life imprisonment, whose number is definitely more than those sentenced to limited life imprisonment, are out of some uncertainties and some legal institutions of Arafaq include them as well. As the name of this two-urgency plan suggests; The aim of this plan is to help reduce the prison population. Among the institutions and legal actions that have undergone changes from the application of Note 6, including those sentenced to indefinite life imprisonment, who are considered first-degree convicts under Article 19, are the following:

1. The ability to apply a discount for the punishment of life imprisonment; Because it is considered the first degree and according to paragraph "a" of the amendment of Article 37 of the Islamic Penal Code approved in 2013, it is possible to apply one to three degrees of discount in it.
2. Conditional release after serving half of the prison term according to Article 58 of the Criminal Law.
3. If the convicted juvenile is between 15 and 18 years old; It can be subject to paragraph "A" of Article 89 of the Islamic Penal Code approved in 1392.
4. According to paragraph "a" of article 105 and paragraph "a" of article 107 of the Islamic Penal Code approved in 1392, it can be subject to the passage of time.

prosecution and execution be punished; Of course, in terms of Article 109 of the same law.

5. The possibility of using leave from prison for those sentenced to life imprisonment after passing the minimum required in the regulations of the prisons organization.



6. Based on the deliberations of the judges in the meeting of the judicial authorities, the sentence stipulated in the top of Article 45 of the Addendum to the law amending the Anti-Narcotics Law approved in 1376, which refers to the punishment of life imprisonment, has been changed to the punishment of first degree imprisonment, and in fact, life imprisonment is the subject of this article. In this regard, it has been ruled out. (Minutes of the judicial session, Semnan, 3/27/2019)

The second speech: reducing or converting prison sentences to alternative punishments

In the dictionary of criminology, the alternative punishments of imprisonment are defined as follows: "The punishments that are implemented by the criminal court on offenders and include various forms such as reprimands, financial fines, criminal supervision and unpaid work, etc. In most cases, they replace prison sentences. (McLaughlin and Muncie, 2012:51)

The purpose of implementing these punishments is to return the criminal to the society and to implement the punishment when the criminal is present in the society. The implementation of these punishments requires public acceptance. If the community members support this project, the self-confidence and commitment of criminals will increase and criminal justice will be established. (Sevdiiren, 2011: 6)

After the blessing of life, freedom is the highest divine gift. And taking it away means taking away one of the most fundamental values of human life and violating his inherent rights. Therefore, rights as regulators of human social relations cannot ignore the concept of human freedom. Criminal law schools have long considered deprivation of liberty as a punishment for violating the rights of individuals and society and have included it among punishments. Despite these schools of criminal law, today they believe that excessive imprisonment cannot fully achieve the goals of this punishment. The need to respect the inherent right of human freedom on the one hand, and the harmful effects of prison, including its economic cost, the destructive effect of prison on the criminal's family, and its criminality.

On the other hand, the prison environment and the reduction of its correctional and educational effect have caused that today the prison is considered as the last solution. In this regard, the legislator in the Law on Reducing Ta'ziri Imprisonment Punishment 2019, the punishment of a number of imprisonment

It has reduced the number of crimes and in other cases it has changed the imprisonment of some crimes to other punishments. (Mossadegh, Mohammad, Description of the Law on Reducing the Taziri Imprisonment Punishment, 2019)

Here, as an example, Article 1 of the Law on Reduction of Imprisonment, which implies the reduction or conversion of some punishments



We will review the subject of the Islamic Penal Code (Tazirat 1375) in two separate sections:

A) Reduction of punishment

□ According to Paragraph A of Article 1 of the Reduction Law, the penalty of penal servitude has been reduced from Article 614 of the Penal Code of 1375, which was two to five years and a 5th degree punishment, to six months to two years, which is a 6th degree punishment.

□ According to Clause B, Article 1 of the Law on Reduction, the punishment for the crime of kidnapping or cover-up is stipulated in Article 621 of the Islamic Penal Code (1375 Punishment), which used to be 3rd degree imprisonment and between five and fifteen years of imprisonment; If the crime is committed by violence or threats, it is reduced to fourth degree imprisonment, i.e. more than 5 to 10 years, otherwise it is reduced to more than 2 to 5 years, i.e. fifth degree imprisonment. Also, the note of this article has been repealed and the punishment for starting the crime of this crime can be applied according to Article 122 of the Islamic Penal Code of 2012.

