

The Nature and Effects of Institution of Postponement of Criminal Verdict Issuance in Iran's Law

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Abstract

One of the mentioned legal institutions in fifth chapter of Islamic penal law is the postponement of criminal verdict issuance axiom. Surely application of this institution in Iran's criminal law is due to attaining special goals. Goals like prevention of perpetration of a crime, rehabilitation of criminal, could be mentioned as two goals associated with the postponement of criminal verdict issuance in the legal system of Iran. Postponement of verdict issuance could be done in two ways; simple postponement or under surveillance. In under surveillance postponement law makers have regulated some obligatory and some optional commitments on criminal. Most of these obligations are made to reform the character of criminal or in order to prevent the reappearance of the criminal in crimeful environments. In present study along with considering the institution of postponement of criminal verdict issuance, the foundation of this penal institution in new penal law is examined.

Keywords: postponement of verdict issuance, new Islamic penal law, nature and effects

1. Introduction

In the process of trial the judge, from the beginning of hearing to the moment of final verdict issuance, may take advantage of different institutions to reduce or suspend the punishment in order to reintegrate criminal with the society and eventually, reformation of society by judiciary system and this kind of treatment is a depiction and a reformation of behavioral constructs of individuals in society.

Some believe that a criminal after committing a crime and trial process and verdict issuance with regard to mitigation of punishment, should be punished and suspension causes inappropriate reaction toward criminal's anti-social behaviors. But it seems necessary to consider the fact that crime might be done under specific circumstances by individuals. It is possible that criminal is under 18 years old, the crime might be done due to honorable motivation, he/she has done just an anti-social behavior or the criminal is young and should be provided with commutation, opportunity and proper environment to return to society. Thus the constitution of suspense is suitable and can facilitate the return of individual to society. With regard to the notion of the present article which is the institution of verdict issuance postponement, it is worthy of mention that the cases with pardonable crimes and with merely private aspect which to a great extent verdict can be determined by the charge or discharge of complainer, this institution was made by law maker to give the complainer the power to ask the court to renounce the persecution or postpone persecution in order to observe future deeds of the criminal and to decide on pressing charges based on them.

From terminology prospect postponement means delay and procrastination. In legal context postponement means deferment of verdict issuance by court. Postponement of verdict issuance is a legal expression which usually is used by law makers. It means that under special circumstances, expediency may be applied and despite of the existence of criminal elements issuance of verdict may be postponed.

Legal base: in penal law, it is the law that has the first and last say. Everything must be according and adduced to the law and even if in a specific case the law is ambiguous the interpretation should be narrow and in favor of accused and broad interpretations should be avoided. For this reasons the legal adduction of such institute should be pursued in present penal law. The only existing legal adductions are sections 39 to 44 of renewed Islamic penal laws which passed by legal commission of Iran's parliament in 2011.

Paragraph 39 of Islamic Penal laws stated: "in crime with discretionary punishments of level 6 to 8, the court

after ascertaining the conviction of accused, with regard to personal, domestic and social circumstances and records and conditions that motivated or caused the crime, in the presence of below conditions postpones the verdict issuance from 6 months to 2 years”.

1. The existence of conditions for mitigation of punishment
2. Prediction of criminal correction
3. Compensation of losses or arrangement of the process of compensation
4. Lack of effective penal records

Note: according to paragraph 25 effective conviction is the one in which the convict is deprived from his/her social rights as a result of enforcement of judgment.

2. The Constitution of Postponement

One of the predicted features for correction of criminals is postponement of verdict issuance which is decided based on answering the needs of criminal and not the severity of crime. Practice of justice has been flourished through many years by the use of past experiences. In the process of administering justice in a legal system specially in determination of punishment the judge has a unique and determining rule in order to attain the goals of penal system. Bestowment of authority to the court to determine the punishment from among the different choices of punishment, assumed as the liberty in determining the penal policy (Ardebili, 2006). The constitution of postponement of verdict issuance is rooted in United Kingdom legal system. In distant years if there were doubts about the certitude of documents or in expediency of special conditions, the issuance of the verdict was postponed to apply for majestic pardon. This constitute during times gradually turned into the constitution of suspension of punishment and postponement of verdict issuance (Zera’at, 2013).

