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ADJOURNMENT AS A LEGAL APPROACH

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ABSTRACT

Nowadays in criminal issues, some alternative punishments are suggested for imprisonment and even in some cases, they are enforced including fining, adjournment, parole, social deprivation and so on and so forth. One of the alternative institutions for imprisonment is adjournment. Adjournment is an institution seeks to individualize the punishment and reduce prisoners number and has entered into Iranian criminal response system following the strategies that have been adopted by western countries, particularly France. The aforementioned institution was included in the Articles of 40 to 45 of Islamic Criminal Code enacted in 2013 under the fifth chapter of second part. According to these Articles, deferment has been ordered in two simple and care-based forms which are decided in view of the degree of convict's obedience to the sentences issued by the court and based on the reports of social workers and considering the general conditions of the convict.

Keywords: *Setence Deferment, Labeling, Reducing the Use of Imprisonment.*

INTRODUCTION

Penalties pursue various goals that are both for repression and deterrence. Repressive or criminal side of the penalty aims to punish the convict for the mistake that he has made and for this reason, the penalty is determined in a way that it may punish the convict because of the action he has done in the past. One of the other goals of punishment is deterrence that is for intimidation. Emanuel Kant who insists on retributivism argues that even if a society is torn with numerous crises the first priority should be the execution of the imprisoned murderer; because murder harms justice and punishment enforcement is the prerequisite of justice (Salimi et al., 2013: 10). One of the schools that highlights deterrence is neoclassic school that deny the absolute responsibility of the convict. The founders of this school believe that man is a being of the sense of justice and good and in sentencing the convict the human character of him should be taken into earnest account.

However, after the emergence of Bentham's ideas, who believes that punishment aims at deterring the occurrence of crime through correction of convicts, a new school came to existence in the domain of criminal studies that is founded on the idea of support of humanity and human values (Salimi et al., 2013: 10).

In legal system of France, adjournment institution has been discussed along with exemption from punishment. In other words, the court in certain conditions is allowed to exempt the convict from the punishment or defer the penalty announcement regarding a group of crimes. After the enactment of the Islamic Criminal Code in 2013 the ground has been paved for alternative punishments for imprisonment including adjournment, parole, adjournment, that in turn set the

scene for the rehabilitation of the convict outside the prison. This is done indeed to endow the convict with a new opportunity to accomodate himself with the social norms if the judiciary authorities provide the required conditions. The current research seeks to attain to the scientific solutions for introducing the legal experts particularly the judges and justice attorneys to the requirements of adjournment in Iranian legal system as well as the legal approach to the adjournment in general. Thus, it makes efforts to assay the impact of this institution and its role in the growing or declining process of crime as well as its role in socialization of the convicts.

Lexical Meaning of Adjournment

Adjournment, lexically speaking, refers to temporary delay or rest and pause in the implementation of some project or a work (Moein, 1983: 405). In English we have also other alternatives that connote the same like deferment but adjournment as a technical term implies “delaying or suspending the sentence announcement due to the legal considerations.”

“Adjournment (sentence deferment) represents a legal term that is usually used by the legislators. To put it otherwise, in some conditions the legal authorities would decide to adjourn (defer the sentence announcement) despite the existence of criminal elements”. (These certain conditions will be discussed in its place). Then adjournment, as a legal term, denotes the deferment of sentence issuance” (Shams, 2004: 521). We need to mention that the legislator in Islamic Criminal Code of 2013 has not provided any definition of this legal institution in spite of its enactment in recent times.

The Principles of Adjournment Institution

“As we know, imprisonment or any counter-freedom action as compared to physical punishments are relatively new in the history of criminal law. Since the time freedom was considered to be a value and an element of human dignity, restricting one’s freedom has been used a means for retaliation of a committed crime to punish the convict. When we refer to the past criminal rules including Code of Hammurabi that was discovered in southern area of Turkey in the first quarter of twentieth century we see that criminal codes are majorly focused on physical punishment (like lashing, mutilation, execution and even stoning), and ransom and fine. Perhaps these tribes were deprived of centralized system and central organized state (tribal central government) due to the existing conflicts. Then watching delinquents requires having a place, the officer and a certain fund that should cover the costs and because they had no access to these they unavoidably used inexpensive and fast punishments without needing any place or penitentiary (Salimi et al., 2013: 10). United Nations in 1955 in first conference on crime prevention and treatment of prisoners highlighted the necessity of humanization of the prison environment and in 1990 in the resolution known as The Tokyo Rules the member states speak of the non-custodial measures. In other words, not only imprisonment should be restricted rather arrests that can limit the freedom should also be restricted.”

