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Anifestation of Labeling Theory in Postponement of Deliverance of Judgment

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Abstract

Criminology data have been the main factor for improvement in criminal law. Islamic Penal Code of Iran was approved in 2013. According to Islamic Penal Code of Iran, punishments have found new effects. For example, the subject of postponement of deliverance of judgment which is rooted in Labeling Theory of criminology was first noted in this code. However, it seems that the practical success of criminal law system in terms of using judicial individualization depends on judges having adequate knowledge to use these instruments.

Keywords: postponement of deliverance of judgment, Labeling Theory, Individualization Principle, first deviation, seconddeviation, shaming

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Introduction

In Islamic Penal Code of Iran, chapter five, second part of the first book (articles 40 to 45), there is a new legal entity as "Postponement of Deliverance of Judgment" which has been entered following the new criminal code of France. According to merely legal view of criminal law where the punishments are applied based on moral consideration or punishment, applying such entitys is not justifiable. However, criminology and scholars view has helped the criminologists and criminal law to meet the aim of utilitarianism, correction and adaption of the offenders with the society and pass over the mere legal view of criminal law and reach a realistic view of crime. Nowadays, in criminal law of Iran, there is a trace of criminal data in old entitys such as suspend penalty, judicial mitigation, parole and regime of Half-release and others, all of which are considered as the judicial individualization instruments. However, the law put a step forward this time and has used one of the most significant methods of agreement in criminal procedure before the deliverance of judgment based on the personal condition of the accused and in order to prevent the incorporation and suggestion of criminal character to the accused so that there would be the possibility of preventing the punishment of those who can be corrected without punishments before the deliverance of judgment.

Postponement of Deliverance of Judgment: History, Concept and Foundations

History

There is no history on postponement of deliverance of judgment in Criminal Code of Iran since the Penal Code of 1925 to the Islamic Penal Code of 1996. Postponement of deliverance of judgment was first considered in the Law of July 11, 1975 in France and then in New Penal Code of France approved in 1992 aimed to individualize the penalty and following the no-detention policy so that articles 58-132 to 70-132 are devoted to this entity. In England based on the Criminal Code of 1973 the courts were allowed for the first time to act for the postponement of deliverance of judgment (Mehra, 2009). Now, articles 40 to 45 of Islamic Penal Code of Iran, chapter five, second part of the first book are devoted to this legal entity **.**

Concept and Nature of Postponement of Deliverance of Judgment

Postponement in literal terms means to prevent, delay and demur (Amid, 1987). Postponement of Deliverance of Judgment means to delay the deliverance of judgment according to the court delivering the final sentence and in order to correct the behavior and re-socializing the accused (Ardabili, 2014). Criminal proceedings and postponement of deliverance of judgment are following the provisions of the Criminal Procedure Code and by cancellation of postponement; the conviction is inevitably issued and applied. By issuing the conviction, the postponement of deliverance of judgment is cancelled and thus the postponement of deliverance of judgment is temporary and can be in two form of simple and supervised.

Foundation of Postponement of Deliverance of Judgment

Postponement of Deliverance of Judgment is an achievement of modern criminology known as Symbolic Interaction. The Symbolic Interaction criminology refers to studying the process of forming the social identity of the accused and aims to label this contextual process. The regime of postponement of deliverance is rooted in legal system of England and the English judges postponed the deliverance of judgment in old times to ask remission by the king (Zeraat, 2014).

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Foundations and Concepts of Labeling Theory

The Foundation of Labeling can be found in the book "Social Pathology" by American sociologist Edwin Lemert (1951) (Najafi Tavana, 2015).

Labeling

Psychologically, whenever the positive or negative adjective is attributed to someone, he would unconsciously lead to approve it. Thus, the studies of social psychology suggests to avoid the attribution of negative traits and only react to the act of a person not the material and spiritual entity of him. Negative labeling, that is the inappropriate difference of the person socially and based on the specified personal features, a lower trait which discriminate the person from normal mood, empowers the negative perceptions such as shame and scandal and belittles his personality (Rostami Tabrizi, Mohtashami, 2013).

