



Adjourning Sentence Issuance in the new Islamic Penal law approved in 2013

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ABSTRACT

Adopting human approaches in executing the punishments and lowering the adherence to the penalties can be accompanied with a reduction and mitigation in the crimes and rehabilitation and readjustment of the criminals. Postponing the issuance of the sentences and judgments against the perpetrators of the crimes in line with decriminalization and deterring from resorting to punishments is a foundation which can actualize the objectives pursued by the penal codes policy-makers parallel to lowering the crime commitment rate. The Iranian law makers in line with this long standing human goal that is lowering the crime rates are trying to establish new facilities pivoting around correction-oriented approaches. Adjournment of issuing verdicts and judgments is among the facilities which have been the focus of the legislating bodies in the Islamic penal law enacted in 2013. It is through delaying the issuance of a judgment that he sentence postponement institution provides the criminal with the opportunity to become socialized and return back to the community and resume a healthy social life. Adjourning the issuance of the decrees and verdicts by the courts is a lenient opportunity given to a limited number of the individuals who are subject to the canonical punishment of Ta'zir. Such crimes are light and non-harsh and the perpetrators of such crimes are less dangerous and the adjournment of the sentence issuance regarding such crimes will be more easily and readily and with a faster pace lead to the reduction in the crime reiteration and the criminal reacceptance.

Keywords: Adjournment of the judgment issuance, simple mere postponement, caring postponement, adjournment circumstances, adjournment effects

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INTRODUCTION

The legislative approaches adopted regarding the quality of determining the punishments within the framework of the Islamic penal law enacted in 2013 in comparison to the previous legislative bodies particularly the legislators before the Islamic Revolution have seemingly made use of transformational approaches which are replete with heresies and innovations in certain cases which is envisaged as unprecedented within the whole legislative history of the country [1-4]. The legislator has acted generously concerning the part of the punishments and penalties which are found less important and has tried to free the criminal of the legal punishment and the law and the legislative bodies pursue such a policy in various aspects. Postponing the issuance of the judgments and sentences by a court, the suspension of the punishment and penalties execution, imprisonment surrogate punishments, semi-freedom system, conditional releases from the jails, and other cases of the like are all institutions which showcase the legislator's open arm for setting the criminals free of the punishments and penalties. The institution of the sentence adjournment in comparison to the other cases seems to be an innovative initiative and it is apparently devoid of the one-hundred year history of the Iranian legislation [8-11]. The institution of the sentence adjournment was first established according to the articles 40 to 50 of the Islamic penal law enacted in 2013. Article 40 proposes the conditions of this statutory mandate. Article 41 expresses the various types of adjournment mandates which are classified into two categories of simple and caring mandates. Article 42 points out the strategies and policies which are required to be devised in line with the caring postponement mandates. Article 43 underlines the verdicts over which the court has discretionary rights but the perpetrator is not obliged to observe them. And, finally, the articles 44 and 45 make reference to the statement of the effects and consequences emerging from observing or

not observing the orders and decrees issued by the court and also the effects of committing or not committing a crime are all underlined therein [5-11].

Study Hypotheses:

1. Adjourning the issuance of a judgment means postponing the verdict indicating an individual's conviction whose criminality has been verified and confirmed..
2. Main conditions of adjournment in issuance of a judgment can be divided into criminal act-related conditions and the perpetrator-relevant circumstances
3. The effects of adjournment in issuance of a judgment can be investigated at any time when maintaining or expiring such a mandate.

Research Methodology:

The present study has been carried out based on a descriptive-analytical method and the information and the data required for performing the study have been collected through taking advantage of library methods and the data have been extracted through referring to the books, articles, codes of the law, guidelines and the bills under investigation.

Sentence issuance postponement conceptualization:

Sentence postponement has been defined as adjourning, delaying, hesitating and hindering in accomplishing a task and doing something with a great deal of procrastination. And it has to be discerned as some sort of leaving a job to be performed in the future and postponing a task to a later period in time. And, finally, in another dictionary it has been defined as inhibition, delaying and hesitation in fulfilling a task.

"Not issuing the penal sentence against a culprit whose commitment of a crime has been tried and made sure by a judge with the purpose of making the formal penal reaction adapted to the unique characteristics of every individual perpetrating a crime to the maximum extent possible in cases that the conditions for executing such a mandate are all satisfied according to the terms defined in the law".

The effects of adjourning the issuance of a sentence:

The basic theory in sentence adjournment philosophy is conviction based on labeling theory, which, is, in fact, avoiding tagging the culprits with criminality labels.

Based on the law, the court does not have the right and qualification to discretionarily postpone the issuance of the verdicts for the entire array of the crimes. But in the area of the canonical punishments of Ta'zir, in which many of the crimes can be classified, the court can adjourn the issuance of the sentence after the accusation is tried and the conviction is insured.

The effects before the adjournment period expiration:

Such effects are revealed when the judge has made a decision to postpone the sentence issuance and the adjournment period of the ordinance has not come to an end or the court has not come to the conclusion to cancel the adjournment decree due to one reason or another. In this stage, the effects take one of the two forms of absolute or conditional.