Legal Effects of Adjournment Institution

Making no Criminal Record for the Delinquent

The legislator in 2013 despite legislation of adjournment rules has not determined the state of criminal record of the individual whose trial has been adjourned and he is accordingly exempted from punishment. Thus as the following comment suggests: “If adjournment leads to the exemption of the convict from punishment, in such a case in Iranian Criminal Law one should refer to legal reasons to decide whether this judiciary decision is to be considered a



conviction verdict or not and should it be registered in the convict's criminal records or not. According to legal reasons, in case of the exemption from punishment the criminal feature of the action continues to exist and the convict has criminal responsibility. For this reason, the court's verdict is focused on exemption from punishment and exoneration and the verdict is registered in the criminal record of the convict. In adjournment the court exempts not exonerates the individual. With this comparison one may argue that after the exemption verdict the criminal records will be registered" (Salimi et al., 2013: 10).

However, it seems that in case of adjournment due to following the measures adopted by the court that results in exemption from punishment, no penalty has been determined by the court and there is no record to be included in criminal history of the convict. The Article 40 of Islamic Criminal Code states: "In crimes resulted in punishment of degrees six to eight... the verdict will be adjourned fro six months to two years." And also in the Article 45 it suggests: "After the passage of adjournment term... the court will decide over the penalty or exemption from punishment."

The Convict's Release from Prison

The criminal legislators in Iran has included the institution of adjournment among criminal codes for reducing the number of prisoners and adopting non-custodial measures under the inspiration of western law. This institution can both address the needs of the victim and the society. As to the victim, until the time when the convict has not made up the harms done due to his criminal action he will not be given the adjournment. Likewise, society ignores the insignificant crimes that do not pose any harm to social order when the convict does not have any effective criminal conviction and it gives the citizen another opportunity to be committed." (Alipur, 2015). One of the goals of the criminal justice system is punishing the delinquent and providing lessons for others. Nevertheless, the disadvantages of imprisonment particularly in insignificant minor crimes are clear to all. Then, criminal justice systems all across the world have been continuously after alternative institutions and come up with certain solutions and proposals. One of these solutions is the institution of adjournment. Accordingly, some measures have been adopted by the implementation of which the convict return to the normal life after the termination of the imprisonment term.

The Obligations of the Delinquent towards the Observation of the Court Orders and Measures

"Whereas the basic motive for adjournment is resocialization of the convict and returning him as a safe citizen to the society, the court will necessarily issue orders with the implementation of which the convict will pave the ground for his exemption from the punishment. These orders according to the Article 43 of Islamic Criminal Code are of the following features:

Firstly, in issuing the order the crime should be taken into account. For example, if the convict has committed cyber crime the court can set a restriction on his cyber activities. Secondly, the court has to consider the convict's family conditions so that no trouble is made for him and his family. This is to say the legislator expects the judiciary to pay earnest attention to life conditions in issuing the appropriate verdict; for example, if the convict is a student who lives in Tehran the court should not issue a verdict that sends him to another city. Thirdly, the court orders can be one or several cases mentioned in the Article 43.

The eight cases mentioned in the Article 43 with slight modification are the same cases that the legislator had mentioned in 1991 as regards care adjournment save the fact that in previous



code refusing from working in certain occupations has been clearly highlighted while in the new code this note is restricted to the activities related to the committed crime.

As to social relations the Code of 1991 had mentioned the court's role in recognizing the cases where there is an urgent need for termination of the possibly harmful social relations of the convict while in the new code of 2013 the legislator insists on the convict's obligation regarding severing his relations with the partners and accomplices and those related with the crime including the victim and the phrase concerning the ban on pretension to committing prohibited actions and refusing to do the obligations has been deleted from the new code. It seems that the deletion of this phrase has been due to its practical insignificance as well as the lack of concrete measures for controlling it.

The attention paid to the victim in this clause is due to the fact that sometimes the crime can shatter the spirit of the victim in a way that he is not willing to see the convict even for a moment though there are also some cases where the visit paid by the convict or his family can reduce the pains of the victim and in these cases the aforementioned clause is not forced.

