J. Basic. Appl. Sci. Res., 2(6)6071-6075, 2012

ISSN 2090-4304
Journal of Basic and Applied Scientific Research
www.textroad.com

A Survey on Inflicting Severe Punishments in Penal Codes

Hamid Ghorbanpour[1], Mohammad Saleh Validi[2]

[1,*]Department of Law (Field of Penalty and Criminology), Islamic Azad University, Arak Branch, Arak, Iran
[2]Department of Law, Islamic Azad University, Tehran Markaz Branch, Tehran, Iran

ABSTRACT

Applying punishment is one of the differentiation features of penal code with other branches of law science. There are a lot of discussions that have been done about the description, principles and how punishment is performed. One of the controversial discussions is predicting the severe punishment in law and performing that, in the judicial level. Although, in his famous book -epistle about the crimes and their punishments- that it is considered as a preface of modern Penal Codes ,more than he considered the severity of punishment as a cause of prevention of crime, he is emphasizing on certainty and deterministic of punishment. But this belief that the severe punishment because deterring generic and individuals, has strongly penetrated in people and lawmakers minds. This penetration is as much as that today after the relative defeat of criminology of modifying and cure and the crisis in increasing the crimes, the movement of back to retribution in the modern law systems is detectable and indentifying. Penal code of some countries, because of different reasons for responding to the crimes, have used the teachings of severity of punishments through the making the distractive penal policies. The most important flashes of this distractive criminal policy is clearly identifiable in the case of crimes related to drug, crimes in the context of culture and the crimes against with public morals and virtues. Making this distractive policy and based on the severity of punishment theory is in the situation that in the independent researches haven't been paid attention to the evaluation of them. This paper is trying to take considerate evaluation and pathology of implementation of severe punishments in the penal code from the aspects of human rights, philosophical, criminology and penology. So in light of this pathology, different effects of these kinds of punishments on the criminals, their families and even society are considered by the authorities of the penal justice system and also the researchers of penal code.

KEY WORDS: Severe punishments, the theory of severe of punishments, deterring, strict penal policy, reproduction the crime, penal populist.

INTRODUCTION

Penal regulation and in other words the penal code in the human societies, way back to four thousand years ago. So the modern penal code as a systematic field is two hundred years old. And some writers like Caesar Barky, the famous Italian scientist with the book (Epistle About The Crimes And Their Punishments), has been known as preface of modern penal code.[1] Before the appearance of modern penal code, the punishments were applied so tough, *,strict* and so severe because in this era, the governors had a absolute power in punishing and the crime was considered the action that the offender was deserved any kind of punishment that had been determined by governors. In other words, there wasn't any necessity for equity between the committed crime and its punishment. After formation of the modern penal code,, the crime was still considered as an acting against social morality but the perpetrator had to be punished according to the severity and density of the committed crime. This punishment has to be equal for all criminals and has to be predicted for all certain crimes. Eventually, this point of view leads to the genesis of the organized, uniformed shape and equivalent penal justice for all, that his predominant orientation was penal suppressing of the criminal based on the criterion of the severity and weakness of the crime -means regarding the coordination principle between crime and punishment- that it is considered as retributive justice. Based on this model, certainty and deterministic of the crime and the speed of performing that give preventive aspect to justice; It means, on the one hand, it scares potential criminals and establishes public lessons, so it prevents them from committing crimes. On the other hand, corporeal and mental results that are consequences of the committing the crime will be made neutralized and meaningless by suffering the pain, so that they never commit the crime. But this point of view has been faced a lot of criticism by law writers, penologists and criminologists.[2] Penal code in light of criminology studies, gradually has accepted the principles that are more about perpetrator of the crime, not the crime. Thus the committed crime must be considered as a sign for evaluating the rate or the kind of dangerous state or the trauma state of the perpetrator. And implementation of penalty that is related to divesting freedom in prison as

***Corresponding Author:** Hamid Ghorbanpour Department of Law (Field of Penalty and Criminology), Islamic Azad University, Arak Branch, Arak, Iran Email:hamidlaw2@gmail.com

a (clinic of crime) must be a chance for removing this dangerous situation and indeed retreatment of the criminal and eventually preventing of committing the crime. With appearance of the new schools and especially modern social defense school of Marc Ansell, in the arena of penal code and criminology, the criminal is paid attention more than the crime. And regarding coordination between crime and punishment has lost former importance and determining and recognition of the most competent penal devices and secure and cultural activities on rely of the criminal character and his behavioral and mental characteristics on the base of individualizing the crime, gets more important and as a result, retraining as a justifying agent of punishments or the reform and training system, pose the necessity of determining the punishment according to criminal instead of crime.

