The Survey of Imprisonment Substitutions in the Iran's Retributory System

Mohammad Tahmasebi

Department of Law, Criminal law, Payame Noor University, Tehran Center, Tehran, Iran.

**ABSTRACT**

One of the main pur-poses of punishments is mental and social training of convict until he can live legal in the society after releasing from prison, whereas prison environment is unreal and far from real qualification of society. That's why prisoners are treated with certain criteria, so most of the jailbirds are not able to contact properly with the milieu after releasing. Therefore, retributory systems are trying to decrease the harms of jail for the prisoner and his family by creating new institutions and increase it's positive points. In the new manner, the IPC is not advocator of imprisonment. It mostly prevents imprisonment and uses substitutional penalties like: limited liberty, moiety liberty system, publicly useful activities and cash penalties.

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**INTRODUCTION**

The study of criminal science evolution shows this fact that imprisonment as the principal penalty was not paid much attention from communities and governors in the far past unless it was used for temporary retention of convicts who was waiting trial or sentence of the court or was used as a way of forcing to pay fine. Imprisonment was substituted for physical punishments to reduce the severity of punishments and could stabilize it's position as a main retribution in different communities. But in practice it's failure to achieve the goals for which it was intended revealed. Increasing the frequency of crime and lots of social and economic problems were the deleterious effects of this retribution, guards reform would not be able to solve the problems alone. So scholars expressed doubts about the use of this retribution. Various designs and ideas have been proposed to eliminate the harmful effects of imprisonment, whether those which planned to reform prisons or those which expressed to be replace with this retribution. In this respect, retributory systems have adopted various methods as an alternative policy. Over the years these methods have been studied and their performance, according to studies and experiences can select a suitable alternative to imprisonment. For this purpose this research is a descriptive study which is performed according to library and documentation method and research required information was gathered from scientific sources like: book, magazines and periodicals available in the library also sites with scientific and authoritative research.

**Problem statement:**

Enrico Ferri was the first person who phoned and explained retributive substitution, he raised a broad set of alternatives to retribution that were both in society and administration of justice level, and were among the preventive measures and social defence. Jan Pynta examines the concepts of retributive substitution and substitute of vetrribution and he knows these two concepts so close together. Jan Pynta defines both of concepts and mentions their similarities and differences. They are similar as both of them have substitute role and function and have the same nature. About the difference of these two concepts Jan Pynta states that substitute of retribution puts the punishment away and instead do some actions with retributory features. But retributory substitution replace different punishments instead of imprisonment. He makes difference between substitute of retribution and retributory substitution. If short-term imprisonment would not removed legally. Sentences that judges have to choose among them would be substitute of retribution, contrary if short-term would removed leg
ally all of the punishments will be retributive substitution. The so-called substitute retribution are nothing more than alternative penalties.

According to above definitions Mr. PyntaI doesn’t know the case as retributive substitution where the judge is allowed to choose criminal rather than punishment or imprisonment. He is doubtful about the proceedings which is done in France law about the substitution for imprisonment and he asks himself whether these proceedings are really punishments or not? And for answer he doesn’t know most of these proceeding as a retributive substitution.

Jan PyntaI divides the substitute retribution in 3 categories:

Substitutions which refer to the punishment performance like: permission of prison for working out of there detention pending trial weekend detention, home under arrest and safekeeping out of prison like: interdict from traffick driving. And publicly useful actions. Actions which is done instead of prison sentence like: abeyance of imprisonment and abeyance of retibutory sentence.

In PyntaI definition substitution takes place in two way: Iegislative approach that during sentencing by a law which allows to replace another punishment and judge is obliged to apply or with justice approach which judge can substitute another punish-ment instead of imprisonment.

In pradl segmentation with respect to the above both at the time of execution of punish ment and sentencing alternatives to imprisonment can be used. Also Tokyo rules divides actions which are not deprivation of liberty and can be substitute with imprisonment into two stages, first in sentencing law and second in execution of punishment.

