

Alternatives to Imprisonment or Intermediate Retributions

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Introduction

Imprisonment as an official and common reaction of the society does not have a long background. It was not long time ago where deprivation of liberty and imprisonment of the offenders were only enforced at the pre-trial stage before submitting the accused to the court. Thereafter, the punishment, which used to be in the form of corporeal and inhumane, would be exercised immediately. After the French revolution, and particularly after abolition of corporal punishments, attentions were drawn to deprivation of liberty as a form of punishment.

By a brief review of the process in which imprisonment has been formed and developed in different countries, we will turn to analysing Alternatives to imprisonment.

A. Imprisonment in the Orient

1. Imprisonment in Pre-Islamic Iran

With the exception of those laying claim to the throne, who were likely to be sent immediately to the “Oblivion Castle”, it was common to imprison other ordinary offenders for a few days, at the most, before handing them to the judge for Various types of severe corporeal punishment, execution and, in some cases, pecuniary punishments were common forms of retribution.

2. Imprisonment in Post-Islamic Iran

In post-Islamic Iran, by inquisitorial procedure becoming popular, and alongside corporeal punishments, torture and persecution of offenders, imprisonment deployed as a means of excusing power and authority by the State. However, imprisonment in the view of the Holy Koran must be discussed separately from the issue of the position of imprisonment after the establishment of Islamic State and, in particular, from what was done by the *Omavis* and the *Abbasis*.

3. Imprisonment in the Eyes of the Holy Koran

Reviewing various verses of the Holy Koran, it becomes clear that, alongside retributions under the title of *Hudud* and *Qessas*, imprisonment (*Sedjn*) has also been mentioned.

Nonetheless, imprisonment has not been recognized as an essential institution and/or means of dealing with and isolating offenders. In the Holy Koran and in the opinion of the *Imamia* jurists, imprisonment, except in exceptional cases, has no place.

Imprisonment is seen by the Holy Koran as a means deployed by the oppressive States in order to repel their opponents or to force them to obey.

B. Imprisonment in Europe and North America

1. Emergence of Prisons in Europe (the Old Age)

In ancient Greece, besides its retaliatory function for victims as a means of restitution of honour, retribution had another function which was to bring about peace within the society through the correction of offenders. This approach can be seen in the work of Plato and Ulepin.

2. The Middle Ages

In the Middle Ages the ‘thought of pardon’ derived from Christian traditions, required that punishments be carried on in monasteries. Ecclesiastical penal law, along with its retaliatory acts and punishments, developed in a way that established other sanctions called ‘remedial’: like the clerics who seclude themselves to be forgiven for their sins, offenders should seek to remedy their offensive behaviours by regenerating their souls in prison cells.

In this age, the criminal justice was inspired by the teachings of the Bible and the writings of ecclesiastics and Christians jurists such as Saint Thomas D’Acqin in the 13th century. In 1690, Jean Mabillion, a French religious jurist, published his book “Considerations on Religious Prisons” which made a correlation between the Christian pardon and penal law. In this way, by close cooperation between the aristocrats and Christian clerics, regulations on administrating prisons and particularly on juvenile education and protection were introduced. In addition to France, and under the influence of religious thoughts of this era, prisons were established in Italy, Britain, Austria, and

the Netherlands where special regulations were brought in for juveniles, women, drug addicts and vagrants.

Before the French Revolution, by gradual institutionalization of prisons, persecution and torment became important objectives of punishments. Also, before the codification of modern laws in Russia (1789), Prussia (1780), Toscana (1789) and Austria (1788) which ensued a new era in criminal justice in Europe, torment of offenders became common as a public demonstration, especially where the accusation was an offence against the King. In the latter case, the torment would be more severe since the accused had in fact undermined the throne and the principle of the King's power and, as such, there was no doubt that he must face the most severe punishments and tortures.

Such torment was not to re-establish justice. Rather, it was to reactivate the reign of the King, a power undermined by the offence of 'murdering the King'. To entail the desired effects, torment must be "intimidating" and "exemplary" and, therefore, was performed in public, through special formalities which were characteristically more of military than judicial structure.

3. The French Revolution and Institutionalization of Prisons

The literature of the Enlightenment era and thoughts of Beccaria in particular, had a leading impact on the French revolutionists' abolishing corporeal punishments with the exception of death penalty. The right to punish was taken from the King and granted to the society. Gradually a view developed according to which punishment must not be measured and decided upon according to the severity of the crime, but on the basis of the likelihood of its repetition. In other words, it was not the crime in past, but the protection of the society and prevention of crime that were taken into account. In a short time, imprisonment shifted into the "major form of punishment" and the *Code Napoleon* of 1810 introduced a hierarchy of various types of imprisonment including imprisonment with hard labour, imprisonment with work and correctional imprisonment. In this way, detention centres were established within every municipality. Also, a correctional prison was established within every governorship and every state had a bigger prison for those convicted to more than a year of imprisonment. In some harbours prisons were set up for those convicted to hard labour.

4. Prisons in Post-revolutionary France

After the Revolution in France, imprisonment was seen as 'desirable' merely because it was based upon depriving citizens from liberty. Compared to other punishments such as pecuniary punishment, deprivation of liberty could easily appear as "equatorial", given that liberty was one of the values demanded by the revolutionists, and, furthermore, it was regarded as a "favour" to which all the citizens were equally entitled. Despite these humanitarian views, nowhere in the world imprisonment has been practically amounted to "equal deprivation" or "mere deprivation" of liberty. From the outset, deprivation of liberty as well as technical changes of individuals (in Foucault's term) were objectives of imprisonment, maintaining its intimidating character in order to prevent both potential and actual offenders from (re)offending.

In this way, and before the emergence of the Italian Positivism, imprisonment had been considered the major punishment in the European criminal justice systems and viewpoints were made on how to improve its performance.

With Positivism emerging, and given the fact the positivist questioned the offender's freedom of will in committing crime, it was believed that the social sanction must be determined according to the "dangerous status" of the offender, that is, the "level of danger" and the social responsibility. Consequently, it was suggested that deterrent measures must replace punishment and penal experts take charge of making decision on the accused even, occasionally, before the crime was committed.