Despite these criticisms, condign penal justice has impressed many of lawmaker thoughts so far and predicting severe punishments in penal laws is based on the accepting this model of penal justice. With precise considering of penal code of countries, plainly, the influence of this model is observable. The subject is counted as a problem of this research and less regarded is pathology of this legislative approach. It seems that theory of severity of punishment that is a theoretical expression of severe punishments in the penal laws, in word and action, has faced a lot of different damage. In the visionary arena, as it mentioned, penologists about this option that "the severity of the punishments causes generic and individual prevention" have criticized from different aspects and in the action arena also, in the case that the lawmakers of countries have considered the severity of punishment policy and according to that, they launched to pass and perform severe punishments -for example crimes related to drugs- penal system couldn't reach any appropriate result. Not only have these severe punishments destroyer influences, but also from this perspective, in some cases, the punishment itself causes producing other crimes.

It seems, pathology of performing these severe punishments in countries and evaluating the consequences of them are necessary that in light of that the lawmaker can precede wise and more appropriate penal policy.

There are two approaches for evaluating the severity of punishment.

Approach 1: Determining the rate of pain that offender is suffering from a specific penalty. The amount of dissatisfaction of punishment might be determined from the approach of researches that have been done over the citizens.[3] This approach is concentrating on imposing pain and bale and is relied on the Empirical research. In this order, "seba" tried to, by the method such as what 'selin' and 'wolfgang' have used for evaluation the severity of the crime which means public survey presents a criterion for the severity of the punishment. The criticism pointed to this research is, if the people who have been surveyed so far, haven't been punished, their comments might be imprecise or maybe they look at the problem with incuriosity toward others pain. For example, based on this fact that they can't perceive genuine sufferings and pains and deprivation related to be capturing, they underestimate roughness of duration of prison.[4] With surveying the sentenced prisoners or the people who have the record of being sentenced, the severity of various punishments will be more clarified, because they have experienced these punishments and they care about the pain they suffered. This kind of information doesn't exist yet. More precise evaluation is to determine what punishment does with criminals. For example, which chances they lose and what mental loneliness they suffer. In evaluation of the severity of the crimes, we faced two dimensions (accepting the criticism and the consequences). But the severity of punishments only has one dimension: the influence of the punishment on the criminal. It seems, in this case also the criterion of the standard life for the evaluation of the severity of punishments is useful. The severity of the punishments can be evaluated from the angle of benefits which they have affected, and also the importance of those benefits for the living a standard life.[5]

Approach 2: It is the importance of the special benefits and then evaluation the merit derived from deprivation of those benefits. According to this approach, the rate of harms to the interests of individuals from the view of imposing one punishment, determines the severity of the punishment. There are important benefits that can affect quality of life but, for some reasons, freedom is the most important benefit that can be neglected or limited. First of all, freedom means releasing from captivity, custody or physical limitation. This benefit plainly is limited by the custody punishment -most severe punishment that is used conventionally- second of all, the main objective of applying the punishment is to blame unacceptable behavior and prevent committing crimes. Restricting people freedom often is an instrument that leads to these objectives. (Aim justifies the means). Eventually, today, personal freedom is a vital feature in individual lives and restricting this right means a person has been detested from a percentage of his total right as a citizen. This approach indicates that interfering the punishments how deeply indemnify the quality of individual lives and the average deprivation of personal right, is a criterion for the severity of the punishments.[6]

Disabling as one of the objectives of punishment, conventionally by the custody, is applied as one of the samples of severe punishment. Custody is known as a place where the criminal has been kept far from society and he is losing the chance of committing the crime -at least in society-

Disabling has been derived from the theories of beneficiary. If the objective is preventing people of committing the crime, the simplest instrument for achieving that is to disable people who have disobeyed and violated before. People who their danger generally have been proven by their penal record.[7]

The important criticism of determining punishments according to disabling, is that the civil rights of citizens are not oppressed for the things they have committed (crime), but for the things they might do in future. Punishment according to disabling means criminals suffer punishment even more severe than they deserve. According to optional disabling, punishments for the similar crimes might be strongly unequal. Because according to the danger of the criminal, not the committed crime, punishments are applied. The future consequences of punishment interfere with ranking punishment and its percentage; it means an inconsiderable and trivial crime might be attributed more punishment in comparison with a crime with more severity. Using past crimes in predicting future crimes means that the criminals suffer extra punishment for the penal record. [8]

MATERIAL AND METHOD

In this paper, various instruments and methods have been used to gather information. These instruments are divided in to two forms: Library and field methods

In the library method, writers are trying to point various comments in this subject with referring and reading related books to discussion that the references of this paper, all have been oriented to this subject. But in field method writers have accumulated a lot of information about punishments in different countries. And they have investigated different opinions of more than 30 persons of experts and judges and advocators in various countries especially Middle East. The writers of paper also have investigated and evaluated more than 100 penal profiles and personal referral to courts and prisons and doing Q & A from sentenced from these punishments and their families and various social groups in the middle east countries and in this paper have done scientific and tentative analyzing over the these data and it can be said this paper has adequate acceptable validity and reliability.