□ Pursuant to Clause C of Article 1 of the Reduction Law; Imprisonment in Article 684 of the Penal Code and Deterrent Punishment Law was amended in 1375 and was reduced from six months to three years to six months to one year, so that this crime can be pardoned according to the note of Article 104 of the Islamic Penal Code of 1392 and based on this article The minimum and maximum imprisonment is halved for crimes of degrees four to eight. Therefore, the 6th degree imprisonment of this crime has been reduced to half of the 6th degree imprisonment, i.e. for three months to one year.

b) alternative punishments of imprisonment

Two of the mechanisms of criminal law retreat strategy are decriminalization and decriminalization. Decriminalization is incomplete decriminalization, in this case, a type of intervention and social planning replaces punishment. But the criminal title is preserved for the act or omission. Decriminalization means limiting, adjusting and replacing the punishment, and in another sense, it means reducing it. In decriminalization, the reaction to the phenomenon of delinquency changes because the nature of the crime remains in its place, but the way to fight against it changes. Therefore, decriminalization includes the forms

Injuring and adjusting within the criminal system is aimed at reducing or removing the punishment. (Farahmand, Mojtabi and Garami, Hossein, 2019: 48)

For the first time, Enrico Frei, one of the founders of the school of realization, introduced the term of criminal substitutes into criminal law. To

His opinion is that these surrogates should become the main tools of social defense, because they are excellent antidotes to social agents



They are considered scapegoats. According to Frey, "Criminal substitutes are preventive measures of social defense that are placed both at the level of society and in the field of judicial institutions." (Gholami, Hossein, Legal and Judicial Pathology of Alternative Imprisonment Punishments, 2015)

The subject of alternative punishments to imprisonment is mentioned in Chapter 9 of the Islamic Penal Code approved in 2012, and according to Article 64 of this law: "The alternative punishments to imprisonment are a period of care, free public services, fines, daily fines and deprivation of social rights, which if passed The plaintiff and the existence of mitigating factors are determined and implemented by considering the type of crime and the quality of its commission, the effects of the crime, the age, skill, status, character and history of the criminal, the state of the victim and other circumstances.

Of course, the General Board of the Supreme Court, by issuing unanimous decision No. 746 dated 29th of January 2014, interpreted this article in such a way that in mandatory cases of changing the punishment to imprisonment, the plaintiff's pardon and the existence of mitigating factors are not necessary and the imprisonment must necessarily be a punishment. become a substitute.

Depending on whether the crime is intentional or unintentional, the way to convert it into an alternative punishment is different based on the amount of the original imprisonment:

- In intentional crimes whose main punishment is imprisonment up to three months, conversion of imprisonment to alternative punishment is mandatory, and in intentional crimes whose main punishment is 91 days to 6 months imprisonment, conversion of imprisonment to alternative punishment is mandatory.

If there are no obstacles listed in the law, it is mandatory (Articles 65 and 66 of the Islamic Penal Law 2013).

- In intentional crimes whose main punishment is 6 months to 1 year imprisonment, converting imprisonment to an alternative punishment is optional if there are no obstacles listed in the law. (Article 67 of the Islamic Penal Code 1392)

- Impediments to determine the alternative punishment of imprisonment in paragraphs 2 and 3 are meant to have more than one record of conviction to imprisonment of up to 6 months or a fine of more than 10 million Rials or whipping or one record of conviction to imprisonment of more than 6 months or Limitation or retribution or payment of more than one-fifth of the ransom in terms of intentional crime and

Five years have not passed since the execution of these punishments.

- In intentional crimes whose main punishment is more than one year of imprisonment, if the court reduces the imprisonment to less than one year, it is prohibited to convert imprisonment



into an alternative punishment, and otherwise it is optional. (Article 73 of the Penal Code Islamic)

- In the case of multiple intentional crimes punishable by more than 6 months of imprisonment, it is prohibited to convert imprisonment to an alternative punishment.
- Article 72 (Amended 23/2/2013): Multiple intentional crimes, where the legal punishment for at least one of them is more than one year's imprisonment, prevents the issuing of a sentence with an alternative punishment of imprisonment.
- In fact, the Law on Reduction of Penalty Imprisonment 1399 has not been violated by the legal provisions of Chapter 9 of the Islamic Penal Code approved in 1392 (except for Article 72). And the mentioned materials are still valid.
- In non-intentional crimes whose main punishment is less than two years of imprisonment, conversion of imprisonment to an alternative punishment is mandatory.