Although positivists were not successful in replacing the concept of punishment by that of "deterrent measure", they had a crucial influence on views on imprisonment as a punishment. The introduction of the probation service and parole in France and Belgium may be considered as important, direct or indirect, result of this school in the end of the 18th century.

By the end of the years of oppression and strangulation caused by the Fascist and Nazis dictatorships in Europe, and after the emergence of the "New Social Defence" school of thought led by Marc Ancel, social defence was formed within the framework of criminal codes and the necessity of the reinstatement of the judge. By admitting probation, humanizing the prisons regimes, and innovating alternatives to the provisional detention

(judicial control orders), attempts were made to restrict imprisonment, particularly provisional detention. In this way, crucial steps were taken towards the adoption of alternatives to imprisonment.

5. Imprisonment in North America

Statistics show that over the past few years, prison population in the U.S has been increasing dramatically. Between 1990 and 1995, the average increase in prison population has been 66.745%. On 30 June 2000, this population has increased to 1,931,659. Thus, at the beginning of the third millennium it has increased to two million people, whilst between 1980 and 1990 the number of those under probation has been increasing from 1.1 million to 7.2 million and the overall number of those under social supervision has increased from 220,438 to 531,407.

Also, there is an evident difference between 'blacks' and 'whites' in terms of the rate of inmate population. While American blacks compose merely 12% of the country's population, the majority of inmates are blacks (35% whites, 46% Afro-Americans and 17% Hispanics.) The problem of condensation has been gradually emerging as a crisis in the West and the U.S. . As a solution to the crisis, penologists and criminologists have suggested that establishing private prisons and letting the private sector to take charge of administrating and organising prisons. As a result, a number of countries have attempted to establish private prisons so that it might be a way to minimize the increasing pressure on the government in this regard.

C. Role of the Criminal Policy of the United Nations in the Field of Criminal Justice of Imprisonment

In line with efforts at domestic and regional level aimed at reforming conditions in prisons, we are facing a fundamental and crucial change at the international level led by the United Nations through resolutions, reports, conferences, and general rules and principles on prison, its organisation and administration. Similarly, significant steps have

been taken towards improving conditions in prisons. These efforts have, *inter alia*, resulted into the following:

1- Standard Minimum Rules for the Treatment of Prisoners

This has been adopted by the majority of the participants at the first UN congress in crime prevention and treatment of offenders in 1955 in Geneva. In pursuit to this, on 31 July 1957 a resolution was passed by the OECD.

2-The fifth congress in 1975, almost two decades after the adoption of the Standard Minimum Rules, recommended to the OECD to evaluate the scope as well as the ways in which these rules were to be enforced. On this basis, the Council, through its resolution of 12 May 1976, asked its Committee for Crime Prevention and Offending to put this issue on its agenda. The Committee, in its fourth and eighth meetings, managed to adopt a text entitled: “Rules on the Effective Execution of Standard Minimum Rules on the Behaviour towards Prisoners”. This included thirteen articles together with comments in the form of resolution entitled: “Practical Enforcement of United Nations Standard Minimum Rules on the Behaviour towards Offenders”, which re-emphasised on the rehabilitative and treating function of imprisonment and its beneficial and constructive enforcement in prisons of the State parties.

Section One

Substitutes and their Importance in the Criminal System

A. Generalities

In referring to the alternatives to imprisonment in its broader sense, we mean any sanction that can initially keep us away from resorting to imprisonment at all or curtail the term of imprisonment. In this sense, not only alternatives such as community service or house arrest (imprisonment), but suspension and probation are also included. According to some American criminologists, however, alternatives or ‘intermediate’ punishments are those with imprisonment at one end and probation at the other (given the American public opinion criticism of the latter institution), enabling the judge to choose the proper punishment according to the conditions surrounding the commission of the crime, personality of the offender and damages suffered by the victim.

Unfortunately, nowadays, at the outset of the third millennium, there is still a tendency towards using imprisonment yet for even longer terms and “obligatory minimums”. This has resulted in its efficiency becoming doubtful. Proponents of imprisonment have provided numerous reasons to justify the necessity of resorting to this type of punishment, of which three reasons are listed below:

- 1- Where the death penalty still exists, elimination of imprisonment is likely to lead the judges towards sentencing the offenders to death penalty.
- 2- Intimidation and private prevention of imprisonment purportedly refer to “disablement” of the offender over the prison term. This may not be achieved by alternative methods.
- 3- Should the imprisonment be abolished, it is not clear how dangerous offenders and recidivists would be dealt with,

B. Reasons Put Forth by Opponents and Abolitionists

In the 18th century, it was believed that imprisonment could work as a lesson for the offender and potential offenders who had not yet committed crime. Here, the emphasis was put upon the offender’s remorse. In the 20th century, criticism on short-term imprisonment and its deleterious effects drew attentions towards the rehabilitation and

treatment theory. Yet, it seems, all those efforts and hopes have turned out in vain and imprisonment has been unable to reach the goals for which it had been projected. The following are reasons for this frustration:

- 1-Inability to prevent recidivism by prisoners (special intimidation);
- 2-Destructive psychological and personal impact on prisoners;
- 3-Contradiction between imprisonment and the principle of “individuality of punishments” in terms of its impact on the convict’s family;
- 4-In many cases, the fact that most of convicts belong to the poverty-stricken class of the society causes the same factors that worked as pretext for criminality to come up once again after the offender is released;
- 5-High costs of imprisonment. That is to say, building and maintaining prisons needs a huge amount of money which is a burden on governments. Besides, the convict, disallowed to take part in social and economic activities, will face difficulties in compensating damages inflicted to the victim. This also entails an overall negative impact on the economic development trend of the society.
- 6-The prisoner loses sense of responsibility and, as a result, hardly commits him/herself towards the social values;
- 7-Low-level health care and moral problems as well as drug-related problems and AIDS in prisons;
- 8-Congestion of the prisons’ inmate population results in considerable financial and human resources to be used merely for “storing up” human beings. As such, treatment and rehabilitation of prisoners become impossible. In addition, such congestion itself works as a source of tension among the prisoners and the personnel;
- 9-Methods used for imprisonment and segregation, harsh attitudes towards prisoners, and discriminations equally augment the dangerous status of violent and non-violent inmates;
- 10-Discrimination against minorities and coloured inmates in some countries;
- 11-In many countries, prisons are facing lack of financial resources and experts;