Considering section 40 Islamic penal laws “the court, after ascertainment of culpability of defendant with regard to personal, domestic and social status, penal records and the conditions that caused committing the crime, in the presence of special circumstances, can postpone the issuance of the verdict from 6 months to 2 years.”

3. Discretionary Punishment

According to the new Islamic penal law the punishments can be categorize to 4 main types; Islamic prescribed punishment, retaliation, compensations and discretionary punishments, Which postponement of punishment only can be issued in case of crimes with undetermined or discretionary punishments.

In section 18 of this law discretionary punishment is defined as; “discretionary punishment is a type of punishment which is not categorized under titles like Islamic prescribed punishment, retaliation or compensations and according to the law in case of committing religiously illegal acts or breaking governmental rules is determined and applied. Type, quantity, quality of administration and regulations about commutation, suspension, or termination and other verdicts of discretionary punishment will be determined according to the law”.

4. Punishments of Level 6 to 8

According to section 19 of Islamic penal law, discretionary punishment according to their severity categorized in 8 levels. The minimum level of punishment is level 8 and the maximum punishment is level 1. In order to postpone verdict issuance the court should consider the legal punishment of crime and if it is placed in the categories between 6 to 8 in new Islamic penal laws the court has the authority to postpone verdict issuance. Any punishment which its maximum is not more than maximum punishment in level 6, can be candidate to be considered by court for postponement of verdict issuance.

Level one: incarceration more than twenty five to thirty years. Fine more than one billion Rials. Confiscation of properties.

Level two: incarceration more than fifteen to twenty five years. Fine more than five hundred million Rials to one billion Rials.

Level three: incarceration more than ten to fifteen years. Fine more than three hundred sixty million Rials to five hundred fifty million Rials.

Level four: fine more than one hundred eighty million Rials to three hundred sixty million Rials.

Level five: incarceration two to five years. Fine more eighty million Rials to one hundred eighty million Rials. Deprivation of Social rights more than 5 to 15 years.

Level six: incarceration more than 6 months to two years. Fine more than twenty million Rials to eighty million

Rials. Whipping from thirty one to ninety nine strokes. Depriving of social rights more than 6 months to five years. Announcement of final verdict in medias.

Level seven: incarceration from ninety one days to six months. Fine more than ten million Rials to twenty million Rials. Whipping (flogging) from eleven to thirty strokes. Depriving of social rights to 6 months.

Level eight: incarceration to three months. Fine to ten million Rials. Whipping to 10 strokes.

Note 1: the cases of social rights depriving are those which mentioned in subordinate punishments.

Note 2: punishments that its minimum accord with one of the above levels and its maximum accord with the higher level are considered as the higher level.

Note 3: discretionary whipping more than seventy four strokes is applicable only in case of crimes which are detrimental to public morality.

Note 4: in case of plurality of crimes the severer punishment should be done and in case of implausibility of recognition of the severer punishment the incarceration punishment is applicable and also if a punishment is not in accordance with any of the eight levels it should be considered level 7 punishments.

Note 7: confiscation of things or properties which were used to commit the crime or they were supposed to be used in a crime excluded from this section and subsection 6 and section 20 and they were treated according to section 213. In the cases that court issue confiscation verdict, the usual life costs of the criminal and his/her under protection individuals should be excluded from the verdict.

According to the mentioned sections it is evident that only incarceration punishments to two years and fines to twenty million Rials, whipping to thirty strokes and depriving from social rights to six months are punishments which included in postponement of verdict issuance institution.

5. Existence of Commutation Conditions

According to subsection A of section 40 one of the conditions of verdict issuance postponement is the existence of conditions of commutation. The court can only issue postponement of verdict it reach the ascertainment that the criminal has one or more conditions commutation.

The conditions of commutation of punishment are elaborated in section 38 of new Islamic Penal Law and like the old version of the Law have exclusive aspects. These cases are mentioned in below:

- A. Remission of complaint or private claimant
- B. Effective cooperation of accused in identification of accomplices in crime, obtaining documents, discovering properties and things gained by crime or used in committing the crime.
- C. Announcement of accused before charge or his/her effective confession during process of investigation.
- D. Penitence, clean record or special condition of accused like senility or disease.
- E. Efforts of accused in order to reduce the effects of crime or his/her deeds in line with compensation of losses caused by crime.
- F. Insignificancy of the losses of offended or the results.
- G. The light complicity of the accomplice or accessory in the crime.