Alternative punishment is optional. (Article 68 of the Islamic Penal Code 2013)

- Of course, in crimes against internal and external security, the judge cannot issue a sentence instead of imprisonment. (Article 71)

Also, if the judge issues an alternative sentence of imprisonment, the amount of initial imprisonment is also mentioned in the sentence so that if the implementation of the alternative punishment is not possible or the convicted person does not follow the court's orders, the original punishment (imprisonment) will be implemented. (Article 70)

Cases of conversion of Taziri imprisonment to alternative punishments according to the amendments to the Law on Reduction of Taziri Imprisonment Punishment:

- According to Clause T of Article 1 of the Law on Reducing the Punishment of Imprisonment for the Crime of Destruction or Loss of Other Property

According to Article 677 of the Law of Penalties and Deterrent Punishments 1375, it is six months to three years, if the amount of damage is 100 million Rials or less, it has been converted into a fine twice the amount of damage. Also, if the amount of damage is more than 100 million Rials, based on Note on Article 104 of the Penal Code, since its degree is between four and eight, therefore, according to the mentioned note and considering the forgivability of this crime, the minimum and maximum punishment is reduced by half, i.e. three months to one year and six months.

- Pursuant to Clause C, Article 1 of the Law on Reducing the Punishment of the Crime of Attributing or Publishing without Reason a Criminal Matter to Another, which, based on Article 697 of the Law of Penalties and Deterrent Punishments 1375, has been punished with imprisonment of one to three years, it has been reduced to a fine of the sixth degree. Is.



The third speech: Repeal of some laws related to imprisonment

As it was said before; Two of the mechanisms of criminal law retreat strategy are decriminalization and decriminalization. The meaning of decriminalization is the processes by which the jurisdiction of the criminal system to apply the guarantee of execution to

The meaning of reaction to a certain form of behavior (that is, specific criminal behavior) is denied. In the Law on Reducing the Penalty Imprisonment, the legislator has implemented some aspects of decriminalization. Such as starting the crime of theft in some cases mentioned in the amended article 104 of the law, which was considered a crime in the past.

Also, the Law on Reducing the Penalty Imprisonment 1399, in its Article 15, by adding text to Article 728 of the Islamic Penal Code 1392, sometimes a part of an article or note, and sometimes the same article or note has been removed from the Islamic Penal Code or special laws. And as a result, with this action, it caused a reduction, transformation in punishment or transformation in legal institutions, the most important of which are mentioned below.

Article 15 of the Law on Reduction of Penalty Imprisonment 2019:

The following text is added to Article (728) of the Islamic Penal Code approved on 01/02/2013:

The phrase "maximum punishment of less than ninety one days of imprisonment or" from paragraph (1) of article (3) of the law on collection of some government revenues

and its use in certain cases approved on 28/12/1373 and the phrase "or the law" is removed from the beginning of Article (127) of this law and

Note (1) of Article (1) and Note (6) of Article (5) of the Law on Intensifying the Punishment of Perpetrators of Bribery, Embezzlement and Fraud, approved on 09/15/1367 by the Council for Expediency of the System and the special cases of the law in which to initiate a crime and vice in mass

It is clear that the punishments are determined under these headings and Article (666) of the Fifth Book of the Islamic Penal Code (Tazirat and

Deterrent punishments) approved on 02/03/1375 and its note is canceled. Now we will examine the effects of this deletion and cancellation separately:

A- In paragraph one of Article 3 of the Law on Collection of Certain Government Revenues and Its Consumption in Certain Cases of 2013, the phrase "maximum punishment of less than 91 days or" has been deleted.

B- The word "or law" has been removed from Article 127 of the Islamic Penal Code of 1392, which repeals the punishment of being an accomplice in some crimes, such as the punishment of being an accomplice in the law on the entry and residence of foreign nationals in Iran approved in 1310



Is. And then the punishment for such crimes is determined based on the general rule of Article 126 and 127 of the Islamic Penal Code 2013.

C - The legislator with the phrase "... specific examples of the law in which the initiation of a crime and aiding in a specific crime are designated under the same headings of punishment..." in Article 15 of the law, in fact, all punishments for initiation and aiding and abetting crimes are reduced In the crime defined in other legal articles such as article 542 (starting forgery) and article 594 (starting to bribery) of the Penal Code of 1375 etc., the criteria for determining the punishment of such crimes according to the general rule and based on articles 122 and 127 of the Penal Code Islamic 2012.

T- Legislator expressly repealed Note 6 of Article 5 of the Law on the Intensification of Punishment for the Perpetrators of Bribery, Embezzlement and Fraud.