12-In some countries, those waiting trial (on provisional detention) constitute a high percentage of the inmate population and some of them serve longer terms than the minimum required by the law;

13-In some countries, adequate facilities for segregating the children and those with mental problems from other inmates are unavailable;

14-Often, there is no room for the drug-addicts to undergo treatment and the prison has even become a safe place for drug dealers;

15-In many countries, it has become practically impossible to build up more prisons in order to reduce the congestion in prisons. Similarly it is difficult to deploy and train prison officers, and to provide more financial resources for prisons;

16-Cultural values within the society and inside prisons create violent, anti-social behaviours among prisoners and destroy their morality;

17-The myth of “the doctor healing the criminal and saving him from his criminality” has failed, so prisons are no longer of utility.

With the above mentioned reasons in mind, it must also be mentioned that although abolitionists believe in harmfulness of the prison, they all have their own arguments and views. A number of them consider the Western style criminal justice system as being unfair and, as such, believe in the total elimination of prisons from this system. Along with this group and those radical opponents of imprisonment who are against the State organised punishments, particularly imprisonment, a number of criminologists and sociologists are of the opinion that steps must be taken towards the abolition of prison systems. Yet, on the way to this end, restorative methods must be applied in order to change the elements of prison systems, especially by taking advantage of alternatives to imprisonment and broad social control.

C. Role of Structures and Some other Proper Activities in Using Alternatives

It must be noted that alternatives also cause problems. They must involve a reasonable and appropriate structure to enable judges to use them with confidence in their efficiency and usefulness. To this end, it is essential that laws relating to each of such alternatives be made in a way that takes advantage of the experience of other countries and, at the same time, takes into account the domestic culture and the circumstances of each country so that these laws could achieve their goal of reducing criminal population.

Section Two

Alternatives to Imprisonment at the Pre-trial Stage

A. Generalities

When the accused becomes engaged with the criminal process, he is deemed to be innocent unless his guilt and criminal responsibility is proven before an independent and neutral court. During this period, he enjoys the advantages of the principle of presumption of innocence, clearly reflected in international documents such as the Universal Declaration of Human rights (1948) and the Covenant on the Civil and Political Rights (1966), as well as in regional documents such as the European Convention on Human Rights (1950), and domestic laws. One important result of this principle is the right of liberty, according to which nothing may justify depriving the accused of or restricting his unless he commits an offence and this latter is proved before a competent court.

Although the liberty of the accused is always presumed, it is likely that laws on criminal procedure provide for temporary detention of the accused where necessary and under certain conditions. Temporary detention refers to “depriving the accused of liberty, and his imprisonment by the judicial authority during some parts or whole of preliminary investigations.

It must be noted that, due to the substantial contradiction between “temporary detention” and the presumption of innocence and individual liberty, criminologists and penologists as well as international and regional organisations, by adopting laws and regulations, have attempted to restrain the cases where such means may be used. In this way, and under the instructions of “Riyadh Guidelines”, judicial authorities were compelled to use such means only as “the last resort” and for “the shortest possible term”. In doing so, it was attempted to find the alternative solutions and avoid temporary detention. Besides, attempts were made to use these alternatives from the beginning of the prosecution. In other words, the liberty of the accused is presumed and temporary detention must be used only as the last resort.

It is evident that where it is necessary to detain the accused, a number of rules and regulations must be observed and the rights of the accused must be guaranteed. The following are among the principles and rules governing temporary detention, according to international texts and documents as well as the criminal policy of the United Nations:

- 1-Non-discrimination;
- 2-Prsumption of innocence;
- 3-Prohibition of unlawful arrest and detention;
- 4-Notification;
- 5-Appearance before the judge or other judicial authorities;
- 6-Observing the reasonable time in temporary detentions;
- 7-Right to have access to legal assistance and council
- 8-Right to contact the family;
- 9-Right of appeal against the detention order;
- 10-If acquitted, the right to claim for damages caused by temporary detention;
- 11-Prohibition of torture and inhumane behaviour;
- 12-Segregation of those under temporary detention from other inmates;
- 13-Compensation for damages suffered by those wrongly and innocently imprisoned.

B-Alternatives to Temporary Detention with Emphasis on the International Criminal Policy

Transnational criminal policy, which has been particularly reflected within a number of documents such as the Covenant on Civil and Political Rights, Tokyo Standard Minimum Rules, as well as different congresses on crime prevention; contains important solutions with regard to the alternatives to pre-trial imprisonment. These solutions have been illustrated by domestic laws. Part of the above mentioned rules concern non-custodial measures as alternatives, and some of them relate to “alternatives to criminal prosecution” excluding the accused from the criminal process. Referring to international rules and documents, it can be argued that temporary detention may be resorted to only when it is “legal, reasonable and necessary”. Otherwise, non-custodial measures such as bonds, bail, compromise, public labour, etc. must be used.

Pre-trial alternatives must last no longer than it is necessary and must be performed in accordance with principal rules of humanity and with respect to the position of individuals and their dignity. Shortening the term of custodial measures at the pre-trial stage is not limited to “alternatives to detention”. According to the UN-secretary’s report to the seventh Congress on Crime Prevention and Dealing with Offenders, a number of laws and regulations, through “expediency approach” and at the prosecution stage, have provided measures, which extend the scope of the ‘expediency’ applied by judicial authorities to make decisions upon prosecution or abandonment of prosecution. Such measures include ‘abandonment of prosecution’, bail, caution, and civil (non-criminal) sanctions.