Third section – trial and conviction stage…section 2-8 punishment officials set the penalties in the following way

a) DraI penalties like advise and warning
b) parole
c) Temporary fines (punishment for rating)
d) Economic and financial penalties such as fines and daily penalties
e) Sequestration or expropriation order
f) Returning property to the victim or compensation order.
g) Suspension or post poneNent sentence
h) Trial and judicial supervision
I) sentence to community service
J) Refer to the care center
k) can fine ment at home
L) Any method of treatment other than incarceration
M) A combination of the above

… and another in the execution of a prison sentence in fourth part-the post-conviction stage …section 9-2. After sentencing provisions include the following:

a) vacation and inhabitation in a specific place (half freedom)
b) Freedom associated with work or training
c) Different forms of commitment
d) Mitigation
e) amnesty

According to the above definition, it is possible to use proper substitution for imprisonment in all of trial and execution steps.

Alternatives to incarceration features by looking at Islamic penalIty law:

In the distant past, criminal sanction was applied as a serve physical and degrading penalties, punishment of offenders was based on revenge and repression in this period and were served as physical punishment like death penalty and other inhuman acts. Although traditionally there have been a prison sentence due to the limited usage were not considered common in those ages. Yet as a punishment entered into the criminal laws gradually. At first despite the bad condition of jails imprisonment instead of severe physical penalties was hoped. But with the passage of time this hope become frustrated because of lack of attention to prisons, high incarceration rates and becoming professional convicts phenomenon. Not only imprisonment couldn’t be

Ip to the betterment of convicts but also made them more and the destroying effect of prison was more than its positive effects. Therefore jurists want to decrease imprisonment or substitute another penalties. Criticisms and inefficiency of prison caused to rise some alternatives to meet the goals of punishment better and to cause atonement and rehabilitation of offender. Substitution for imprisonment frist raised in prevention stage in London in 1876. But implementation of it’s plans refers to the years following word war II and establishment of the United Nations.
We can divide imprisonment substitution into modern and traditional. Of traditional replacements are fines, suspension of sentence, parole and of modern replacements are confinement at home. Community service, etc.

A) Being comprehensive and collaborative:
Social penalties are ones which limit personal freedoms and rights and have atonement features. These penalties perform for a group of convicts with monitoring of communities and institutions. In broad concept it’s not just government with formal institutions like justice and ministries which is responsible for criminal events, but responses of civil society and NGOS join to the government responses.

B) Being two sides and adaptive:
On of the most important features of imprisonment substitution is adaptive and being two sides. That means in addition to the judicial the convicts determination is also necessary for this alternatives. This approach puts convicts determination in width of judice and makes it less straight and plays an active role in side of convict in trial process.

Being adaptive is accepted in new Islamic trial, specially in point 83: Free public services are those which convicts satisfaction is important in trial”. Also in electronic supervision the satisfaction of convict is essential in electronic supervision the satisfaction of convict is essential in point 61. For other alternatives (care period, daily fines, fines) even its not mentioned in the law but the will of convict is essential for its performance and imprisonment will be used instead of alternatives. According to waver 30 point 83: In case of dissatisfaction of sentenced to perform public service the initial one will be performed.

C) Being reversible:
Another feature of imprisonment alternative is being reversible. And it is performed when the convict does not act to the obligations.

In this case again initial sentence will be perform. Actually when the alternatives can’t be perform properly the imprisonment will be implement. According to point 69 of new Islamic law: Beside setting an alternative punishment, the court also determines the length of prison sentence that’s because if the alternative senative sentence can’t be performed or the convict couldn’t pay the fines the initial imprisonment will be performed. Also according to point 80: If convict violates the court orders or implementation of sentences quarter or half of sentences will be added to the sentence at the first time and if it is continue imprisonment will be implement.

d) Being able to suspend, discount, convert:
An other feature of imprisonment alternative is that if through the outer barrier outside of the convicts will or due to the sentenced excuse the sentence can’t be implement temporary, the sentence can be suspend. According to point 81 of new Islamic law: If the whole or part of the sentence can’t be implement, the whole sentence or it’s part will be implement later. If the barrier is caused by the convict to postpone the implement of the sentence the main sentence will be used. According to the waver 4 of point 83 of this law: The judge is able to postpone the sentence up to three months or suggest an alternative punishment to the court according to the health, the need for medical care. Family problems, etc of the convicts.