In subject of using expertise opinions, mentioned experts all had sufficient experience in the context of penal law and criminology and sociology and scatology. The writers of paper have used experts' opinions personally and with interview. And eventually after nearly 100 hours interview with the mentioned experts, for integrating their opinions, 3 brainstorm sessions that in every one of them 10 out of 30 experts attended, have been used.

About the investigation of penal code profiles, writers of the paper after dividing profiles into 5 categories based on type of punishment have investigated profiles. These 5 categories included:

1- People sentenced to execution
2-People sentenced to life imprisonment and long term prison
3-People whose possession or part of it has been confiscated
4-People sentenced to punishments are related to reputation
5-People sentenced to physical punishments

And writers after distribution, have investigated each one of these groups separately that in every of profiles, not only the influence of these kind of punishments on sentenced person has been investigated but also the influence of these punishments on the family of sentenced person and consequently on the society have been investigated and analyzed. Writers also did not confine above cases and made character profile about each an every of sentenced persons that are distinguishing points of this paper from other papers.

RESULTS

The objective of this paper is to know principles from theory of severity of punishment and detect the depth of penetration of this theory in juridical and penal speaking that in the light of this recognition, appropriate pathology of performing these punishments in laws of countries has been reached. Turning toward the severity of punishments is not the only law making discussion but public opinions also are considered the practical back up of this subject. As we indicated in the text of paper, most of the people, even the sophisticated and educated people believe that the severity of punishments has application like the prevention. In this Populist discussion, it is clear that the authorities of penal justice system in some of the countries, for the different reasons like receiving acceptance and legitimating, they ignite the severity of punishment alternative and in result we face a kind of penal populist. The authorities of penal justice system face up to problems like increasing the crime and for response to the phenomenon of fear of crime, they tend to the solution that this Simplistic solution itself faces with a lot of losses. This mentioned saying is detectable in many penal codes of countries. But specifically with penetration Teachings of penal jurisprudence such as retribution and penance, applying the severe punishments have been more emphasized. Whatever is posed as a aboveboard applying of penance punishments such as whipping, cutting hands, are the samples of these cases. In

this paper, we wanted to reach the pathology of applying the severe punishments. As it mentioned, if this pathology didn't consider the reason of penetration the theory severity of punishments, it would be useless practically. However, the results of previous researches are being expressed in following as some certain and determined alternatives.

A- Because the conception of severe punishments is relative, this paper, initially has considered the recognition of concept of such punishments and it seems one of the main achievements of this paper is to investigate of severe punishments according to international documents. Based on this concept, the injustice punishments,

Unnecessary and physical punishments can be considered as important examples of severe punishments.

B-The theory severity of punishment, because of different reasons has penetrated in the penal code systems of some countries and different aspects from intensive criminal policy in laws and penal procedure in countries are observable.

C-Applying severe punishments can be evaluated based on various approaches. One of the most important approaches, the right of mankind, criminology and penology approach is notable and emphasizing.

D-Evaluation of the severe punishments with each of the mentioned approaches shows that applying and performing this kind of punishments has manifold immoral consequences. Applying severe punishments, specifically in aspect of human rights cause a lot of damage over "human sincere". And breaking human sincere practically will be locking any kind of modifying over crime.

In aspect of criminology applying severe punishments, first in a view of labeling phenomenon, results in reproducing the criminal activity and brings the shame of calumnious and second, has massive effects on the family of the criminal. In the aspect of penology, researches have shown that there is no direct relation between applying severe punishments and prevention -General or specific- that can be approvable. Briefly, it can be said that: applying severe punishments that are according to the theory, in theory of severity of punishment. They are not defendable any way and cannot resist to critical evaluation.

The plain achievement of this paper, in the context of critical evaluation of severe punishments in the penal system, can be seen in the following items:

First, applying severe punishment causes reproducing the crime and consequently increasing the crimes in these countries, because as the criminological theories express, rigor does not cause prevention rigor but in the training process, reproduces that.