Absolute effects:

Such effects are termed absolute because they are solely exercised in case that the sentence issuance adjournment verdict is ordained and they do not need any prerequisite to become fully applicable. These effects can be studied within four subject matters of, respectively, freeing the culprit from imprisonment, announcement of the sentence issuance adjournment mandate, providing for inspection possibility and the accomplishment of the obligations deemed as necessary from the perpetrator's side.

Conditional effects:

Such effects are dependent upon the realization of certain conditions and they are not envisaged as actualized merely through the sentence issuance adjournment verdict announcement. The conditions here are, respectively, conditional depending on the commitment of a crime and conditional depending on the non-submission to the courts ordinances.

CONCLUSION

Individualization of the punishments which is considered as being gained through the accomplishments by the efforts made by the neoclassic thinkers believing in the retribution-intimidation has been discovered to be of different kinds, including legal, judicial and executive. It has been endeavored in the Islamic punishment codes of law to establish a new institution called the institute for the penal conviction sentence issuance adjournment meanwhile preserving the prior methods of punishment individualization which are currently in practice in Iran's penal law. Such a method of the punishment individualization which is the judicial style of individualization is applied in the courts and by the judges while judicially trying a penal lawsuit provided that, firstly, the committed crime should be deserving a low order (Taziri) punishment of the degree 6 to 8 and, secondly, the court should have come to the realization that the

accused party is guilty and this should have been insured through penal issues justificatory evidences and documents and, thirdly, the trying judge should have hope in that the culprit can be corrected in future and this, as well, should have been assured through taking the culprit's past history and the current states and moods into consideration.

If the judges pay a more careful and extensive attention to this institute and if in cases of less important crimes the legislator allows for obligatory sentence issuance adjournment and removes it from being at the discretion of the judge and turn it into something more of a compulsory nature rather than being optional or if there is provided the preconditions for making such a mandate of sentence issuance adjournment more all-inclusive and extensive to cover a wider range of the crimes, then such an institute will become more efficient. Thus, it can be ultimately concluded that:

1. The institute for sentence issuance adjournment, while being different from the other similar institutions, including the institute for suspension of a verdict issued by the court, is a foundation which is predicted and devised by the Islamic punishment law enacted in 2013. Such an institute has been excerpted from the France's penal law (articles 60-132) and entered into our country's penal law with the purpose of supporting the non-dangerous criminals or the ones committing crimes of less importance.

2. Generally, the individual expediencies along with the public exigencies form the fundamental premises and background conditions for the prediction of the sentence issuance adjournment institute in the Islamic penal law approved in 2013 by the legislator.

3. The idea of crime commitment without punishment should be institutionalized in the form of an axiom in our penal law. Additionally, in order for such an idea to be practically exercised there is a need for the thorough investigation of the new science of criminology and the results obtained therein should be applied parallel to the criminals' correction and rehabilitation without taking advantage of the punishment as a lever.

4. The sentence issuance adjournment institution is essentially a non-penal formal foundation which can temporarily replace the punishment.

5. The institute for the sentence issuance adjournment, with its practical premises, is laid upon the foundations of imprisonment punishments inefficiency, decriminalization, de-judicialization, and judicial individualization.

6. The institute for the sentence issuance adjournment has also been laid upon the philosophical foundations such as pragmatism, justice, the individual and the society.

7. The criminology science surveys indicate that the sentence issuance adjournment institute can result in a great deal of effects and influences and such effects are manifested occasionally in the society level and they are sometimes revealed in the penal justice institutions level. The criminological effects of the institute for the sentence issuance adjournment in the society level are connected to the criminal and the victim of the crime and even the third parties who have no role in penal processes.

8. The correct and proper sentence issuance adjournment activities can create an essential revolution in returning the individuals to the society and it can also play a role as an encouraging factor in motivating the criminals to try to correct themselves. Therefore, the judicial authority as the judge can think of a criminal as not deserving punishment and refrain from punishing the individual through making use of the novel criminological, psychological, social and economical findings regarding the crimes of less intensity and lower importance (Tazir) based on the predicted conditions and mechanisms devised in the sentence issuance adjournment mandate.

9. The fact of the matter is that our judicial procedure is more tending toward the use of simple adjournment and caring adjournment is rarely ordained. Some of the specialists may find it a result of the judges not being aware of the advantages of the caring adjournment of the sentence issuance, but such a reasoning is not so much acceptable.

10. Unfortunately, for the time being, it seems that the sentence issuance adjournment is more a tool applied in order to offset the criminals' population. Due to the same reason, it is seen that the required precision is missing from the verdicts decreed by the courts. Samples of such an imprecision can be observed in the section on judicial procedure evaluation. Adventitious and improper sentence issuance adjournment can be as devastating as the inappropriate punishment.

11. Essentially, the sentence issuance adjournment should be carried out through thoroughly evaluating the individual's personality. In a great majority of the advanced countries, such a task is performed through gathering and filing personality information of the culprit along with his or her accusation files and information. Unfortunately, the culprit's personality file is still missing. This is while, essentially, the culprit's personality is considered as one of the main scales and indicators in determining the intensity and the weakness of the punishment regarding the low-order less important crimes deserved to be penalized through the use of canonical punishment of Tazir. Due to the lack of such files

and information, we expect that the judges of the courts, as jurists, should take responsibilities related to the education, psychology and sociology sciences besides fulfilling their own main duties.

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