In 1367, the expediency of the system even found the penalty of permanent and temporary dismissal of those convicted of embezzlement and fraud to be reduced according to clauses 2 and 37 of the Islamic Penal Code of 1392.

Also, by repealing Note 1, Article 1 of the Law on Intensifying the Punishment of Perpetrators of Bribery, Embezzlement and Fraud approved in 1367 by the Expediency Determination Assembly, the punishment for fraud can be suspended based on the generality of the law.

The fourth speech: Prohibition of short-term imprisonment

Reduction of punishment is one of the legislator's measures to apply the principle of minimum criminal law and decriminalization. It is also one of the effective legal capacities in the direction of individualizing the punishment and determining the punishment according to the crime and the circumstances of the criminal. Punishment mitigation is sometimes mandatory; That is, if the reason foreseen in the law is realized, the court has the duty to apply it, which is referred to as legal excuses, and in some cases, it also has an optional aspect, which is referred to as judicial relief. Legislator in the new law to reduce the punishment of imprisonment following the development of this institution

And the best available legal capacities for the use of judges was the institution of judicial relief.

Short-term imprisonment has been removed from the penal system of many countries. The reason for the elimination of short-term imprisonment is the failure to achieve the goals of punishment. (Ibid., 115)

Many criminologists consider the lack of sufficient opportunity to know the character of the criminal and as a result the lack of sufficient opportunity for correction and treatment and resocialization as the reason for the uselessness of short-term imprisonment. (Malmir, 2017, 279)



In terms of legislative history, the law on the possibility of conversion of imprisonment in criminal matters (imprisonment with a duration of two months or less) approved on 26/2/1370 is the first law that aims to eliminate short-term imprisonment.)

The legislator of the Islamic Republic of Iran, in Article 37 of the Islamic Penal Code approved in 2012 and by applying amendments and adding a note to this article in the Law on Reducing the Penalty Imprisonment of 2019, has prohibited the determination and application of prison sentences of less than 91 days in the criminal system. Although this prohibition is not explicitly mentioned in an article, but from the juxtaposition of legal articles and judicial interpretation, the prohibition of setting and applying punishments of less than 91 days in general and revolutionary crimes is quite clear and obvious, and court judges cannot legally impose punishments of less than 91 days. Issue a verdict.

Chapter Two: Reduction or conversion of prison sentences in some theories of criminology

First speech: Deprivation of freedom punishment in some theories of criminology

Criminal policy is strongly under the control of ideas, schools and cultural and political currents ruling every society and these are the general learnings that explain the basic strategies in the form of judicial and executive legislative policies in order to curb the phenomenon of delinquency. In addition, the findings and achievements of criminal sciences such as criminology, criminology and sociology along with international principles and rules and the human rights system play an important role in the process of formation and direction.

It plays the criminal policy of governments. Therefore, depending on the type of government and the specific task of each society, there are various classifications of criminal policy, inspired by scientific findings and ideological teachings. (Zabo, Nik, 1998: 38)

The criminal policy of the United Nations and contemporary advanced legal systems, inspired by the modern perspectives of criminology and criminology and criminal sociology, are based on the premise that the use of prison as a last resort to deal with dangerous criminals and resort to punishment Alternative society on a large scale not only guarantees the safety of the society, but also significantly reduces the costs of criminal justice while complying with the requirements of human rights and human dignity. The legal criminal policy of the Islamic Republic of Iran has also joined this therapeutic reform movement, but in terms of legislation and justice, the outcome of the courts' opinions has shown that it is important that there are numerous legal restrictions and obstacles on the one hand, and the inefficiency of the executive regulations of alternatives and the lack of culturalization. appropriate in the context of society has caused the courts to not apply social alternatives.

Before this, Iran's criminal policy during its legislative, judicial and executive era was based on extreme criminalization and pure punishment, which followed other penal systems in the distant past, severe corporal punishment as the only mechanism of social reaction against



crime. In this period, the punishment is based on revenge and punishment and rehabilitation of the criminal

It has been the highest level of execution and very inhumane and violent tortures. With the passage of time, imprisonment gradually replaced corporal punishment as the main and common punishment, which was considered a suitable and promising alternative in penal systems for many years, despite the poor and miserable condition of prisons. (Ashuri, Mohammad, Alternative to prison or intermediate punishments, University of Tehran, 2015)

Now, after many years have passed since the institution of prison was established as a punishment for criminals and despite the emergence of schools of thought in explaining crime and responding to it and the progress of criminological sciences, this institution of prison is still applied as the main punishment by criminal courts and its legislators. in their criminal laws. Although the situation of prisons has moved and changed seriously from the purpose of punishment to the reformation of criminals, but still witnessing the use of this punishment

We are punished by criminal judges. The attention of public opinion in punishing dangerous and violent criminals also leads the courts to determine prison as an important and fundamental punishment. (Gholami, Hossein, previous)

For example, in 1966, a survey was conducted in England. What do you think is the most common and desirable punishment? 67% have identified prison as the most desirable punishment.