As the title care adjournment suggests itself this type of decision is made because the court (under certain conditions) does not suffice to the written promise and continues to monitor the actions and behaviors of the convict in public and work place. Undoubtedly, having access to such information will not be possible without the cooperation and will of the convict. Then, if court does not have access to such information there is no way but getting written promise that if breached the convict will face the criminal consequences" (Sabzewarinezahad, 2012).

Effects of Adjournment in Infants and Adolescents

"The legislator has offered more support to the infants and adolescents due to their particular state because this class of convicts even in the event of committing all punishment deserving crimes are still capable of benefiting from this establishment. In this regard the Article 94 states: "the court can adjourn the sentence in cases of criminal offenses by adolescents". (Azimzadeh, 2013: 224).

According to the Article 94, the court can adjourn the case in all criminal offenses done by the adolescent. The degrees of the punishment of adolescents are functions of the major punishments anticipated for them in criminal laws and are not subject to the Article 19 of Islamic Criminal Code rather they have been distinctively determined in the Article 89 of Islamic Criminal Code in an independent way. The phrase "all criminal offenses" as used in Article 94 could be used in two senses; first, it refers to punishment and only denotes the adjournment of the sentence mentioned in the Article 89. This view seems correct when we know that the measure of adjournment is punishment; in other words, adjournment is logically for deferment of the sentence in which certain punishment has been determined. In the second sense, it refers to the criminal offense and then to the crimes committed by adolescents. Then adjournment is concerned with the conviction of responsible adolescents as a whole; whether it is in punishment form or in the form of safety measures. Therefore, adjournment not only is applicable to the rules of penal enforcements as discussed in the Article 89 rather it is also applied to the practical sanctions of the safety enforcements as mentioned in the Article 88 of Islamic Criminal Code. This view is closer to truth. Because regardless of the emphasis laid in the Article 94 on penal crimes one needs to take it into account that what is important in adjournment is the demonstration of the individual's guilt. Thus, for both penal actions and safety measures we need first to demonstrate the adolescent's conviction. Then, in both cases the executive guarantee is



the same, i.e. convicting the adolescent. Hence, since all penal crimes of adolescents proportionate to the age limits that have been stipulated in the Articles 88 and 89 can simultaneously be subject to punishment and safety measures and thus they both deserve adjournment. Then if penal actions are adjourned the same should be surely the case with the safety measures too. However, the main challenge in this context is the nature and mission of safety measures. The safety and correction measures aim at reforming and are totally consequentialistic; this challenge can be addressed via a set of considerations. First, the safety measures stipulated in the Article 88 have time limits and it is supposed that the adolescent under 16 will be corrected in the determined time and secondly, the aim of adjournment is correction of convict and reducing the dangers in prisons and even in juvenile detention center. Then adjournment is replaced in one sense with the safety measures.”

CONCLUSION

Iranian legislator after almost one century of criminal legislation, has accepted the institution of adjournment in Islamic Criminal Code of 2013. With the establishment of this criminal institution the legislator has been seeking to fulfil certain goals which are endorsed by legal experts particularly the criminologists. The adjournment institution is used in most cases for the correction of the delinquent and preventing him from attending the criminal environment. Adjournment can be regarded as one of the chief manifestations of restorative justice in Iranian criminal system. In other words, every criminal justice system is committed to the ideal of correction of delinquents. The crimes are usually committed for providing the needs of delinquents and to prevent from the occurrence of this phenomenon one has to know and neutralize the crime-generating factors. Meanwhile denying the convicts from society not only makes no contribution to their spiritual restoration rather it can lead them astray.

Adjournment and deferment of sentence in certain occasions can provide numerous interests of the government. If we want to approach the legal procedure and criminal verdict from a purely legal aspect, the result is that committing every crime is tantamount to the punishment of the convict. Extensive penalization needs the establishment of various institutions including prison, justice department, police, more human resources, development of criminal justice organization and so on and so forth. Adjournment in many cases provide the economic interests of the government. Moreover, political interests of the government requires the number of the crimes to be reduced. Then one can conclude that public interests along with individual expedencies serve as a basis for establishment of such legislative institutions as adjournment in new Islamic Criminal Code.

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