The court must mention the conditions of commutation in the verdict.

Remission of complaint or private claimant in case of unremissionable crimes also considered as a condition of commutation. Because in case of remissionable crimes when private complaint remiss the accused it causes issuance of writ of disposal and issuance of writ of stay (Khaleghi, 2011).

The effective cooperation of accused in discovering crime must be in a crime in which he/she is an accomplice and not in discovering another crime or assist in the process.

Before the issuance of verdict the accused must do his/her efforts to compensate the effects of the crime to provide court with enough ground for commutation or postponement of punishment.

6. Types of Postponement

According to section 40 of Islamic penal law postponement is either simple or under-surveillance.

A. in simple postponement the criminal signs a written commitment that in the time span determined by court he/she will not to commit any crime and from his/her conduct it is predictable that he/she will not commit any crime in future.

B. in under-surveillance postponement beside the conditions of simple postponement, the criminal must be committed to obey and perform the orders and considerations assigned by court in determined time span.

7. Simple Postponement

In simple postponement the criminal is committed by signing a written commitment not to commit any crime in the time span assigned by court and it will be predictable by his/her conduct that he/she will not commit any farther crime in future. In this type of postponement the law makers designed no mechanisms for postponement period and generally asserted that in the assigned period of time the criminal must not commit any crime, then the court will decide on the time span of postponement and should supervise the conduct of the criminal that of course a constant supervision by court is not possible and the court due to the ascertaining circumstantial evidences makes sure that the criminal is punished and in postponement period will not commit any farther crime.

8. Under-Surveillance Postponement

In under-surveillance postponement beside the conditions of simple postponement the criminal commits to obey and perform the orders and mechanisms assigned by court during postponement. According to note 1 and 2 under section 40 of Islamic penal law passed in 2011 by Iran's parliament, court could not issue writ of postponement of verdict as an absentee verdict. It means that for the issuance of postponement verdict the presence of accused and assessment of his/her character and countenance with regard to conditions and status pursued by law makers are necessary and the judge must issue the postponement verdict after considering all these conditions. If the accused receive the writ of summon and do not attend the court session he will not be nominated for postponement. Moreover if the accused is in custody, the court after issuance of verdict postponement immediately issues the release order of the accused.

Here may emerge the discussion that if in case accused cannot supply the proper and acceptable bail to appease the judge by, and court order lead to custody of accused, or the accused were kept in custody before the verdict announcement and court wants to postpone verdict issuance, Then what is the solution? Perhaps lawmaker in in note 2 section 40 of Islamic Penal law accepted the view that eventually interpreted this matter to advantage of accused and as a result requesting bail and assigning the amount of the bail should not lead to custody of the accused. But with regard to the fact that issuance of such order is only under court's authorization and the court after considering the appearance, social and moral status of accused eventually issue the order, it seems that, the court has upper hand and final say in the situation and with regard to refusal of the accused to surrender guarantee (bail), court presumes this conduct as a sign of demerit of accused to receive such an order and does not issue the postponement of verdict order. But from the tone used in note 2 of section 40 it can be deduced that in case the accused is in custody, the court after the issuance of verdict postponement order, immediately issues order of release for him/her, and court also can request for proper bail in this case. The law makers mean that after issuance of verdict postponement order court can get proper bail and in case of refusal of accused to surrender bail, court can vacate the verdict postponement order and not that the court, heedless to bail surrender order, can postpone verdict issuance and release the accused from custody. This may be in line with the authority of court in verdict issuance postponement order. But it makes issuing bail order useless and if the accused would not surrender any guarantee (bail) the court should not insist and after issuing postponement of verdict order, should take the accused under custody.

9. Conditions of Under-Surveillance Postponement

Under-surveillance postponement should be accompanied with below measurements (Section 41, Islamic Penal Law).

