

The position of the principle of personalizing punishments in Iran criminal policy

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ABSTRACT: Criminal law follows a series of principles that the purpose of each of them follows the social order and the protection of individual rights and social. The most important of these principles is the principle of individual guilt and punishment. Make punishments to the individual punishment namely: adopting criminal measures appropriate to the real character that it is necessary to judge the true character of the offender knows; and this knowledge is achieved by formation characters file which Criminal Justice will form with criminal file. Criminal file is describing the quality and crime pays; and file characters, contains delinquent's complete information on the physical and psychological and social biology characteristics. Knowing the precise character of the offender which judge found it by character filing, helps to him to adopt the best strategy in dealing with offenders with recognizing factors various affecting the criminal phenomenon and determine contribution every one of these factors and the share of commits free will and motives of crime; so that could to reform and rehabilitate offenders and return him to the bosom of family and community.

Keywords: Individualizing principle, punishment, penalty rights, personality files, crime, and Criminal policy of Iran.

INTRODUCTION

Human has been faced with the phenomena of Crime and it is derived from searching of historical events that human supposed this event as a kind of fault and disorder in the balance of social life and for this reason always reacts against crime. At first individualizing the punishments has been grown from the thinkers, philosophers' sight and completion of punishment borne at the end of the 19th century. This principle firstly accepted in neoclassic school, then in certainty school, and again in social difference school by Gramatica and Mark Ansel individualizing of punishments seriously supposed.

Individualizing of punishments means doing and fulfilling the crimes according to offender's personality and physical, mental, and social characteristics that because of the kind of crime or offender's characteristics has been predicated by lawyer and cleared by judgment and presidential forces and may be resulted to stress, rebate or suspension of crimes. This purpose only achieves with knowing criminal's real personality that judge knows it by making personality file near criminal file and achieving ideas of different science expert. Personality file includes complete information from individual and family history and ideas of medical, mental, and social helper experts.

Nowadays attention to criminal's personality in penalty rights has more importance and having penal justice and reaching to punishment purposes without knowing criminal personality is difficult and without it, penalty rights may expand cruelty instead of fulfilling justice. In rights of Islam focusing on keeping personality of all people even criminals and for their rights has been used from different methods of comparing crimes with offender's personality, location, and manner. "Legislative, judgmental and executive personalizing of crimes" observed widely in Islamic

rights and undoubtedly Islamic rights are the pioneer of attention to criminal's personality and maker of different methods of individualizing penalties.

Legislative individualizing principle of penalties in criminal policy of Iran:

Lawmaker identifies various penalties for members of special groups of offenders because of different conditions. This stage fulfills with law making and causes to achieve favorite purpose of criminal policy (Ahmadi Abhari, 1998).

Definition of individualizing principle of penalties: This principles means, doing and fulfilling penalty proportionate to offender's personal and physical, mental and social characteristics that because of the kind of crime or offenders characteristics has been predicted by the lawyer and cleared by judgment and presidential forces and may be resulted to stress, rebate or suspension of crimes (Noorbaha, 2009).

Causes of legislative individualizing of penalties:

Because of offender's personal characteristics or injured from crime: At the legislation stage the lawmaker should consider offender's manner, gender, safety, religion, job, dislike, past, tries after crime, governmental post and etc. He should consider manner, behavior and actions that can help directly or indirectly to doing crimes.

Because of location and instruments of doing crimes: Sometimes lawmaker considers place, time and instruments of crime offensive at identifying degree of penalties.

Because of the identifying of crime: Sometimes lawmaker, in identifying penalties, individualize penalties considering penalties for persons or for things or for common safety and relax, and identifies heavy penalties for the fines that occurs at the time of war.

Methods of legislative individualizing of penalties:

Regulating methods: In this method lawmaker tries to reduce stress of penalties and or completely suspend it according to the conditions in which the crime occurs or characteristics that offender has. Here suspension and rebate of penalties is considered.

Rebate of the penalties: Whenever causes of penalty rebate accompanies with manner of the crime, offender's penalties reduce. Penalty rebate in this case is lawful and judge has to do it. (Ardabili, 2006). According to 22 article of Islamic penalty law in stopping penalties courts are: 1 Suer's remission 2 accuser's expressions 3 conditions of crime 4 accuser's confession 5 accuser's past 6 accuser's action to rebate effects of crime.

Suspension of penalties: Sometimes lawmaker suspends some of the fines for special conditions of penalties and wants not to fulfill those penalties because in most of times fear from fulfilling penalties has better effects than doing them. Suspension laws of fulfilling penalties, with 25 to 37 articles of Islamic punishment law 1370, have been predicted.

Stress methods: Sometimes it is important to maximize criminal penalties and so penalties fitted with offender's personality, skill and job and judge considering penalty stress in lawful article, stresses penalties. Causes that stress penalties based on law texts are:

Crime repetition: It means that person crimes again. Lawmaker knows this crime repetition and judge fulfill penalties based on second crime, as has marked it in 48 article of Islamic penalty law.