C-Alternatives to Temporary Detention in French Law (Judicial Supervision)

The Law of Confirmation of the Liberties of the Accused, which came into force on 17th of July of 1970, contained a few Articles on temporary detention and the necessity of such detention being applied in limited cases. Also, this law regulated the judicial supervision, by putting emphasis on the liberty of the accused as a rule and the temporary detention as an exception to the rule. Since then, legal provisions on temporary detention have seen many changes. The law of 15th of July 2000 has, in its turn, taken efficient steps towards harmonizing the laws of France with the expectations generated as a result of the country’s being party to the European Convention on Human Rights.

According to the most recent reforms, temporary detention is limited to the following cases:

- 1-When the legal penalty is that of imprisonment of felonious nature;
- 2-When the legal punishment is that of imprisonment of misdemeanour (three years and over);
- 3-Where the accused deliberately refuses to act in accordance with the orders regarding the judicial supervision.

The most important legislative achievement with regard to temporary detention has been the establishment of the new institution of “judge for the liberties and detentions”.

The law of 15th of July has in fact dispossessed the examining magistrates (*juge d’inspection*) of their discretion to detain the accused, a discretion that was in the hands of examining magistrates for almost two centuries. Now, this discretion has been granted to “the judge for liberties and detentions”. This latter, after an adversary procedure where the accused, his lawyer, and examining magistrate are present, makes decision upon the detention or discharge of the accused. This decision is made *in camera* with the accused and, if necessary, his lawyer being present (where the accused is over 18 years of age an open session may be asked for).

1-The Concept and Conditions of Judicial Supervision

Although liberty of the accused is the rule in French law, the law of 15th of July, given that releasing the accused may impede the administration of justice and investigations, requires the examining magistrate to use one of the sixteen warrants provided by Article 138 of the Criminal Procedure Code (these are known as judicial supervision).

The examining magistrate may issue a detention warrant where judicial supervision warrants do not seem sufficient for preventing the accused from absconding, interfering with the witnesses and abettors or others. In any event, and according to Article 138, the examining magistrate may use judicial supervision warrants where the offence is punishable by imprisonment of misdemeanour nature or more serious penalties. As such, judicial supervision warrants may not be issued in minor offences.

2- Types of Judicial Supervision

The ultimate goal of judicial supervision is to maximize the liberty of the accused in a way consistent with finding the truth and maintaining the public order. When under judicial supervision, the accused will not be incarcerated. He only faces some limits on his everyday activities and is placed under supervision to fulfil the obligations imposed on him.

Article 138 provides that, based upon the examining magistrate decision, judicial supervision requires the accused to commit himself to one or more of the following:

- 1-Not to leave certain areas determined by the examining magistrate;
- 2-Not to leave his residence or the residence determined by the examining magistrate under certain circumstances;
- 3-Not to go to certain places or those determined by the examining magistrate;
- 4-To inform the examining magistrate of any movement other than those permitted;
- 5-To make appearance at offices or by those authorities determined by the examining magistrate;
- 6-To respond to the summons issued by competent authorities determined by the examining magistrate;
- 7-To hand in all of his identifications, the passport in particular, to the court registration office or to the police or to the “*gendarmerie*” and a document confirming his/her identity must be issued in return;
- 8-Not to drive any types of vehicle. In emergency cases, the driving licence must be handed in to the court registration office and a receipt must be issued in return;
- 9-Not to meet certain people determined by the examining magistrate;
- 10-To observe instructions regarding medical exams, treatment, or hospitalization especially for the purpose of giving up drug addiction;
- 11-To provide a bond of which the sum and time-limit for payment is determined by the examining magistrate;
- 12-Not to do certain social or vocational activities;
- 13-Not to keep or carry arms or, if necessary, to hand in the arms already possessed to the registration office of the court in exchange for receipt;
- 14-To provide personal or real guarantees, the sum and duration of which is determined by the examining magistrate to safeguard the rights of the victim;
- 15-To demonstrate that he fulfils his familial obligations.

The examining magistrate enjoys a wide discretionary power as to whether or not to issue judicial supervision warrants and, when necessary, may name one or more of the

warrants, requiring the accused to observe them. Besides, the examining magistrate is not required to provide reason for the limits imposed on the accused.

The accused may be placed under judicial supervision either immediately after the first interrogation or anytime during the investigations. On the other hand, the examining magistrate is free to change or adjust the warrants. Should the accused fail to observe the regulations, the examining magistrate may issue arrest warrant and/or custody order.

The examining magistrate may issue a warrant on the removal of the judicial supervision; by his own decision or when requested by the district attorney or the accused, after receiving the district attorney opinion. Judicial supervision may extend after preliminary investigations. This being the case, the examining magistrate is required to make decision on the extension of the judicial supervision onto the trial stage by a separate and well-founded warrant. The judicial supervision is also likely to extend after the judgement is rendered or finalized.

D-Alternatives at the Pre-trial Stage in Iranian Law

Article 129 of the former Criminal Procedure of Iran permitted the examining magistrate to issue one of the five warrants mentioned in that Article. These were exclusive. Thus, where it was necessary that the accused be available or to prevent absconding, interference, or hiding; the examining magistrate was not allowed to use any types of guarantee other than those provided by the law. These warrants were as follows:

- 1-Obligation under word of honour not to leave determined jurisdictions;
- 2-Bail or the obligation not to leave determined jurisdictions until the trial has finished and the judgement has been enforced;
- 3-Surety; the accused must be permitted by the examining magistrate to hand in cash or personal or real property in lieu for introducing surety;
- 4-Pawn (whether personal or real property);
- 5-Precautionary detention in accordance with Article 130 (*bis*).

The above-mentioned warrants were likely to be aggravated in descending order and it was upon the judge to accept either of these guarantees by taking into account the

personality of the accused, his previous convictions, severity and seriousness of the crime and punishment, and causes of and evidence to the crime.

The Law on the Criminal Procedure of the Public and Revolutionary Courts (LCPARC) that came into force on 26 October 1999 has provided for various types of guarantees that may be taken by courts. There is no essential difference between these provisions and those of the previous laws.