Concepts of Primary Deviance and Secondary Deviance

Primary Deviance and Secondary Deviance are two common terms in Labeling Theory.

Primary Deviance

Lemert (1967) conceptualized primary deviance as engaging in the initial act of defiance. This is a behavior where the most people at some stages of their growth are engaged in acts which are considered as deviant (such as drinking alcohol before puberty, smoking hashish and shoplifting). However, they act so due to a wide range of social, cultural and mental reasons. At this stage, no change happens in identity of the person and deviance is a temporary event.

Secondary Deviance

Secondary deviance is observed when the person is engaging in the initial act of deviance (such as shoplifting) and then an official reaction is taken against this behaviors (such as asking Police to face him). Here, if the police arrests the person, it is possible that he will be labeled as "deviant" (for example the label of "young offender").

Consequently, it is possible that the person will internalize the deviant behavior, the base of which is the new social status given by state authorities to the person (Salimi, 2015, p.196).

Stages of Labeling

Negative Label

At this stage the person committing deviant behaviors will be sued and is labeled as thief for shoplifting and without considering the positive potential of the person, he will receive a label to be called by the people around.

Defame

By labeling the criminal following the trial and sentence, he would be defamed and society would take a new view of him. The deviant behavior emerges by labeling him. Harold Finger gave the name degradation to the secondary deviant. The experience has shown that degradation would not be separated from human being.

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Formation of New Identity in reaction to negative labeling

Labeling theory is related with two other theories; theory of basic needs which is rooted in everyone's need for respect whether from the personal self-esteem or the social aspect of needing respect and approval from others and also the theory of Cognitive Conflict Theory which is created after labeling the basic needs. Following the labeling, the person considers himself as respectable since he has some positive qualities besides his deviance but the society does not respect him anymore and here there emerges a cognitive conflict and he has to change his identity.

Adherence to the new identity relying on the available roles and relations

Following the reaction of the society and labeling, the person would modify his behaviors based on the label and would feel comfortable in the circle of those having the same label. People who are considered as deviant form the criminal gangs and groups and the casual offenders become the chronic offenders (Salehi, 2015).

Reintegrative shaming

The most comprehensive example of labeling theory was suggested by John Braithwaite (1989). He integrated theory of opportunities, subcultural theory, social control theory and labeling theory to introduce a theory based on shaming. John Braithwaite who beings with theory of opportunities points to the fact that desires and the means for meeting them can be both legal and illegal. Reintegrative shaming is a point which should be taken into account. There are many forms of shaming in normal and subculture groups so that an offender may be exposed to shaming or is expecting it. Two forms of shaming have been introduced: reintegrative and disintegrative shaming. In case of the first one, a shaming offender cannot be re-entered into a society or sub-group and thus it leads to more deprivation and deviance. The second type of shaming leads to conciliatory return of the offender to the group and separation of deviant behavior from the offender. Here, the obvious clear policy implication in this regard is to punish these acts seriously but a corrected offender can be excused. Since the subcultures have the power of shaming (while the common ethical order is two third of this), the present theoretical issue is to overcome the effect of subcultures through the social media which acts based on the reintegrative shaming (Malek Mohammadi, 2014).

Postponement of Deliverance of Judgment

The legislator has considered for condition for issuing the Postponement of Deliverance of Judgment in Islamic Penal Code of Iran

The legislator has allowed using this entity not for the crimes but for ta'zir offenses of the sixth to eighth degree and in article 40, it has stated "ta'zir offenses of the sixth to eighth degree..". It should be also mentioned that the legislator has increased the area of postponement of deliverance of judgment for the offenses committed by children .and juveniles and included all ta'zir offenses based on article 94 and stated that "In the case of all ta'zir crimes committed by young people, the court can postpone the deliverance of the judgment or suspend the execution of the punishment".

In terms of criminology, the impossibility to postpone the execution of punishment in high degree offenses considering the threatening mood discussed by Raffaele Garofalo in Positivism school seems

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quite true since there are other theories such as zero tolerance theory by Peter Evans which is against the Labeling theoru (Noubarhar, 2008).