1. On time attendance in time and location assigned by competent judicial authority or social services case officer.
2. Providing information and documents facilitating surveillance on fulfillment of commitments of accused for the social services case officer.
3. Announcement of any change of job, residence, or moving in time span less than 15 days and submitting the report to the case officer.
4. Submitting Permission request from judicial authority in case of travelling abroad. The mentioned measures could be accompanied by some cooperative measures like introducing criminal to some supporting organizations by the court.

10. Vacate Postponement Order

According to first part of section 44; “in the time if postponement, in case of committing new criminal activity punishable by definite(prescribed) punishments(according to Shariah), retaliation, deliberate crime punishable by compensation or discretionary punishments to level seven, the court vacates postponement order and issues the punishment verdict”.

Normally vacate of postponement order is possible after issuance of final verdict about committing new crime by accused so the court cannot vacate postponement order just based on knowledge of committing new crime although the appearance of the law may lead to such interpretation (Zera’at, 2013).

The criminal during postponement period must earn the trust of court in order to prevent court to determine his/her punishment. With regard to the philosophy of postponement it is expected committing any crime lead to vacate of postponement order but the law in this case is not absolute and insignificant crimes which are categorized in level eight do not lead to vacate of postponement order (Sabzevarinezhad, 2012).

In case of criminal’s committing any crime during postponement period, according to section 43 of Islamic Penal Law in case that the crime is punishable by Islamic prescribed punishments, retaliation, compensation or discretionary punishment to level seven court will vacate the postponement order and issues punishment verdict. But in case of not obeying the order of court by the criminal whose punishment verdict is postponed, judge only for one time, as long as half of the period mentioned in the order can add to the time of postponement or issue the punishment verdict. It is also worthy of mention in the note of section 43 it is predicted that: in case of vacate of punishment postponement order, for the accused, issuance of punishment suspension order is also forbidden.

11. Expiration of Postponement Period

According to section 44 after termination of postponement period, with regard to the extent of obedience of criminal toward court orders, reports of social services’ case officer and considering the conditions of criminal, court will decides on determining punishment or issuing exemption of punishment order.

12. Forbiddance of Verdict Issuance Postponement

As it was mentioned before, the issuance of postponement order is only permitted in crimes which are determined by the law. But law makers in the section about suspension of punishment have pointed out some crimes and bound the court not to postpone or suspend the verdict in case of these crimes. In section 47 it is stated that: “issuance of verdict and performance of punishment in case of committing below crimes are exempt of postponement and suspense:

- A. Crimes against internal and external security of the country, sabotage in water, power, gas, oil and telecommunication facilities.
- B. Organized crimes like, armed robbery, robbery with harassment, kidnaping and acid attacks.
- C. Disturbing the peace and threatening with knife or any other weapon, crime against public modesty, forming or operating places of corruption and prostitution.
- D. Smuggling Drugs or psychedelic materials in large scales, alcoholic beverages, weapons and ammunition, human trafficking.
- E. Discretionary punishment substituted for retaliation for life, accessory in deliberate murder, infringement of public security and corruption on earth.
- F. Economic crimes, with value of more than one hundred million Rials.

It seems because the punishment of these crime categorized in level 5 or above then it is not necessary for lawmakers to explicitly announce these cases forbiddance (Sabzevarinezhad, 2012).

In this section by “organized crimes” lawmaker means illegal activities solid collective coordination of individuals which cooperate to reach their financial benefits or power, through constant criminal activities and using any means to reach their goals (Bakhshizade, 2013).

For economic crimes in penal law and other laws there has not been any clear cut definition. Generally it could be said economic crimes are the crimes committed against economy of the country and disturbing the economic system of the country.

13. Conclusion

Iran’s lawmakers in Islamic penal law, passed in 2013, have accepted verdict issuance postponement institution. There defined some goals for the application of this law; goals like prevention of crimes, rehabilitation of

criminals which were pursued by two application methods of simple postponement and under surveillance postponement. The institution of verdict issuance postponement can be seen as a display of fidelity to mitigating justice in Iran's penal law. Moreover the final goal of any other judicial system is reformation and constructive modification of criminals. Usually the crimes happen in the time when criminals are in state of need. This institution is founded to support harmless criminals with justifications like preventing from damaging good reputation of accused and is applied as a mechanism to reform such criminals with regard to their personal, domestic, social conditions, their records and the conditions which motivated and triggered their criminal act.

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