Mark Ansel, who is known as the founder of the new school of social defense, while pointing to this important issue that depriving convicts of their freedom has gradually lost its discipline and that prison in practice does not fulfill what it claims to be and for its purpose. has not been created. It means not only the remorse of the criminal It doesn't have, but in practice it has turned into a school for repeating crimes.

He states: There is no doubt that at present it is not possible to act with the introduction of a legal article and with a stroke of the pen as in the case of the implementation of the death penalty (in France); The prison sentence was also abolished, but it can be removed from the state of a normal and uniform executive guarantee and made into an exceptional punishment that can be applied only in the most severe and limited crimes.

The legislative policy governing the 2019 Ta'ziri Penalty Reduction Law has been designed to reduce the number of prisoners and reduce the costs incurred on the country's general budget. And in practice, there is no plan for prevention, correction, treatment and rehabilitation. This is an indication of the legislator's negligence in drafting and approving the current law, because in approving laws that are related to crime and punishment, attention should also be paid to correction and treatment, and in fact, in this era, the development and evolution of law cannot be ignored. The idea of prevention and reform is one of the main priorities of the criminal lawmaker, and the sentence passed indifferently. The recently approved law did not pay any



attention to the aforementioned goals. In fact, if the legislator pays attention to the seclusion of prisons as one of the goals of approving this law, he must definitely accept that this will be possible and possible by preventing crimes and reforming criminals, not simply by reducing punishments.

A: Restorative justice

The ineffectiveness and criticisms of the traditional model in curbing the criminal phenomenon, as well as the achievements of criminal sciences, especially in the last few decades, led to a fundamental transformation in the thought, methods and tools of proceedings, and this transformation, changing the approaches

Proceedings and the formation of new patterns and types of criminal proceedings followed, the emergence of restorative justice is one of the results

The changes that have occurred in the attitude towards criminal justice and thinking about crime in the last two decades. Restorative justice

It is to involve all parties involved in the crime in this process. and with tools such as mediation, to achieve the goal of this decriminalization and decriminalization, and the principle is to not pursue the accused as far as possible, and also to provide healing for the victim's heart.

Criminal justice is a well-known concept in the contemporary legal literature of the world. When we use criminal justice in Farsi language; What comes to mind the most is the model of punishment that relies on punishment and its punitive aspect.

In criminal and punitive justice, the criminal's right to be punished is emphasized. It means that the criminal is treated the way he treated others. (Shiri, Abbas, Paradigms of Criminal Justice, 2015)

At the opposite point of this model, the new paradigm of criminal justice, i.e. restorative justice, has emerged. Proponents of restorative justice believe that the punishment model of criminal justice has failed in the fight against crime. And a new model should be proposed to deal with the crime and prevent it.

They believe that the increasing rate of imprisonment has had the opposite results. And the rate of delinquency has increased and recidivism has become the norm. Most of those who have been convicted re-offend after serving time in prison

be. Therefore, we need new ideas in the field of criminal law. These ideas are spreading today under the title of "restorative justice". (Shiri, Abbas, *ibid.*)

B: Critical criminology

In criminalization and passing criminal laws, research and criminology are very important. Because specifying the causes and factors that lead to the occurrence of a crime clarifies the



basis and basis of individualizing the punishment from the legal, judicial and executive point of view. Also, the legislator, relying on criminological theories, can impose punishments for all types of criminals that are appropriate to their conditions and situations. For example, to legislate a punishment that is suitable for their age and lighter than other criminals. But the Iranian legislator, especially in the aspect of criminal issues,

He has a limited field of vision and has remained trapped in the framework of his thoughts in the formulation of penal laws. Our legislators did not use scientific methods in drafting the laws and it is not surprising that after the approval of the laws, they were forced to amend them immediately. (Norba, 1999: 125-124)

The failure of governments and governments in the field of dealing with the criminal phenomenon despite the enormous costs they have spent and the inefficiency of the criminal justice system and its specific directions in this field, as well as the injustices applied in this regard.