Article 132 of the LCPARC provides that “for the purpose of having access to the accused and his due appearance before the court when necessary, and to avoid absconding or hiding or interfering with others , the judge, after explaining the charge to the accused, shall use one of the following guarantees:

- 1-Obligation under the word of honour to appear before the court;
- 2-Obligation under bail to appear before the court until the trial has finished and the judgement has been enforced. In case of non-appearance, this shall be converted to surety;
- 3-Surety;
- 4-Pawn, including a sum of money or bank guarantee or real or personal property;
- 5-Temporary detention in accordance with rules.

These guarantees may be aggravated in descending order and according to the seriousness of the crime and severity of its punishment, causes of and evidence to the crime, likelihood of absconding and destroying traces of the crime, and by taking into account previous convictions, marital status, age and prestige of the accused (Article 134).

The new law has provided for another guarantee that had been practically used in the past with reference to Article 128 of the previous criminal procedure code. Article 123 of the LCPARC reads: “in addition to the aforementioned guarantees, the court may issue a warrant requiring the accused not to leave the country. This warrant shall be in force for six months and, if necessary, may be renewed by the court every six months.”

The alternative warrants mentioned in Article 132 are irreconcilable. Yet, the warrant mentioned in Article 123 on prohibition of leaving the country may reconcile with other guarantees.

Each of the aforementioned warrants and the rules regulating them are explained by various Articles of the LCPARC. It must be mentioned, however, that these warrants are very limited and, contrary to French legal system where judicial supervisions are used on the basis of the principle of liberty of the accused, Iranian law of procedure has empowered *the judge* to choose either of the warrants. In order to guarantee the rights of the accused and interests of the society, reform in this area seems necessary.

Section Three

Deferment of Prosecution (with Emphasis on French Legal System)

In accordance with the principle of legality of prosecution, the prosecution authority is required to prosecute every offence of which it becomes aware of its taking place. In the west, in 19th century and among western countries in particular, the principle of legality of prosecution, upon which German legal system has been particularly emphasising, was aimed at preventing the government from authoritarian acts, along with obliging the prosecutor to prosecute all offences.

Nowadays, from the viewpoint of the criminal policy, prosecuting all offenders, particularly in minor offences for it contributes to increase in the number of criminal cases, may no longer seem as much useful. As such, another principle, that is, “the opportunity of prosecution”, has been granted a special position among the means of criminal policy. Where applicable, this principle allows the prosecutor to order non-prosecution. Yet, this is not to say that the accused will never be prosecuted again. The prosecutor has the power to prosecute the accused before the legal time limit expires.

These days, the criminal policy of many countries is reflected through taking no further action upon specific cases and, on the other hand, by using alternatives to prosecution.

A-No Further Action

One important issue regarding the decision of the prosecution authority on taking no further action is the explanation provided for such decision. Indeed, it is not possible to subject such decisions to detailed reasons that may be provided by the prosecutor. Rather, it must be left upon the prosecutor to decide whether or not prosecution is necessary by taking into consideration specific circumstances of each case. The new criminal procedure law of France makes distinction between minors and adults in this regard. As for the adults, the prosecutor is not required to provide reasons for not taking any further action, while with regard to sexually victimized minors, such decisions must be well-documented and reasonable as well as notified in writing. In any event, these decisions are seen as administrative ones that may not be appealed against, and the prosecutors may not be prosecuted on the charge of impeding the rule of justice.

Finally, it must be mentioned that this institution (deferment of prosecution) makes it possible for the prosecutor to reach a judicial solution.

B-Alternatives to Prosecution

Alternatives to prosecution are divided into two groups:

1-Remedial Alternatives

These alternatives are aimed at compensating the damages suffered by the victim and the society because of the crime. This compensation is realized through payment of damages to the victim and rehabilitation and treatment of the offender. These alternatives include: ordering to comply with the law, leading the offender to a treatment centre, terminating the anti-law status of the offender, compensating damages, and resorting to mediation with the agreement of both parties to a case.

2-Retributional Alternatives

These concern the pre-trial stage and include “settlement of the case or conciliation with the offender”. In French legal system, conciliation with the offender includes the following ways that can be combined and added to compensation for damages inflicted to the victim:

- a) payment of a sum of money to the public (State) treasury;
- b) depriving the right on the properties used in the crime or acquired through the commitment of crime;
- c) handing in driving or hunting licence to the registry office of the court;
- d) community service;
- e) compensation for damages incurred by the identified victim.

- **Mediation**

Recently, the “diversion” approach, particularly in the form of mediation and conciliation, has successfully developed in European and Northern American countries. Over years, in Northern America, a significant movement has taken place towards restraining the scope of penal law and judicial institutions. This movement has resulted in the growth and development of means and methods such as “decriminalization”, “de-penalization”, and “diversion” (from the judicial institutions). By these means developing, with the agenda on mediation and conciliation being at the forefront, many

countries have planned and performed “experimental schemes”. The successful outcomes of these schemes have encouraged a number of countries to integrate the aforementioned means into their legal system. Following this, international organisations, such as the United Nations, have been paying attention to this matter. In 1995, the UN adopted “Rules on Standard Minimum on Juvenile Justice”. Previously, in September 1978, the European Council had adopted similar rules.

Nowadays, dispute settlement outside of the judicial system, in the form of conciliation and mediation, has become an issue of global interest. Yet, it must be mentioned that long before such methods become pervasive in their current form in Europe and Northern America, traditional types of informal methods of dispute settlement were in existence in the Orient.