About children and young people, since the deviance is considered as one of the age requirements, the act of legislator in this regard cannot be criticized and labeling theory is usually applied for children and young offenders in various books of criminology.

Regarding the second condition, article 47 has mentioned some of the crimes and offenses which cannot be postpones and stated that: "Deliverance of judgment and execution of punishment shall not be postponed or suspended in the following offenses and attempts to commit them":

(a) Offenses against the domestic and foreign security of the country, destruction of water, electricity, gas, oil, and telecommunication facilities.

(b) Organized crimes, armed robbery or robbery that involves assault, abduction, and acid attack

(c) Flaunting strength and disturbing people by resorting to knives or any other weapon, offenses against public chastity, the establishment or management of places for corruption and prostitution

(d) Large-scale smuggling of narcotic or psychedelic drugs, alcoholic beverages, guns and ammunition, and human trafficking

(e) Ta'zir punishments alternative to qisas of life, accessory to murder, moharebeh and efsad-e fel-arz

(f) Economic offenses if the subject of the crime is valued over one hundred million (1,000,000) Rials

Although scrutinizing these crimes in many cases indicated the risk and high criminal potential but since the legislator has not allowed the postponement of deliverance in offenses of first to sixth degree based on first condition and thus the postponement of deliverance is not possible in many offenses since they have the punishments heavier than two years imprisonment and repeating the impossibility of the postponement of deliverance in article 47 can be criticized.

We are facing a kind of judicial individualization which is based on individualizing the punishments and on the other side we have limited the judge in applying this policy (Keynia, 2009).

The third condition is related to note 2 of article 115. ta'zir offenses of the sixth, seventh, or eighth degree are not included in articles 40 and 45. Thus if an offense is considered as ta'zir offenses of the sixth, seventh, or eighth degree, the judge cannot postpone the deliverance of judgment based on articles 40 and 45. The provisional ta'zir includes the acts which have not been mentioned in Islamic Penal Code and inevitably the judge should found the sentence in legal provision such as finding a man and woman naked in bed. Determining the type and level of ta'zir in these cases is the authority of the judge unless the amount and level of ta'zir have been determined in law (Ardabili, 2013).

The last condition is related to the length of postponement of deliverance of judgment: postponement should be for six month to two years; that is the deliverance of judgment can be postponed for six months to two years which can be added for one year in some cases (Borhani, 2014).

Conditions for Postponement of Deliverance of Judgment

Following the recognition of ta'zir offense degree based on the legal punishment, it is time to examine each condition for postponement of deliverance of judgment to make it clear if the court can use its authorities to postpone the deliverance of judgment. The legislator has considered four conditions under article 40:

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(a) Existence of mitigating factors

Mitigating factors are those mentioned in article 38 of Islamic Penal Code:

(a) Forgiveness by complainant or private claimant

(b) Effective cooperation of the accused in recognition of accomplices and accessories to the offense and in finding the proceeds of the offense or discovering the properties and goods resulted from, or the means used in commission of, the offense

€ Specific circumstances under the influence of which the accused has committed the offense; such as: inflammatory conduct or talk of the victim or honorable motive for committing the offense

(d)Statement of the accused prior to prosecution, or his/her effective confession during investigation and prosecution

€ Regret, good reputation or specific condition of the accused such as his/her age or illness

(f) Efforts by the accused in order to reduce the effects of the offense and his/her measures to compensate the loss resulting from it

(g) When the loss imposed to the victim of the offense or the consequences of the offense are slight

(h) Slight contribution of accomplice or accessory to the offense in commission of the offense

However, considering other cases also indicates the fact that it is based on the fact that the judge due to sufficient knowledge which is required and available and by examining various personal aspects of the offender, can act in order to make a proper judicial decision.

(b) Foreseeable correction of the offender

Today the main goal of punishing the crimes is to correct and make people adaptable with the society. If the judge considers various personal aspects of the offender and the conditions of the case and predicts that the offender can be corrected without receiving punishment, there is no reason for labeling him as offender and developing a self-concept of a criminal identity to the person (Rahiminejad, 2013).