The cases provided the ground for the entry of some critical thoughts and ideas from the late 1950s and early 1960s into the field of criminology and criminal policy in protest of the existing situation. From this point of view, critical criminology has entered this arena as an approach consisting of diverse and multiple points of view, by challenging the status quo and the unequal structure of society, and by adopting an opposing position to classic and conventional criminology, and classical criminology solutions that instead of focusing on He questioned the main and real cause of the crime, paying more attention to the crime itself, the punishment and the criminal. (Najibian, Ali et al., 2014: 58)

Critical criminologists are of the opinion that the main causes of crime are not in the criminal and his biological and personality criteria, but in the unequal structure of society, which may be manifested in models such as racist forms, gender discrimination, or class inequality. And it is crystallized to be institutionalized. Therefore, they emphasize the influence of the structure of political economy, social class, gender, ethnicity, race and religion in the formation of crime, criminal law and the criminal justice system. (Safari, Ali, 1383, 2016)

Based on this point of view, criminologists are seeking to improve the existing conditions by providing different solutions from traditional criminology. In this context, they want to implement short-term policies with the aim of paying attention to political, economic, social and cultural factors, as well as serious analysis of factors such as chronic poverty, sexual discrimination, and the lack of industrial structure that lead people to commit crimes. In addition, they want to deal with the punitive and repressive methods of the existing penal system and replace it with supportive methods and social and philosophical programs such as creating employment, increasing the minimum wage, and the like, as well as using formal and informal tools of social control. They are for reducing crime and establishing justice and pacifism that can result in an inclusive society. (Najibian, Ali et al., 2014: 58)



The solutions available in this criminology, in addition to private achievements, have also brought public achievements in the field of justice, decriminalization and punishment, which without doubt can help improve the efficiency and performance of the criminal justice system in some areas. New Islamic punishments are influenced by the laws of countries like France and indirectly inspired by criminological views, such as the most important goal of criminal law is to criminalize and punish the perpetrators of prohibited acts, reform criminals and successfully return them to society. But the passage of time has proven the opposite of this, so that the examination of the available statistics is a seal of approval. The lack of success of criminal law is the prevention of delinquency, along with some other factors such as inflation

Criminal and its social, economic and cultural ill effects have made it face a kind of crisis. As a result, jurists concluded with field investigations that by adopting policies of no criminal legal intervention or limiting its scope, in the dimensions of decriminalization, decriminalization and decriminalization, the burden of justice and society's problems can be reduced to some extent, and from inefficiency Prevent criminal law in the eyes of the public.

American sociologist "Baker Howard" is quoted in the book "Sociology of Social Deviances" that: "In the process of establishing criminal laws, even though the mechanism of legal criminalization becomes more active and trust in the effectiveness of criminal law and its authority increases, the list of crimes Legally, and as a result, the list of real crimes will also increase, and this will cause extreme and indiscriminate criminalization in the criminal justice system. He believes that we should not consider criminal law as the only suppressor and the only tool to fight crime. Rather, the application of mitigation policies and the conversion of prison sentences to punishments that are more favorable to the convicted have a greater effect in reducing the commission of crimes. And it provides the context for the return of the delinquent to the society as a useful and productive element.

The second speech: The scope of punishment reduction in the Islamic Penal Code with emphasis on the law on reducing the punishment of imprisonment

As it was mentioned before, the purpose of punishment is to intimidate or create fear of committing a crime and to deter, and during the proceedings in the courts, sometimes the judge may be faced with conditions and situations that can be used to punish the crime. to discount Reduction of punishment means reducing the punishment of the perpetrator to less than its minimum.

Mitigating factors provided by the legislator are known as "legal excuses". In addition to this, there are other abbreviated qualities that are at the disposal of the court and are referred to as "judicial abbreviated qualities". One of the features of the reduction of punishment is discretion, which means that whenever the criminal, according to the legal provisions and

If the fulfillment of the abbreviated factors warrants mitigation, the court is not required to apply mitigation, but mitigation is one of the powers of the courts, which can be applied in all



crimes other than punishment and retribution. In other words, the application of judicial abbreviated qualities is an optional matter for the courts, and considering that the legislator used the phrase "the court can" in Article 37 of the Islamic Penal Code, it indicates that the application of the provisions of mitigating or converting the punishment is a completely optional matter for the courts. and it is possible that the court may not use the provisions of Article 12 despite determining the reasons for mitigating or converting the punishment. (Ardabili, Mohammad Ali, 2014)

Therefore, based on Article 37 of the Islamic Penal Code, the scope of applying abbreviated qualities is only in the form of punitive and deterrent punishments, and it does not extend to punishments requiring divine limits, self-retribution, or parties (members) with Sharia law. For example, it is not possible to discount or discount or turn into another punishment due to reasons of discount, God's limits or retribution of self or member or payment of dowry.