The main idea of settlement outside of the court is that the fray generated by the criminal behaviour (crime) engages two or more people who can settle their differences by referring to a mediator. Generally speaking, one consequence of a successful dispute settlement outside of the court is that judicial investigations will be avoided. As such, these institutions are considered as the most visible implications of “diversion”. Besides, a recent categorization of diversion methods has put settlement, mediation and remedy alongside those methods known as “cessation of the criminal process”. In this way, settlement and mediation schemes may be illustrated through three phases of a criminal process:

- The first phase which refers to settlement and mediation at the criminal prosecution stage is visible in those legal systems where an establishment known as the prosecution office” exists. In these systems, the prosecutor and/or the examining magistrate are in charge of mediation;
- The second phase refers to the trial process and is conceptualized within the framework of the tasks of the court;
- The third phase which refers to stage in which the sentence is carried out. This again is included in court’s duties;

With settlement being successfully done outside of the court at the prosecution stage, the prosecutor will stop taking any further action with regard to the case. Also, settlement during the trial results in the judgement not to be issued and, as a result, there will be no punishment and all court costs will be avoided. Nor will an official record be made of the offence.

That conciliation and mediation are seen as methods of settlement outside of the court is due the fact that in these methods either of the prosecutor or the judge, depending on the circumstances, asks the mediator or conciliator to settle down the case outside the court and make the parties to a case aware of the likelihood of such settlement being reached. In this way, either the mediator or conciliator, during the process of settlement, directs and advises the parties and, by taking into account the content of the agreement between the victim and offender, reports the result to the prosecutor or the judge in the end.

One further point with regard to the mediation and conciliation schemes is that, generally, those offenders are eligible for such schemes who have committed less serious offences punishable by less severe punishments. In other words, these schemes are applicable to those who committed minor offences and have no criminal record.

Nowadays, a diversity of mediation and conciliation schemes has been developing across Europe as well as some African countries. In the Republic of Tunisia, for instance, the Law on the Protection of Children (1997) has allocated a section to the institution of conciliation.

In Western Europe, and particularly in Germany, there exists valuable experience on how to perform such methods of settlement outside of the court. In this country, the decrease in the prison population in recent decades has been attributed to the development of diversionary alternatives including schemes for conciliation and mediation.

(At this stage, this research turns to examine, in further detail, conditions, methods and consequences of the institution of mediation in Germany, Russia, Austria and Poland.)

Section Four

Alternatives to Imprisonment at the Trial Stage and Enforcement of the Judgement

A-Traditional Methods

Generalities

Reform within a system of determining punishments, refers to creating a wide range of retributive options. Depriving the offender of his liberty, these options bring the offender under control. Educational, social and rehabilitative measures refer to those punishments that allow the offender to take part in the schemes aimed at controlling the offensive behaviour and reintegration of offenders into the society. Since mid-1900s, these social schemes, of which probation and parole are the oldest and the most famous types, have become a part of the criminal justice systems. The most important objectives of such schemes include protecting the society, and reconciling and reintegrating the offender into the society. Initially, offenders must be examined to find out to what degree they pose threat to the society. This is understood through their participation in social schemes that are, of course, hardly suitable for those committed violent crimes or those with numerous criminal convictions. Further, those who supervise offenders in social schemes must protect the society through ensuring the full performance of the orders of the court and observance of the conditions of release. Finally, violating these conditions and the orders issued by the court and authorities must be taken seriously.

As mentioned above, reintegration emphasises upon reconciling the offender with the society. This is realized through requiring the offender to take part in schemes where his opportunities and abilities are developed and, as a result, it becomes possible for the society to take advantage of such abilities and opportunities. For reintegration to be successful, the educational, rehabilitative and treatment schemes must meet the following prerequisites:

- 1-They must create circumstances and appropriate cooperation in the society where facilities proportionate to the needs of the offender are available;

2-They must create conditions similar to the offender's own home, or to another such place, or the place of residence he shares with others in way that enables him to live as a responsible person;

3-They must provide educational, training, counselling and other socially supportive facilities;

4-They must provide opportunities in a way that ordinary social responsibilities as a citizen, member of a family, student, or employee may be learned and accepted;

5-They must provide opportunities for individual development.

1. Parole

This refers to the release of the offender before the termination of the punishment under conditions set out by the granting authority. This institution involves release under supervision within the society with the possibility of revocation in case of the conditions being violated during the release. In parole, the offender, after serving part of the punishment in prison, will be released while still under supervision.

A. Parole in the United States of America

What is now known as "parole" was tested for the first time in "Elmira Reformatory" in New York State. Since then, it has been developing across the country and now is seen as an important method of releasing offenders from educational-corrective centres in the U.S. . In this country, parole, which refers to the conditional release of those offenders serving their imprisonment sentence, is realized through an administrative measure taken by the educational-rehabilitative or penal institute. The offender under parole serves the remainder of the punishment within the society and under supervision. In a sense, parole is an expansion of the imprisonment from the prison onto the society while the person on parole may be re-arrested and imprisoned without being tried.

In the United States, parole is granted by the Parole Committee, an administrative committee affiliated with the government. It has 3 to 19 members and decides whether or not a prisoner is eligible to be granted parole before the punishment comes to an end. Also, this committee has the power to either revoke the release or grant complete release

to those who satisfactorily complete their punishment within the society (on parole). Although, this committee has a diversity of discretions and responsibilities, effective systems of parole have specific characters, including the following:

- Flexibility of the rules on determining the punishment and parole;
- An eligible Parole Board;
- Eligible and competent members;
- Independence from political influence or other types of undue influence;
- An appropriate position with the governmental structure;
- Appropriate methods;
- Preparation before release;
- General tendency towards parole;
- Investigations on the impact of this institution and collection of data with this regard.

The process through which prisoners are selected for parole is an important one.

Generally, those prisoners who have spent the minimum period of imprisonment are eligible for parole. This minimum period varies across the states. In most of the states, it is legally required that the prisoner serve at least one-third of the term. Nonetheless, the period served in custody and satisfactory behaviour are also taken into account while determining the date where a prisoner will be eligible for parole. It must be mentioned that this is the date on which the Parole Board decides upon whether or not to grant parole.

1. Conditions for Parole

These conditions are decided by the Parole Board. Then, prisoners on parole are placed under supervision of parole officials. The committee has a full range power to set up these conditions. Nevertheless, the following principles must be observed with regard to conditions:

- a. They must be clear;
- b. They must be reasonable;

c. They must be appropriate for protecting the society and rehabilitating the offender;

d. They must be consistent with constitutional rights

These conditions include:

- Prohibition of carrying arms or of using vehicles;
- Fine or handing over some properties or possessions;
- Community service;
- Living in a social educational-rehabilitative centre;
- House-imprisonment for a specific period;
- Prohibition of living in or going to certain places.