(c) Compensation of, or taking appropriate measures to compensate, the loss

Amendment justice is one of the last paradigms of criminal codes. In New Criminal Procedure, article 81 indicates the innovation by the legislators and considering the amendments in form of intercession where it is tried to minimize the damages due to offense. It should be mentioned that intercession is possible in offenses of six, seven and eight degrees, the prosecution of which can be suspended and the other point is that the suspension of prosecution is also rooted in labeling theory at the stage of prosecution and court (Mosadegh, 2014).

(d) Lack of effective criminal record

Labeling is a theory which can be applied along with the criminal law. The final aim is to prevent the primary deviation to change into the secondary deviation. The presence of criminal background indicates the exposure of the offender to the secondary deviation which needs stronger medical care to be treated. Repeating the crime indicates the dangerous form and higher criminal capacity and applying the strategies such as postponement is not logical for the person affected by secondary deviance (Mirkhalili, Hesani, 2015). The most significant point is the efficiency of criminal record. The effective sentences refer to the sentences which have consequent effect. Consequential punishments deprive the person from some social rights though the sentence is not mentioned in the court sentence. The consequential punishments are

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mentioned in articles 25 and 26 of Islamic Penal Code. However, every kind of criminal record would not cause postponement of the deliverance but it is considered as an effective law by the government and then indicates a high criminal capacity.

Types of Postponement

The legislator has divided the postponement of deliverance of judgment into two types of simple postponement and supervised postponement.

Simple Postponement

In simple postponement, following the investigation in personal case and examining the personal traits of the offender, the judge concludes that the offenders has not high criminal capacity and it is possible to correct them without punishment, the recognition of which relies on the knowledge of the judge and if possible using the opinions of the experts in criminal psychology, criminal sociology and other related sciences in this regard. In simple postponement the offender would give a written promise to avoid committing any crime during the time specified by the court and the court would ensure about the behavior of the offender that he would not commit a crime in future (Validi, 2014).

Supervised Postponement

In supervised postponement the condition is more dangerous and the criminal capacity is higher so that the judge recognizes that the offender in addition to promising to avoid committing the crime should promise to follow the orders and measures taken by the court during the time of postponement at the right time.

Conditions in article 42 of Islamic Penal Code of Iran

Article 42: In supervised postponement the following measures shall be taken:

(a) On-time attendance at the time and place determined by the judicial authority or the supervisory social worker.

(b) Providing the required information and documents in order to facilitate the supervision of the social worker over the compliance of the convict with his/her obligations

(c) Declaring any change of job, residence, or relocation within fifteen days and providing the report to the social worker

(d) Application to the judicial authority for permission for travelling abroad

It seems that the nature of supervision should be so that the offender steps on the way of being corrected and there should not be mere intervention in personal affairs of the offender without having a specified objective. The nature of supervision should be on the way of shaming the offender in order to correct him or her and suggests the fact that although his/her offence and wrongful cat has been clearly recognized by law, there is still the chance to return to the right path and the society is still respecting the positive aspects of his/her personality and it is not going to attack all the personal aspects of the offender.

The court orders based on article 43 of Islamic Penal Code of Iran

Performing the orders and conditions specified under article 43 of the Islamic Penal Code according to the orders given by courts is a series of correctional and sometimes treatment plans which should be

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examined during the time specified by the court so that if the offender succeeded in this experiment, it can be finished even before the specified time (Ardabili, 2014). According to article 43 of Islamic Penal Code: "In supervised postponement, the court, while considering the offense committed and characteristics of the offender and conditions of his/her life, can require the offender to carry out one or more of the following orders during the period of postponement, provided that this will not significantly and hugely disrupt his/her own, and his/her family's, life:

(a) Learning or holding a specific profession or job
(b) Residence or non-residence in a specific place
(c) Treatment of an illness or rehabilitation of an addiction
(d) Payment of *nafaqa* (allowance) to those required by law
(e) Refraining from operating all or some motor vehicles
(f) Refraining from professional activity relating to the offense committed or using the means of the offense
(g) Refraining from contacting and associating with accomplices and accessories to the offense or other people such as the victim of the offense at the discretion of the court
(h) Attending (a) special program(s) for training and learning basic skills for life or participating in training, ethical, religious, educational or sport classes"

The orders mentioned in the article have been based on an objective and have limitative aspect. For example, learning an occupation and employment can cause the freedom of the person from the life style of vagrancy or inhabitancy or non-inhabitancy in a specified place which would protect the person from being accused of being an offender; drug addiction is a primary crime and by treating it, the dangerous condition of the person in committing the other types of crime would be controlled.

The presence of specified orders and conditions for supervised postponement on one hand indicates the focus of the legislator on the labeling theory and on the other hand, it can be seen in supervised postponement that the legislator looks for ways to correct and treat the dangerous condition and as mentioned in article 43, the court, while considering the offense committed and characteristics of the offender and conditions of his/her life, can require the offender to carry out one or more of the following orders during the period of postponement, provided that this will not significantly and hugely disrupt his/her own, and his/her family's, life.

Regulations for issuance of postponement of deliverance of judgment, cancelation of the decisions and consequences of postponement of deliverance of judgment

Regulations for issuance of postponement of deliverance of judgment

Postponement of deliverance of judgment is issued in form of dictum. The decision of the court is issued without discussing the nature of an issue which in this case would not stop litigation or prosecution. Issuance of postponement of deliverance of judgment is one of the authorities of the court and the legislator by stating the term "May" in article 40 of Islamic Penal Code has emphasized the authority of the judge and his absolute authority in issuance of postponement of deliverance of judgment. It seems that the judge mentioned in this article would include both the judge issuing the primary judgment and judges issuing the appealing order.

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Postponement of deliverance of judgment is a right for the offender and so it is not possible to issue the postponement of deliverance of judgment when the offender is absent and absence of the offender in hearings session means overthrowing the right of the offender by him/her. The presence of the offender is not necessary in all the sessions of proceeding but he or she must be present in the session where the court has announced the termination of the proceedings and the court could issue a sentence. Proceeding may be with the presence of the offender in cases where the offender can issue the bill but would not be present in the court. So, considering the article at first sight, in this case the court cannot issue the postponement of deliverance of judgment since the offender should be present in the court and at the same time give a written promise to avoid committing the crime and have good behavior and follow the orders and conditions mentioned by the court. If the offender does not give a promise and the court issues the postponement of deliverance of judgment without considering the issue, the decision is void since the promise of the offender is the main principle of issuing the postponement of deliverance of judgment (Zeraat, 2014). Written approval of the offense and promising not to repeat the commission of a new crime and promising to observe all the orders issued by the court indicates the shaming of the offender due to the accused offenses. There is no doubt that the offender who regrets about the present conditions and mood with obvious signs can use the provided chance to escape the punishment and avoid to receive the criminal label in the best way. In this way, the offender would try to correct and stay away from the criminal capacity and dangerous mood.

Cancellation of Postponement of Deliverance of Judgment

Cancelling the postponement of deliverance of judgment is possible in two ways: one during the period of postponement which can be following the commitment of the crime (article 44) and the other one after suspension (article 45) which is the normal condition. If the offender follows the orders of the court during the period of postponement of deliverance of judgment and does not commit any new crime, the court is obliged to issue the order of his exemption of punishment. The decision should be based on documents and evaluation of the rate of following the court orders by the offender and also based on the reports given by the social workers and the condition of the offender which should be examined completely by the social workers and then the court can act to issue the exemption of punishment. Thus, good behavior of the offender and following the court orders which is known through the reports issued by the social workers can lead to permanent exemption of the offender from punishment. This is a reward for the offender so that he would be encouraged to follow the orders of the court during the period of postponement of deliverance of judgment and step on the way of correction and acting based on law and regulations.