Second, applying severe punishments have provoked the crisis of legitimacy of penal code in these countries. The crisis of legitimacy means: when applying severe punishments can't have effect on the crime phenomenon and support the feeling of safety and reaching justice, applying that does not have any acceptability in public opinion and insisting on applying the laws which are guarantee for severe punishments leads the legitimacy of penal justice system to being questioned.

Conclusion

According to the mentioned points in this paper, we can achieve following general results:

1- In the level of Audience of penal justice system (people)

1-1- With effective and appropriate use of public media, it has been tried to acculturate and as possible reduce the punishment – oriented mentality of society.

1-2- Public media and press with acculturation the welfare and art (amnesty and remission and collusion) that are from the advices from the God, are expended. Also these kinds of media support the victim's family. And it is not appropriate with foreign media pressure they try to impose their idea on victim's family. And eventually cultural objectives become cultural behaviors.

2- In the officials of penal justice system levels:

2-1- Lawmaker modifies the items that without valid reasons consider passing severe punishments. In other words, first of all take consideration of decriminalizing from the cases like considering petty crimes as a genuine crime and second; reviews the punishment of crimes with considering the subjective and objective criteria that have been investigated voluminously in this paper in details.

2-2- Substantial punishments –that his bill still has been waiting– obtain a suitable instrument for preventing severe punishment; so it seems necessary accelerating in passing that.

2-3- Initiating the watchfully suspension and after that being careful that the rate of monitoring over the criminals must be according to severity of committed crime. So the most rate of monitoring has to be applied for the people who have committed most severe crimes. And with establishing this institution, expenses of surveillance are much less than expenses of discovering and following and… in repetition of the crimes.

2-4- Instead of making and using huge prison whose managing is a much harder, we have to use maintenance and rehabilitation centers or training and segregated corrective bases based on the kind of crimes and the age of the sentenced criminals.
2-5-Superiority of predicting the crimes over preventing of crimes and also superiority of social prevention over disciplinary and juridical prevention that, spending money in this way is being considered investing and definitely with much less expenses, we will have more successful criminal policy.
2-6- Using specialized commissions in juridical audit which causes cutting down the processes and the time of prosecution and also reducing the expenses of prosecution and eventually the context of public trust to juridical system is obtained.
2-7- Passing the law of using installation (suspension, conditional freedom and substantial punishment) from the beginning and not conditional on passing half of punishment. It means under the circumstances of behaving appropriately before issuing of the verdict or the time between issuing of the verdict and implementation the verdict, if criminal takes proper steps such as bringing satisfaction of victim's family or compensating the losses and… the judge can use these installation according to the mentioned passed law. And in contrast, it can encourage and provoke the judges for using of these installations.
2-8- In juridical level, it is preventing mere punishments with more using of instruments like suspending punishment and suspending prosecution. Unfortunately, despite the fact that instruments are formally recognized, in action they less inferred.
2-9- Constituting character profile and referring and inferring to it in all processes of prosecution -like giving leave- should be paid attention and we also can reach supporting from community by supporting individual and in this way we can prevent crimes. Basically, punishment is the last instrument (that is a wise and logic punishment and not severe punishment and against of human sincere)
2-10- Disintegration between dangerous and non dangerous criminals from the view of scientific evaluation of dangerous state of criminals is inferred. Applying severe punishments and functions like disabling the non dangerous criminals are not justifiable. (As in many of countries the death penalty and execution were dissolved)

REFERENCES

[1] Vold's Theoretical Criminology, Sixth Edition, Mar 2009, Oxford University Press, Thomas J. Bernard, Jeffrey B. Snipes and Alexander L. Gerould

[2] Making Sense of Criminology , Keith Soothill , Moira Peelo, Claire Taylor, September 2002, John Wiley & Sons, Inc.

[3] Schiff,M.F.,"Gauging the Intensity of criminal sanctions; Developing the criminal punishment severity scale (cpss)",Crriminal justice Review,1997,p 179.

[4] Von Hirsch.A., Commensurability and crime prevention: Evaluating formal sentencing structures and their rationale, The journal of criminal law and criminology,1993,P217.

[5] Von Hirsch.A. Censure and Sanction.Oxford : Oxford University Press.1993,p 34.

[6] Pincoffs, Edmund L.The rational of Legal punishment .New York: Humanities Press, 1966.p2.

[7] Zimring,F.E.,and Hawkins,G., Incapacitation,New York: Oxford University Press. 1995, p36.

[8] Von Hirsch.A., and Ashworth, A., Proportionate Sentencing, exploring The principle,U.S, New York,Oxford University Press,2005, p20.