As it’s clear this point of law expresses just one alternative of imprisonment of public services of suspension and conversion. It’s not obvious if other imprisonment alternatives can be suspend and convert or not?

Point 79 of the IPC expresses the commutation of the sentence after the implementaion of it. Accordig to this point “If the provisions of the sentencing court shows the modification in convicts behavior, the court can once decrease the rest of the penalty to half with the proposal of the judg.

e) Non-repudiation of the offender from the community:
Imprisonment alternatives apply in a way that do not obstruct the or dinary life of the offender and offender can spend the penalties as lives in the society like other peoples. The offender doesn’t feel ostracized from the society and doesn’t feel himself a victim. But there is still a sense of respon-sibility towards the people in his turn and will back to the society after a while. According to 83 of the IPC public service hours for employed is 4 and for unemployed is not more than 8 a day. “How ever, the hours of public service per day should not prevent the offender’s subsistence. As this point of law implies alternative punishments should not the convict from the ordinary life and should not impose psychological or economic pressure on him and his family.

Examples of alternative punishments in the IPC Based on the concepts of the alternative punishments to the imprisonment which was presented in earlier chapters, in this chapter we will mention types of schemes which can be used in the sentencing phase as an alternative punishment, that is divided into deprivation of liberty punishment and the suspension of the sentence. In sentence convert one of the alternatives is chosen instead of
imprisonment and other deprivation of liberty does not apply. In imprisonment suspension, the judge sets the sentence and makes it suspender if the new crime is not committed.

A) Imprisonment converting on of the ways to substitute another punishment instead of imprisonment is to convert it to another penalty.

In this way the judge according to law and his options chooses another punishment instead of liberty deprivation one which is more appropriate to the convict.

1) Welfare works or free public services:

One of the alternative to imprisonment is welfare work or free public services. Convicts in their sentence period do some welfare works instead of going to prison. These welfare works are the new social sanctions. This punishment has different definitions.

Different welfare works are:
1) working in hospital and nursing home.
2) participation in archaeological excavations.
3) construction.
4) participating in training, technical, professional guidance, driving and health classes.
5) purging of highways, parks, recreational places or any work in fair of society.

It is proven in international level that welfare works as an efficient and cost-effective manner can be more effective and utilized for convicts.

In point 84 of the IPC 1392 in this case: free public services are those which is done by convicts for a certain time. Actually the sentence is as follows and implement under the judge supervision.

a) offenses referred in paragraph (a) point (83) up to 270 hours.
b) offenses referred in paragraph b point 83, 270 to 540 hours.
c) offenses referred in paragraph C point 83, 540 to 7800 hours.
d) offenses referred in paragraph d point 83, 1800 to 2160 hours.

2) Fines:

Fine is not corruption binding like imprisonment and doesn't have any bad effect because of its crime causing environment. Fine preserves its intimidating power despite repetition and keep it's deterrence effect as many times as applicable.

While in imprisonment the prisoner gets use to the jail environment and it looses its effectiveness.

Also fine can be determined with type of the crime, the damage assessment and convict's personality and with this coordination can prevent occurrence of the crime. For convicts with the jobbery purpose fine is the best punishment and more punishing for those people who want to own property.

According to the IPC point 86 the fine alternative to incarceration is as follows:

a) offenses referred in paragraph (a) point 83 up to 9 million rials.
b) offenses referred in paragraph (b) point 83 from 9 million to 18 million rials.
c) offenses referred in paragraph (c) point 83 from 18 million to 36 million rials.
d) offenses referred in paragraph (d) point 83 from 36 million to 72 million rials.