Despite the acceptance of the beneficial effects of mitigation and transformation of punishments in criminological theories, but what has been criticized by criminal lawyers and criminologists; The absence of specific rules for applying discounts for some punishments and ignoring some theories of criminology. For example, it is not clear why the punishment for kidnapping with vehicles or kidnapping with trickery (without violence and threats) should have a lesser punishment than kidnapping with threats and violence? Especially when children (persons under the age of fifteen) are abducted, according to Al-Qaeda, severe punishment should be applied for kidnapping children in any case (whether by trickery and deception or by threats and violence), not the kidnapping of defenseless children that From the point of view of criminology, serious psychological damage is inflicted on them and their families, as long as it is not with violence and threats, the punishment is less than adult kidnapping (with violence and threats).

Or, for example, it is not known why, according to paragraph "T" of Article One of the Law on Reduction of Imprisonment Punishment, the legislator has completely removed the penalty of imprisonment for the crime of "destruction of movable or immovable property (up to 100,000 Rials)" and instead of imprisonment He has only determined a fine up to twice the amount of the damage caused!?. Also, it is not known on what basis the punishment of imprisonment and whipping for the crime of "defamation" (the subject of Article 697 of the Islamic Penal Code) or "insulting and obscenity" (the subject of Article 608 of the Islamic Penal Code), which can cause a lot of moral and psychological damage to people, is completely removed. And only a fine of 2 million to 8 million tomans has been determined?

Also, it is not clear why the amount of imprisonment should be increased for the crime of grazing another crop or destroying or drying up another vineyard or orchard or grove or the crime of cutting crops or harvesting other crops that may be the entire property of a gardener or



If he is a farmer and his life is seriously damaged, hypocrisy, should it be reduced from six months to three years to six months to two years?

Therefore, in this research, due to the impossibility of reducing the punishment of hadd, retribution and ransom, what is discussed under the title of reduction of imprisonment is the punishment of ta'ziri imprisonment.

Conclusion

Prison is one of the main punishments for the criminal and one of the costs of committing a crime. whose main goal is to prevent the repetition of crime and ultimately reduce the number of crimes committed. But in examining and studying the degree of realization of this goal by imprisonment, it can be seen that imprisonment has not been able to fulfill the desired mission and goals. Meanwhile, an important issue that has been neglected; Compensation for mental and emotional damages and financial damages imposed on the victim is in addition to reforming and rehabilitating the offender.

In the last decade, Iran's legal system has implemented the de-incarceration procedure in the country to manage economic, social and political challenges, and especially to reduce the inflation of the criminal population. The approval of the law to reduce the punishment of taziri imprisonment in 2019 was also in line with the continuation of this policy. But at the very beginning, some lawyers and the guardians of the judicial system have made new criticisms on the approval of the aforementioned law. Critics believe that the law on reducing the punishment of imprisonment hastily passed and therefore only reduced the number of prisoners and did not take measures to reduce crimes and crime-causing factors. Also, considering the reduction of the prison term in this regard, Jeremy Bentham's opinion is based on this

The fact that a person is self-interested and before committing a crime, he first considers the profit and benefit of it is found in this law. In other words, because the proportion between crime and punishment is not observed, and when criminals are faced with a light punishment instead of applying criminal justice, they do not hesitate to commit crimes. In this case, the number of crimes in the society increases, and following that, according to the importance that people attach to confronting crime, the imposition of short-term imprisonment or the conversion of imprisonment into fines or lighter punishments; He did not provide reasons for consoling and comforting them and It makes revenge and private justice stronger among members of the society and this issue increases the statistics of crime.

In the 1399 Ta'ziri Imprisonment Punishment Law, the legislator has changed the term of imprisonment in the Islamic Penal Code and some other special laws, as well as a large number of penal institutions such as multiplicity and repetition of crimes, time served, semi-liberal and parole systems, etc. For example, in Articles 1, 3, and 6, the legislator has expanded the scope of forgivable crimes in Articles 1, 3, and 6, and in Article 11 of the mentioned law, the general



aspect of some crimes and the role of the prosecutor in pursuing them have been diminished. The participation and satisfaction of the victim has been colored.

