

Nature and Aims of Imprisonment in Iran's Law

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ABSTRACT

Historical studies show that there has been prison sentence in all countries from old times. And rulers used it for isolation of opponents or for reforming the soul of criminal. Although it was obvious that prison had been useful until twenty first century, in present century, many of European and American juristic consider the use of prison in legislators and rulers' targets as inefficient and criticize the current penalty methods and believe that prison is a crime-learning university. Since most of the countries don't allocate enough budget for separating criminals in due to type of the committed crimes, degree of punishment, age of prisoners and etc, disadvantages of prison are more than advantages of it. With this assumption, no country has courage to omit prison sentence from its legal texts.

KEY WORDS: Prison- Criminal- Penalty.

INTRODUCTION

Imprisonment and prison definition

Lexically, prison is a ward, house and place where convicts and criminals imprison. (Amid, H. Dictionary. Tehran Amirkabir Press. 22th print, 2001) and in legal terms, it refers to a place where irrevocable criminals imprison with recommendation of legal and juristic competent authorities for definite period or permanently to reform and train and tolerate penal with aim of profession-learning, rehabilitation and reconstruction. (1) (Article 3 of legal By-law and executive regulations of Iran's prisons and security and training measures organization approved in 2005 published in State Official Gazettes No. 17724 dated 01/09/2005)

In criminal law, imprisonment is interpreted as deprivation of freedom and self-liberty for definite or indefinite period so that there will not be release-waiting. (2) (Jafari Langarodi, M.J. Terminology of law. Ganjedanesh Library. 9th print. 1998)

Considering legal definition of prison especially a place where irrevocable convicts... are punished, it means that prison is different from detention. Detention is temporary and is completely different in respect to their aims. In Code 1928, detention refers to protection of suspects and accuser but in By-Law 1975, Article 30 it refers to a place for keeping the wanted persons who are arrested according to the order of judicial authorities until making final decision. (3) (For more information, refer to History of Prison Changes written by Godarzi Borojerdi M.R & Meghdadi L. - Mizan Press. Tehran. 2nd print, pp.82- end.). Abolishing the laws, article 4 of executive by-law of state prisons and security and training measures organizations (approved in 2005 published in state official gazette No. 17724 dated 01/09/2005), detention defines in this way: detention is a place of keeping accusers whom were introduced by written affidavit of competent judicial authorities until making final decision. It deducts that detention is a place for protection of complaints' and accusers' rights until sentence issuance.

1. Nature of imprisonment

Studying the history of prisons' changes indicates that prisons are used from old times for isolating political opponents or temporary arresting of accusers. Studying the Hammurabi rules in ancient Bible and studying crimes and executive of punishments and manner of their execution in ancient Iran especially high number of lashes and execution shows not having prison as an executive penal institution in pre-Islamic periods in east of the world. By Islam expansion, use of prisons increased. There was not any different between Umayyad and Abbasi eras' prisons with interpretation of Prophet Yusuf from prison as living grave though Prophet Mohammad assumes prisoner as enslaved and forbade his torture. In west, prison and especially individual prison is used for amending the convict soul and totally physical punishments plays an important role in consolidation of authoritarian regimes. Around France Revolution (1789) which accompanied with the motto of freedom-equality and brotherhood and especially

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from Napoleon Bonaparte coming, the prisons became institutionalized and their necessity was justified in other countries. And there was no doubt toward their necessity and suitability until twenty first century. Despite these issues, prison is deprivation of freedom- this concept has three separate natures considering the type of crime, penal and type of its usage and aim. One is penal nature that is emotional restriction or abuse and physical restriction somehow and shows that person's imprisonment or his freedom deprivation first of all has penal nature and means his penalty. Second one is value or legal nature of imprisonment that characterizes special specifications due to legal system and accepted interpretations. This nature refers to interpretations of a prisoner in prison. For example, before Islamic Revolution of Iran, (1979) prison was a criminal-misdemeanors or wrongdoing imprisonment with different degrees from legal system each of which is different due to the penal nature and legal effects. (For example sentence to criminal imprisonment is surely severe than sentence to misdemeanor or wrongdoing. Third is compulsory nature of imprisonment and deprivation of freedom that means a sentenced person and not punished to deprive his freedom as penal. This is the person who sentenced to pay or refund the money or shall introduce a sponsor or guarantee for his freedom but is not able to do it. We will investigate each of these natures below:

A) Penal nature of imprisonment:

One's imprisonment is apparently a penal nature. Because this action is against one's desire and willing. And undesirability is one of the penal or criminal characteristics. Moreover, imprisonment creates straits to person and imposes on him and this is one another common characteristics of all punishments. By their execution, there is a kind of restriction including physical-financial or emotional-speech for ownership or right to live or freedom. Since fines take parts of one's asset from him, imprisonment takes his freedom so it can be said that imprisonment is penal or punishment. Although as per prison's by-law approved in 2005, use of communication devices like Telephone, Computer, visit and leaves are legal to sentenced and accusers, this is not a reason for lack of penal effects of imprisonment. In every period and every country due to the culture and believes, the bureau of prison, is in a way that prisoner has not his usual freedom and originally the potential of the prison demands this restriction. Although there were changes and revolutions in approaches to running prisons from past to now, there is no doubt that prison is creation of impose, restriction and penal.

B) Legal nature of imprisonment

Sentence to imprisonment has legal effects and frames apart from its penal nature. This is a value matter that interprets it this way because of the importance of the effects. Before Islamic Revolution of Iran, the legislator used the titles like criminal imprisonment 1st and 2nd, individual imprisonment, misdemeanor-wrongdoing-punitive prison for accusers that are different from using facilities (leaves, visits, pardon) and even from legal effects and social restrictions which are abolished at now. In current legal system of Iran's Islamic punishment law, the expression of suspended or inhibiting imprisonment was used. Although there is penal imprisonment by lash in some legal matters (like article GH201 of Islamic Punishment) title of lash punishment cannot be seen in law. (5)(refers to Iran's Islamic Punishment law approved on 1996- published in official gazettes No.14943- 25/06/1996) although law punishment depends on lash regulations, there is no difference between it and other suspended imprisonment from manner of exercising. For example, lash punishment never subject to time lapse, but suspended and inhibiting imprisonment will be subject to time lapse in execution of article GH173 of the legal by-law public prosecutor's in penal matters under certain conditions and stopped the prosecution of crime after expiration. (6) (Legal by-law of public Prosecutor's in penal matters approved in 1999 publicized in state official gazettes No. 15911 dated 10/10/2008).

C) Compulsory Nature of Prison

Although prison has compulsory and imposing characteristics, in some cases, the individuals are not introduced to price for this reason (penal tolerance), for example, losing party who is sentenced to financial payment or return of the amount in legal court, may refrain from execution of verdict, in this way, he may go to prison in execution of the law for financial conviction.- in such cases, the prisoner doesn't imprison for penal tolerance, but he will be under pressure by imprisonment, to pay as soon as possible the money or properties of the object of sentence.

Certainly, we can study this one under the title of punishment. And considers penal as the basis of this imprisonment but the main goal of it will not be penal but it will be pressuring and obliging a person to pay or deliver or supply the object, so, it is put into a independent grouping.

2) Imprisonment Aims:

The aims, executive and practical methods constitute the organizational framework in each organ and organization. And hold all its working and practical areas and all material and spiritual factors are determined and defined with regard to these aims. The prisons are being established according to aims and goals. Because no institute or organization can continue without aim. Undoubtedly, the desires and aims of each institute were originated from the culture of that society in which generally has grown up and lived.

In Past, the aim of punishment execution (not merely imprisonment punishments), was revenging from the criminal, his family and his tribe, but at time lapses, the aims of punishments are changed too. And they took into consideration the public order and peace and they modified the severe and savage punishments and lesson-learning, prevention from separation of criminals and suitability between committed crime and determined penal- is considered as punishment aims. For prison punishments, the philosophers of this science, know the aims of prison in reforming, training or treatment of criminal- general prevention- individual prevention- retaliation for general minds relief- lesson learning, yet the aims of imprisonment are differ in different periods due to time requirements, in ancient times, the prison punishment was executed in Iran for rejection of the sentenced. And the sentenced were kept in castles which were named forgotten-house. Although intimidation or lesson-learning are also among effects of imprisonment punishment, for example in Khozestan, there was a fort with the name of Giligeria Andohshen, which were named forgotten fort, in which Ghobad, Iran's ruler was disposed from king after changing his religion in 498 and imprisoned. (8) (Sanei, P, Public Criminal Law, Volume 1, Ganjedanesh Press, Tehran, 1992, P.184) But at present century, the criminal law scholars believe that the imprisonment punishment shall have reformative and training role in sentenced to imprisonment apart from prevention of crime. Regarding opinions of lawmen and scholars of penal sciences, we can group the aims of imprisonment as follow:

A) Criminal reforming

One of the modern approaches of the execution of imprisonment penal is criminal reforming. Because it is believed that imprisonment is a mean for training and educating and rehabilitation of criminals and at the end, returning them to social life and family. Because when the sentenced to imprisonment is in prison, he should spend his times for preparing and returning to a systematic life while he will be free. Imprisonment is a temporary period for anyway, even most of the sentenced to permanent imprisonment will be exempted under certain conditions and they are released from prison and return to society. So manner of treating with prisoner should be in a way that leads to training and reforming him. Because we can prevent for new crimes' commitment by reforming the criminal. Chastising, punishing, order are exactly mean retraining by punishment.

B) Satisfaction of victim

Among other aims and functions of imprisonment, satisfaction of victim is another aims of prison punishment. Because relief of the victim and his mental and spiritual calmness will lead to public relief and order. So the legislator takes into account the right of victim in legislation and penalty of imprisonment and he wants to ensure the public order. (Refer to Replacement punishments, Mohammadi D, Tehran, Oud Press, 1st Print, 2005, p.85).

C) Lesson- Learning and intimidation

Although this aim was very common in ancient times, and usually be done for Savage Punishments for threaten and threatening the criminal and other around persons and citizens, and merely for prevention of crime repeating, because criminal punishment causes that the others don't obey from criminal and this bad action will not be transmitted to others. In Modern punishment opinions, this aim is considered gently. In this function, the intimidation mainly plays two roles. First- criminal intimidation which will be followed by individual prevention. Second- others intimidation which will be followed by public prevention. Because when other citizens are witnesses of punishment and penal of the criminal, certainly he is not follow the crime with lesson learning from the criminal's punishment. And especially, if this punishment be done on time and quickly, on that way, he can see this effect and prevention directly. (Refer to Penal logy- Bernard Boulk- translated by Najafi. H- Abrand Abadi, Tehran, Majd Press, 1st print, 1993, p.23).

D) Debilitation

When a prisoner elapses his time in prison, he is not able to damage to the people outside the wall frames somehow and the prison helps to reduce the crime in this kind and the people of society and citizens can be safe from the danger of such crime, especially criminals whose crime is acting against public order and who deserves to deprive the comfort of citizens.

E) Rejection and elimination of criminal

Up to present century, we see rejecting punishments in all legal systems, because rejection of the wicked will increase the public intimidation for relieving the society from evil of a person. Mainly, this aim and role functions mostly for criminals whose crimes are so severe which cannot be forgiven. For instance, when a criminal kidnaps and deserves to harassment of the victim, the society and governing board seek to rejection of the criminal instead of his execution with execution of long-term imprisonment (permanent imprisonment), we always saw long term imprisonment in Iran Law because the legislator's belief is that for the criminal who does severe crimes, the temporary prisons cannot reform and train such criminals and at last, returning to the society will be haphazard to citizens and the governments seek to eliminate and reject such criminals with legislation and execution of permanent and log-term imprisonments.

3- Conclusion

With deep perception to history and records of prisons around world, this can be meant that prison was considered as a lever and punishment from past and the governments imprisoned the criminals with different aims in criminal sciences, though the desired aims sometimes has reverse effect. Because it is believed that some prisoners not only cannot be reformed in prison but also the prison becomes a place from their crime learning. And the prisoners become familiar with other crimes and learn other crime commitment methods from others. Especially in prisons, where there is not enough facility for dividing and separation of criminals due to the type of the committed crime and rank of crimes or age of prisoners. On that way, the prison will be a crime and crime-learning university, anyway, prison is accepted as a social reality among social institutes. And despite its advantages and disadvantages, and despite many criticisms, using imprisonment punishment is a common method for suppression of rebels and lawbreakers. Though in last century, alternatives of imprisonment (like simple suspension, suspension care, and prison at home, welfare services ...) are being executed. But in serious and violent crimes, the imprisonment is used as an effective mechanism by governments and especially government of Islamic Republic of Iran.

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