Daily fines:

These fines are called daily because the convict's daily income determines the amount of the fine. The penalties are determined in two stages. In the first stage, according to the type and importance of the crime judge determines the fine. And in the second stage the judge determines the fine based on the convict's income.

In point 85 of the IPC 1392 mentioned:

a) offenses referred in paragraph (a) point 83 up to 180 days.
b) offenses referred in paragraph (b) point 83 180 to 360 days.
c) offenses referred in paragraph (c) point 83 360 to 720 days.
d) offenses referred in paragraph (d) point 83 720 to 1440 days.

Waiver: Guilt is bounded at the end of each month to pay the whole daily fines of that month in ten days.

B) Delayed care:

Delayed care is for convicts that prison seems dangerous or not suitable for them. It's the highest level of supervision and is considered to help the offender to correct his behavior.

We can note the overall review of prison alternatives that every time the judge after reviewing the case reach the conclusion that convict shouldn't send to the prison can make the sentence personal and use alternatives instead of imprisonment. These alternatives have lots of usage and are used in most of the countries.

In point 83 of the IPC 1392 mentioned: care period is a time in which convict with the court decision and under the supervision of the judge force to do one or some of the delayed care orders:

a) In crimes which their penalty is 3 to 6 months imprisonment.
b) In crimes which their penalty is 91 days to 6 month imprisonment and for penalties wich their type and chastising are not determined in the law, 6 month to 1 year.
c) In crimes which their penalty is more than 6 month to 1 year, 1 to 2 years.
d) In unitentiona) crimes that their sentence is more than 1 year, 2 to 4 years.

Directives of delayed care is mentioned in point 43 of the IPC 1392:

In delayed care the court has the power to perform one of the following options based on the crime, offender characteristics, his living condition in a way that does not create major disruption in his life or his family.

a) Vocational training or doing specific professions.
b) Residence or non-residence in certain locations.
c) Treatment of illness or drug addiction.
d) Alimony payment of dependent people.
e) Refrain from taking all or some motor vehicles.
f) Refrain from professional activities associated with crime or usage of relative tools.
g) Refrain from relationship with partners or other accessories like victim with the court detection.
h) Spending specific training courses and learning basic life skills or participating in training, moral, religious, schooling or sporty sessions.

C) Suspend the punishment of imprisonment:

Suspension is a leniency and waiver tool which the court grants to the convicts with some conditions. Suspension in the sentence execution is stop punishing someone who has been sentenced to the deterrent and mandatory sentences. If at a certain time after his punishment did not commit another crime and obeyed the court orders in this period, his sentence will be evadicate.

So, the suspension of punishment is a way to give the convict a chance to avoid crime commitment and return to his ordinary life in the society.

In the IPC approved in 1392 a major change occurred in suspension penalty. This rule is explained in the 46 to 55.

In the IPC point 46 we can see: In discretionary punishment three to eight, the court may delay sentencing all or part of the suspended punishment of one to five years if the conditions required for the suspension.

The condition is related with sentenced records, his social status and responsibilities he may be concerned later.

According to a waiver of point 40 effective sentencing is a sentence which subseqently deprive the convict of social rights based on point 25.

These convictions are:

a) Seven years instead of privative punishment of life and life imprisonment from stop of original sentence.
b) Three years instead of amputation sentence, retribution of body organs if the blood of money of the conviction be more than half of victims blood money or less than it and up to four imprisonment.
c) Two years instead of lashing sentence, retribution of body organs if the wergild of conviction be half or less than half of the convict's wergild and up to five imprisonment.

Also according to the IPC point 40 in discretionary punishment six to eight degree the court is able to postpone sentence execution up to 6 months to two years according to tie personal, family, social condition of the convict and his records and circumstances that leads the convict to crime. This rule is also cited in point 46.