2. Revocation of Parole

This refers to the official termination of parole, and return of the released prisoner to the prison. An appropriate procedure is necessary before revocation. Two important phases of this process involve preliminary and final examinations. It is essential that principles of justice and constitutional rights be respected throughout both of these stages. Besides, it must be noted that the person whose parole has been cancelled may become eligible for it again. Those examinations regarding revocation of parole often do entail revocation and re-imprisonment of the offender. The committee, however, may impose other sanctions, should it come to the conclusion that violation has taken place.

B-Parole in England and Wales

In England and Wales, the Parole Board has been established for the purpose of giving advice to the Home Secretary on early release of the prisoners under the 1967 Criminal Justice Act. The position of this Board has been reaffirmed by the 1994 Criminal Justice and Public Order Act as an “executive non-departmental public body” (this came into effect on 1 July 1996). The activities and schemes of the Board are ultimately aimed at protecting the society and providing an opportunity for the successful return of the prisoner to the society through fair, open and efficient examination of cases. The main duty of the Board is to assess the risks posed by the decisions made upon releasing and

recalling prisoners, while paying attention to the ultimate goal, that is, protecting and defending the society. The 1991 Criminal Justice Act in its third section, “early release of prisoners (Article 32(1))”, persists on the position of the Board. According to this law, the Board is empowered to make decision upon applications made by prisoners sentenced to less than 15 years of imprisonment. With respect to those sentenced to more than 15 years, the Board may advise the Home Secretary on their being released. According to the 1997 Crime and Sentences Act, the Board may also make such recommendation to the Home Secretary as to the release of those sentenced to life imprisonment as well as prisoners whose imprisonment term depends on Her Majesty’s pleasure.

The Board consists of 107 members including: a president, two circuits, two high court judges, eighteen magistrates, eighteen psychiatrists, four criminologists, nine probation officers, and fifty three independent members.

The registrar of the Board is composed of twenty four positions predominantly occupied by those working at the office of prison services.

I. Rules on Parole in England and Wales

The Criminal Justice Act has made a distinction between those prisoners sentenced to short-term and those to long-term imprisonment. As to the former, the Home Secretary is required to issue their unconditional release where the sentence is for less than 12 months after serving half of the sentence. Where the imprisonment is for more than 12 months, the prisoner will be released on licence. For those sentenced to long-term imprisonment the Home Secretary will issue the licence to release after three-fourth of the sentence has been served*.

II. Continuation and Conditions of Licence

A person sentenced to long or short-term imprisonment, released on licence, will be placed under supervision of a probation officer according to specific conditions mentioned in the licence. Conditions and the supervision are binding until three-fourth of the imprisonment has been served.

* Under 1991 Criminal Justice Act imprisonment less than 4 years is known as short-term and those longer than 4 years are considered long-term imprisonment.

As to those sentenced to life imprisonment, the licence will remain in force until their death, with conditions being binding until the time set by the licence. The prisoner will be placed under supervision of a probation officer unless the licence is withdrawn for legal reasons.

III. Misbehaviour after the Release

If a prisoner on parole (sentenced to short-term imprisonment), does not behave according to conditions set by the licence, they may be sentenced to cash penalty through a summary conviction.

If the person on parole commits an offence, the licence will be cancelled and he will be returned to prison to serve any part of the original sentence still outstanding. In some cases, where the Board advises as to the revocation of parole with regard to a person sentenced to long-term or life imprisonment, the Home Secretary may revoke the licence and recall the person to prison. The Home Secretary, in some particular cases, may even revoke the parole himself, without consulting the Board, where he finds it to be in the interest of the public. However, the case must be sent to the Board for consideration. Any person whose parole has been cancelled in this way has the right to appeal. The appeal will be heard by the Board and the final decision will be acted upon by the Home Secretary.

2. Probation

Probation refers to evidence provided for proving something. This institution has been popular in Britain and a major part of common law systems in the middle ages. According to this institution, release of offenders depends on their paying bond and their behaviour and respecting public order and is based on the release on bond system. It was first introduced by John Augustus, a shoemaker from Boston, who voluntarily asked the court of Boston to put habitual drunkards under his direct supervision for treatment.

There is no consensus as to the definition of probation. According to one definition: "it is a method of punishment with sociological-educational basis and can be recognized by a combination of supervision and assistance. The person under probation is required to comply with all the conditions set by the court." The United Nations has provided the following definition:

“probation is a way of dealing with those offenders selected through particular way, which involves conditional suspension of punishing the offender while he is under supervision of somebody and is being counselled or treated individually.”

I. Probation in the United States

There are two types of probation in the United States. One type involves a direct order for probation for a certain period, according to the conditions the judge finds necessary.

Another type involves ordering a minor to introduce himself to a juvenile service institute or department, followed by an order suspending the previous order and putting him under probation. In most of the states, probation is a direct order enforced under the guidelines set by the law. It is up to the court to determine the conditions that must be observed throughout probation.

Where drug-related offenders are involved, probation assumes a specific form. In effect, it becomes an intensive type of supervision, emphasising on the treatment of such criminals according to legitimate treatment schemes, including supervision and casual drug testing.