Crime plurality: It means doing crimes without offender's true convection that is pointed at 47 article of Islamic penalty law.

Judiciary individualizing of penalties in criminal policy of Iran:

In this stage judge using clear choices and total law choices and by studying offender's personality and past, fulfilling rebate or stress about offender dose the fittest reaction.

Motivations of judiciary personalizing of penalties:

Halting: Certainly, every kind of thinking in prevention of crime is logical way so that somebody thinks, achieving to effective criminal policy needs preventing thoughts at first (Ardabili, 2005).

Reeducation: That is offender's well making and preventing from doing crimes, penalty in this method is as a class in which offender learns necessary learning toward life elegant with society, it is also as a heal that cures his physical and mental inaudibility (Jean Pradel, 1994).

Revenge: The first role of penalties is to revenge that clam person and so offender punishes. This moral characteristic of personality has been cured with fulfilling criminology results (Gholdozia, 2005).

Methods of judiciary personalizing of penalties:

Judge's options in identifying penalty: Briefly choice of identifying penalty between known limit, selecting kind of penalty, changing penalty, dividing penalty and judiciary stress or rebate of penalty are known examples of these options in common rights. In penal rights of Iran can point to rebate, suspension, stress and changing penalties.

Remorse: It means regretful from sin, remorse dose not cut penalty and according to the laws of some countries such as England and India, punishes offender's even for starting the crime even he declines completing crime voluntary. In penal principle of Islam, remorse is one of the important causes of falling penalty.

There is a verse about remorse in Holy Quran (Baghereh, 186) It is possible to personalize penalties in limits but kindly relates to before proof of crime and if remorse is after proof of crime it is possible to forgive offender by tutor. Principally there is no barrier about limits in effectiveness of remorse, because what relates to remorse includes limits too (Mareashi, 1999).

Executive and mid-executive personalizing of penalties in criminal policy of Iran:

In executive and mid-executive personalizing of penalties at the time of fulfilling penalties, physical and mental factors that plays role in forming mental form, personality, moral and mental states of human, should be considered. According to this logic true time of penalty must change not only based on crime and its conditions but based on penalty itself. If penalty personalizes, this should be done based on punished person (Foucault and Michel, 1999).

Executive personalizing methods of penalties:

Conditioned freedom: Judge doesn't know reaction of offenders at the time of identifying penalties. This reaction only appears when offender is in prison for a while. So there is no need for offender to finish rest of prison time if his reactions is positive and can free the prisoner.(Sanei, 1995) Articles 38 to 40 of Islamic penal law relates to this matter and also has been considered in law of prisons. Prison responsible should do considered freedom according to prisoner's individual differences and analyzing his personality file if they distinguish that prisoner has fitness of freedom and staying in prison has negative effect for him.

Forgiveness: Because pardon cause personalizing penalties, whenever in prison, responsible distinguished that according to the studies that they have done on his file, being free from penalty is his right, can reform him, and forgive offenders that are so and don't have right of conditioned freedom and step toward personalizing penalties.

Whenever lawmaker distinguishes, can reveal criminal definition from every action and forgive offenders of that action. Parts of 1 and 5 from 9 article of forgiveness commission law approves 1994, paying attention to the offender's personality includes pardon conditions. Additionally in article 13 lawmaker points to cases in forgiveness that is related to personalizing it such as: age, marriage, children's number, their living state and degree of penalty effect on offender.

Fulfilling penalties: Administering prison penalty in Quran hasn't been approved. God says in Yousef Sura, verse 4: "Persons that imprison are despotic and blames imprisoning persons". For fulfilling prison penalty in Iran law, personalizing orders have been predicted. Now articles of matter, article 43 about making acceptance and distinguishing unit, article 59 about knowing prisoners and classifying the, forming personality file based on article 60 and using information of this file at classifying penalty based on article 62.

CONCLUSION

Principle of personalizing penalties is one the advanced principles that governs penalties, in our country in Islamic penal law 1991 that is administering experimentally has not been pointed to personalizing penalties, to fulfill this principle judge needs all instrument that can't reach to goal without it and that is knowing offender's real personality which makes with personality file and this file helps judge in personalizing penalties, if judge doesn't know offender he can't identify suitable judiciary thought for curing him. Identifying false judiciary thoughts may have opposite results. Enhancing crimes specially cost of crime repetition in society is derived from neglecting this point because mast of the judiciary orders issued without paying attention to the offender's personality and any lawful article that compensate judge to form personality file for offender is not seen and only it is in trail principles of criminal infants that makes judge to for file to review infant's state.

But in spite of this, clarity of pointed articles about bounding and also not paying attention to characteristics and fields of causing crime causes that sometimes personalizing penalties in pointed articles becomes doubtful, in other words with bounding and identifying offenders and classifying characteristics such as mental and puberty and neglecting degree of judge's science and considering that judge's science about personalizing penalties is upper in

laws of Iran. Then possibility of having mistake and favorite contacts will e existed. We only can be hopeful to result when offender's characteristics are coordinated with determined bounding that can be an important error in way of lawmaking and lack of using favorite principles.

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