References:

A) Books

- 1- Breith Nach, Seamus, 1387, crime and punishment from the point of view of Emil Durkheim, Mohammad Jaafar Saed, Tehran, Khorsandi
- 2- Basiouni, Mohammad Sharif, 2013, "Bazeh-e-Dahh-e-Jorsi" (International Identification of the Rights of Bahzeh-Bezeh) by Rajian Main, Mehrdad, Tehran, volume 2, Shahr-danesh
- 3- Bolek, Bernar, 1385, Criminology, Najafi Abrandabadi, Ali Hossein, Tehran, Majd Scientific and Cultural Assembly
- 4- Ashuri, Mohammad, 1376, Criminal justice (collection of articles), Tehran, Ganj Danesh
- 5- Rahmdel, Mansour, 1389, Proportion of Crime and Punishment, Tehran, Samit Publications
- 6- Guderzi Boroujerdi, Mohammad Reza and Moqdadi, Leila, 1384, Modern Criminology (or Social Punishments), Majd, Tehran
- 7- Seyedzadeh Sani, Seyed Mehdi, the process of victimization, victimization and crime prevention (Volume 1), 2013, p. 49, Mizan
- 8- Salahi, Javid, 2012, Criminology, Tehran, Mizan Legal Foundation
- 9- Moghimi, Mehdi, Comparative Victimology, Encyclopedia of Victimization and Crime Prevention (Volume 1), 2013, p. 193, Mizan
- 10- Moghimi, Mahdi, emotional exhaustion, encyclopedia, victimization and prevention of crime (Vol. 1), 2013, p. 198, Mizan
- 11- Moghimi, Mehdi, the effect of underlying factors of victimization, encyclopedia of victimization and crime prevention (Vol. 1), 2013, p. 219
- 12- Mahdavi-pour Azam, Child Support Services Institute, Encyclopedia of Victimization and Crime Prevention (Volume 1), 2013, p. 148, Mizan
- 13- Safari, Ali, 2015, Criminology, Tehran, Mizan Legal Foundation
- 14- Gholami, Hossein, 2016, Criminology, Tehran, Mizan Legal Foundation
- 15- Nikbakht, Sara, 2013, Criminology (Analysis of the Effects of Imprisonment on Prisoners), Tehran, Ava Book
- 16- Raijian Asl, Mehrdad, 2018, Bezeh Deh-e-e-e-hazi (course of authored speeches), Tehran, Volume 1, Shahr-danesh



- 17- Ahmadzadeh, Rasool and Tam Mojtabi, 2019, Considerations on the Law on Reducing the Punishment of Imprisonment, Tehran, Judiciary Publications
- 18- Mossadegh, Mohammad, 2019, description of the law on reducing the punishment of imprisonment, Tehran, Jangal
- 19- Farahmand, Mojtabi and Garami, Hossein, article by article description of the Law on Reduction of Taziri Imprisonment 2019, Tehran
- 20- Tahmasabi, Javad et al., a practical analysis of the reduction of Taziri prison sentence approved in 2019, Qom, Poya
- 21- Jahan Tigh, Mohammad, Commentary on the Law on Reducing the Penalty Imprisonment 2019, Tehran, Dadbakhsh

b) Articles

- 1- Eskandari, Abdul Karim, Strategies to support victims in Islamic criminal policy and international documents, Marafet, 2017, No. 134, p. 43
- 2- Adari, Abdul Ali, criminal policy of protecting victims, Qom Higher Education Complex Magazine, 2018, No. 4, p. 27
- 3- Raijian Maal, Mehrdad, Victims, rights and protections of Baisteh, Journal of Law and Politics Research, Fall 2016, No. 19, p. 117
- 4- Karmi, Mohammad Bagher, Iran's criminal policy towards the victim, Judicial Law Observatories Quarterly, 1375, No. 4, p. 85
- 5- Yakrangi, Mohammad and Iranmanesh, Mehdi, community-oriented punishments from theory to practice, Judicial Law Journal, 1387, No. 64, p. 89
- 6- Haji Dehabadi, Mohammad Ali, Yoshi, Mahshid, protective effects towards ordinary victims in the Islamic Penal Code 2013, Shabak, 1/9, p. 45
- 7- Zinali, Amir Hamzeh, Moghdisi, Amir Baqer, the right of the offender to security and information on the criminal process, Legal Research 2011, No. 57, p. 227
- 8- Nobahar, Rahim and Safari, Fatemeh, "Injured material and the qualities of criminalization", Judiciary Legal Journal, 2015, No. 93, p. 231
- 9- Shiri, Abbas, Rights and needs of the victim in the police phase, Danesh Zamizi Quarterly, 2017, No. 79, p. 191