Point 50 of the IPC mentions: If a condemned which his sentence has been suspended, during suspension doesn't obey the orders of the court without plausible excuse, the court with the request of the judge or attorney is able to add one or two years to suspension or cancel the suspension for the first time, violation of the court orders for the second time leads to abolish the suspension and execution of penalty.

It is mentioned in point 43 paragraph eight that then are some order which the court can ask the convict according to convict's condition and the file.

Some orders are training and educative and some others have securing natwere and are so similar to complementary punishment and show the retributional aspect of these orders. But there is not suitable prediction for the execution, expenses and equipments of these orders.

For suspension of sentences, the crime should be of the discretionary imprisonment type.

Point 47 of IPC mentions: The following cases can not be suspend in sentencing and punishment level:

a) Organized crimes, armed robbery or molestation, kidnapping and acid spray.
b) The crimes against internal and external security of the country, obstructionism in eletrity, water, oil, gass and radiographic installation.
c) Affray with knife or any weapon, making or organizing wharehouse.
d) Smuggling of drugs, alcoholic drinking, weapons, ammunition and human.
e) In stead of chastising death, abetting the intentional killing, beligerence, corruption on earth.
f) Economic crimes, the issue of crime over a hundred million AIso the point T 51 of the IPC mention: Suspension of sentence has no effect when the convict has private claims and the order of com pensation or blood money will be execute in this case.
Postponed sentencing:
Execution of penalty is the result of criminal conviction issued by the court, but it is possible to create criminal conviction qualities and change the results, so the suspension in sentencing is the first step of the punishment suspension.

According to point 40 of the IPC: chastising crimes are in postponed sentencing domain from degree 60 to 8 and the courts that have jurisdiction in the criminal affairs are suitable for the postponed sentencing issues just in a case that defendant must be proven guilty. Point 40 of the IPC mentions: In chastising crimes from degree 6 to 8 the court is able to postpone sentencing after obtaining defendant culpability for six months to two years with respect to the individual, family and social condition and background and circumstances of the offense.

a) Existence of different rebating.
b) Prediction of offender's modification.
c) Compensation of losses and its preparations.
d) Lack of criminal record.

Suspension in sentencing is of two kinds: 1. Paragraph a of point 41 is related to simple suspension, according to simple suspension, convict committed in written not to do any crime during the period specified by the court. And predicted of his behavior he will be not commit any crime in the future.

2. Paragraph b of point 47 mentions: In delayed care beside the simple suspension term, the convict subscribes to obey the rules which is seted by the court.

In point 42 if the IPC predicted that delayed care is associated with the following measures:

a) Attending at the designated time and place with judicial or social worker supervision.
b) Providing information and documents to facilitate monitoring the sentenced obligations for social worker.
c) Notifying any change of job, residence or relocation in less than fifteen days and submit a report to the social worker.
d) Official permission to travel abroad.

Also according to the point 43 of the IPC: In suspended caring, the court can force the convict to implement a tation of one or more of the following commands during the period, but with respect to the crime, characteristics of convict and his live condition, in a way that these commands do not create major disruption in his family life:

a) Vocational training or doing specific professions.
b) Residence or non-residence in certain locations.
c) Treatment of illness or drug addiction.
d) Alimony payment of dependent people.
e) Refrain from taking all or some of the motor vehicles.
f) Refrain from professional activities associated with crime or usage of relative tools.
g) Refrain from relationship with partners or other accessories like victim with the court detection.
h) Spending specific training courses and learning basic life skills or participating in training, moral, religious, schooling or sporty sessions.