The second condition is not to follow the order issued by the court and commit the crime again during the period of postponement of deliverance of judgment. Article 44 of Islamic Penal Code of Iran has predicted how to end the period of postponement of deliverance of judgment- whether simple or supervised- in two cases:

If the offender commits a hadd or qisas crime or intentional crimes punishable by diya or ta'zir of up to the seventh degree during the period of postponement, then the court shall cancel the warrant of postponement and deliver the judgment of conviction. In the case of non-compliance with the court orders, the court, for one time, can either add to the period of postponement up to half of the time determined in the warrant, or deliver the judgment of conviction.

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Note- When the warrant of postponement is canceled and judgment of conviction delivered, then it is forbidden to issue a writ of suspension of execution of punishment (Aghaiee Janat Makan, 2013).

Consequence of Postponement of Deliverance of Judgment

Following the issuance of postponement of deliverance of judgment, if the offender is in jail, at first act, immediately issues the order of his freedom. The reason for imprisonment may be the inability to introduce bondsman or bail or the temporary detention. The court can take a proper security in ensuring the command so that it would not end in imprisonment of the offender (Saki, 2015). However, after spending the period of postponement of deliverance of judgment and ensuring that the offender has not committed a new crime leading to cancellation of postponement of deliverance of judgment and considering the reports given by the social workers and the condition of the offender which should be examined completely by the social workers and then the court would act to issue the exemption of punishment. Obviously, the reasons for exemption or conviction should be mentioned in the court order.

Conclusion

From the perspective of deducting schools, the punishments are aimed at the personality of the offender before being focused on the offender to fight with the dangers created by the offender. The most important consequence of the court is to avoid the punishment of un-dangerous offenders which have committed a crime by accident since there is a weak possibility of repeating crime and they are not considered as dangerous characters for society. In contract, punishment of such individuals as it was mentioned in defining the labeling theory would change the primary deviance into secondary deviance and causes identity disorders for offenders and would have a reverse result which may lead to pessimistic view of the offenders toward the society. Furthermore, the involvement of the offenders with dangerous criminal would lead to transmission of dangerous mood to the offender and creating the criminal nature in their untouched nature since human being is seriously influenced by the environment and in addition based on the theory of basic needs, he or she needs social respect which unfortunately by receiving the criminal label, he would miss the respect and based on the theory of cognitive conflict, in conflict between the need for social respect and self-esteem would finally look for respect in a group of criminals.

However, the followers of classic school have considered other objects for punishment which can be referred to as general and specific prevention. Nevertheless, there is not any doubt that criminal prevention is rooted in threatening and would not lead human being to the right path but it only includes a prevention of human growth based on his nature. Accordingly, the less conservative schools have selected a median way and suggested that the judges are let to prevent the external and internal punishment from the offender if they perceive that the offender is not dangerous.

Late in nineteenth century, some institutions were suggested to the legislators, some of which refused the material punishments and some others undermined the material and mental consequences; in suspension of execution of punishment, the postponement of deliverance of judgment is placed first and the specific forgiveness is at the second place.

It may be stated that the postponement of deliverance of judgment is an obstacle on the way of certainty in punishments but the postponement of deliverance of judgment is in fact a kind of punishment since the offender has to be careful about his or her behavior based on accepting the promises permanently and

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have sufficient consideration of orders issued by court. It should also be mentioned that this institute has considered positive aspects of labeling theory in not implying the criminal personality and changing the primary deviance into the secondary one quite reasonably. The judicial individualization has been completely observed in Islamic Penal Code of Iran, 2013 and the individualization of punishment has been considered taken the latest paradigms of criminal law which indicates the concern of the legislator about using the punishments in the way to correct and adapt the individuals with society. In fact, punishment in itself cannot correct a wrongdoer but considering various personal aspects of individuals during the time due to biopsychosocial factors creating the personality of the offender should be taken into account. Postponement of deliverance of judgment is one of the instruments for individualization of the punishments which is rooted in labeling theory and scientific implementation of it relies on sufficient knowledge of the judicial authority. It can be a factor in correcting the offenders without any punishment or any cost.

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