Deprivation of social rights:
According to point 63 of new law, deprivation of social rights is one of the imprisonment substitution, but nothing mentioned about it later. Civil deprivation is not mentioned in this chapter maybe it is because this law is given in the consequential and additional penalties and it was not necessary to repeat it in this chapter. There are some fundamental flaw in this argument. First flaw is in its shape, why lawmakers should state imprisonment substitution punishments in more than one chapter, while a separate chapter is devoted to it other flaws are:

First: imprisonment substitutions are main punishments—although they succeeded imprisonment—while the civil deprivation in point 25 has peripheral aspect. Second: imprisonment substitution punishments is possible in crimes with degree 6, 7, and 8 (in the house arrest degree five to eight) while according to the first wave of point 25 in imprisonment punishing of degree six, seven, and eight, conviction is as the criminal record if convict, but is not published in the convict's certificates.

The overall purpose is in the six, seven, and eight degree there is not civil deprivation. These are not harmonic. On the one hand imprisonment substitutions can be used in six, seven, and eight degrees, at the other hand there is not civil deprivation in these degrees.

Third: IF we suppose the civil deprivation as an alternative to the imprisonment, how it will be applied? where imprisonments have degrees and their substitutions reduce or increase proportionally. This means there is a difference between 1 month and 1 year imprisonment. In other substitutions the method is also the same. Forth: Civil deprivation is only about intentional crimes, while imprisonment substitutions can be applied in unintentional crimes. Maybe the solution is that: Absolute convicts to the discretionary imprisonment of degree 5 to 7 include this system providing plaintiff passing, putting us a good collateral, commitment to perform a
job, continued participation in Family Ife, drug or disease treatment if convict and these convicts with the legal conditions can request half of freedom system hinge on the instruction of half of freedom places which are working under the auspices of prisons and corrective and security measures. In half of freedom system of the IPC 1392 those who are sentenced to light imprisonment can perform other activities out of prison beside jail punishment. It means an institution will be established in the prison which is as a central system of half of Freedom and those convicts whoare in elusive in this system acting under it supervision. Half of freedom crimes are related to discretionary.

Imprisonment of degrees 5,6 and 7. Point 56 of new law overemphasizes on the usage of semi-freedom punishment in discretionary imprisonments and states the court can sponsor convict to the semi-freedom system with his satisfaction and warranties like: giving up addiction, participation in family life, etc.

In fact new law tries to personalize punishments. With the use of new methods like: 

- Freedom, parole, suspension in sentencing exemption of punishment, …we can see the reduction in the bad effect of imprisonment in the society.

2) Parole:

Parole is a chance which is given to the convicts before the end of their sentence.

So that if have a good behavior and obey the orders of the court during the period determined by the court enjoy the absolute freedom. (248)

According to point 58 of the IPC: In the parole punishment the court is able to issue the parole alternative in the following with the prosecutor or judge proposal cases: About the convicts with more than 10 years imprisonment after spending half of sentence and in other cases after one-third of sentencing period.

parole has some conditions like: spending some period of imprisonment, good moral and behavior, not to repeat the offence, paying the losses of private plaintiff.

parole is limited to the stripping freedom punishments like: temporary imprisonment, sentencing to the prison is decondition in parole, even the imprisonment is a main punishment or an alternative one.

parole request is in this way: first the prisoner gives a request and after the warden’s report and approval of judge, the case is sent to the trial court to issue the parole sentence.

Soparole proposal is on behalf of prisons organization and will be performed after the approval of prosecutor or judge. So the request of the convict or his lawyer would not be given any effect.

The court may accept or reject the request, but does not preclude any other request. The reference if semi-freedom issue is the final judgment court.

Conclusion:

The previous IPC law was imprisonment oriented and prison was the main punishment for lots of crimes, so there was lots of prisoners.

In the new law of the IPC the judge has a capability in light sentences use imprisonment alternatives such as suspension in sentencing, post postponement of execution and security and training activities.

Criminal and legislatave policies also use imprisonment alternatives because of the failure in prison's health and reform program and on the other hand from the new findings in the field of criminal sciences.

In the new law of the IPC the status of traditional-alternatives-postponement of execution and parole-is improved, new alternatives like house arrest, public services, care period, daily fines, fines and deprivation of civil rights are also accepted.

REFERENCES