Probation centres in the United States have a wide range of professional network, working on various aspects of criminal behaviour. Their traditional mission is to work as an aide to the court, by taking charge of research and supervisory services with regard to offenders and those under probation. Probation offices, in turn, work in an extensive network of comprehensive schemes, planned for backing up families and preventing drug-abuse as well as organising vocational programmes to enable offenders to think decently and correctly. These schemes are organised by collaboration between schools, health centres, courts, law enforcement agencies, service representatives and other social service institutes.

i-Offenses and Offenders Eligible for Probation in the United States

Probation has been used as an acceptable and wide-spread penalty in serious crimes and misdemeanours committed by adults and minors. In many jurisdictions, the jury has the right to recommend probation, but the final decision is made by the judge. Where the offence is not tried by jury, probation will exclusively be granted by the judicial authority, except for those cases where invoking to supervision is proscribed under Federal law. Almost all types of offenders, even those convicted of violent crimes, rape, and murder, are entitled to be granted probation. Probation may be proscribed only by those laws making certain punishments mandatory, requiring the offender to be sent to prison for crimes such as drug-trafficking and illegal use of arms.

ii-Duration of Probation

Duration of probation varies from one State to another. Normally, the period served for probation depends on the seriousness of crime and behaviour of the offender. Usually, the maximum period is five years. However, probation may be determined according to the time served, or another “time” may be opted for by the court. In misdemeanours, this time is the whole imprisonment term. In crimes, probation term is likely to be shorter and more limited than the imprisonment term.

In juvenile courts, probation is granted for an indefinite time. Young offenders may remain under probation until they reach the full age, that is, until the juvenile court will no longer be competent.

iii-Duties of Probation Officers

According to national standards an on regular basis at least for the first 12 weeks, the offender is required to meet the probation officer once a week. The officer arranges a supervision scheme aimed at forcing the offender to take steps towards avoiding to repeat committing crime. The offender is required to act upon this scheme, which may involve individual or in group (with other offenders) meetings. Similarly, for young offenders, juvenile probation officer is in charge of making the initial contact with them and is required to offer probation services as soon as a young offender is placed under supervision by the court.

iv-Conditions during Probation

Every offender placed under probation, becomes responsible towards a body of rules and conditions including: maintaining the employment relationship, compensating damages, cooperating with the probation officer, complying with the law, fulfilling family responsibilities, participating in educational-training and vocational programmes (particularly for juveniles), and taking part in treatment programmes.

v-Guarantees for Probation Conditions

Probation may be revoked as a result of violating conditions or, more importantly, because of committing further offence.

vi-Effects of Probation in the United States

Decrease in expenditures and costs are one important consequence of probation. In fact, avoiding incarceration of offenders has resulted in a decrease of \$450 to \$550 in governmental costs per day. In California, it has been announced that, over the next five years, probation will save some 1.5 billion dollars in this state and its counties.

Besides, research show that those who have been able to complete the programme under probation have less relapsed into crime than those who have failed to go through the entire process. Although the rate of crime among those under probation is still considerable, it is still rather less than that of those who have been imprisoned.

Another consequence of probation is that it removes the conviction from the criminal record.

II-Probation in French Legal System

French law has provided for three types of probation as well as a method for deferring the judgement in a way the punishment could be avoided. These include:

- 1-Ordinary probation, first introduced by the law of 26th of March,1891;
- 2-Probation introduced by the Criminal Procedure Code of 1958 (Articles 738 to 747);
- 3- Probation with community service organised by the partial abolition of “the Law of Security and Freedom” of 10th of July, 1983.

The law of 6th of July 1989 has contemplated a new approach that is “deferment of the judgement with examination”. This is similar to the aforementioned methods in that the success of the examination results in the offender’s not being punished. Yet, it is different from those three in that it hinders the judgement.

Ordinary probation involves the power granted to the judge under certain circumstances in order to suspend the punishment from being performed. If the offender does not commit a further offence within a period of 5 years, this suspension exempts him from punishment.

Probation with examination is a system in which, by avoiding short-term disciplinary imprisonment and by contemplating a method of protection, preparations will be made for rehabilitation and correction of offenders. This probation is only applicable to natural persons. Although the judge is not bound to grant this type of probation, it is widely used for its appropriate and systematic guarantees. Articles 40 to 132 and 53 to 132, and Articles including and following Article 738 of the Criminal Procedure Code concern this type of probation.

Probation with community service is granted by the courts dealing with misdemeanours or minor offences. It requires the offender to work in community service for minimum and maximum hours of 40 and 240 hours respectively, without repayment. This type of probation was initially introduced to the French legal system by the law of 10th of July 1983, and was completed by the decree of 23rd of December 1983. the new Penal Code has reaffirmed this probation in its Articles 54 to 132 and 53 to 132.

- *Deferment of Judgement with Examination*

Here, the law enables the court to defer rendering of judgement, provided that this decision be made at the presence of the offender .The court shall affirm that the final decision will be made, at the latest, within one year from the first decision on deferment. This deferment is independent from probation with examination. Whenever the court decides to defer rendering of a judgement together along with examination, specific commitments and conditions will also be stated. If the accused does not comply with supervisory activities, or specific commitments, or refuses aids; the execution judge may ask the court to render the judgement.

B-New Methods

1-Intensive Probation Supervision

The necessity of paying attention to the personality of the offender and to individualisation of punishments, particularly after World War II, has led lawmakers of various countries towards new approaches of “intermediate sanctions”. Intensive probation supervision (IPS) is one of these new guarantees, considered by criminal justice agencies of some European (e.g. Scotland) and North American countries. In this way, by avoiding incarceration of some offenders, more control and supervision will be applied upon them. IPS is in fact a method of supervision that requires a high level of contact between the offender and correction and control officers as well as members of the community. Its objective is to impose a kind of punishment that is less harsh than imprisonment and more severe than probation. Although intensive and simple form of probation can hardly be distinguished, the following may be regarded as major elements of IPS:

- Permanent monthly contacts between the offender and correction and control officers;
- Invocation to a body of obligations such as vocational or professional education, job, community services, drug testing, treatment of addicts, and, in some cases, restriction or prohibition of movements.

IPS has been contemplated for offenders at risk, for whom the prison is not a suitable place. It provides the offender with the highest level of supervision and support, aiming at causing change in his behaviour, which, in turn, will be controlled by house or workplace visits, participation in counselling sessions, family and counsellors contacts, and, in some cases, through examination, seizure and confiscation of properties related to an offence and/or illegally possessed, and detention of the offender.

ISP puts groups of 15 to 40 people under supervision of officers. This is less than the number of people that may be brought under supervision in ordinary probation. Groups with less than 40 people will be placed under supervision of two officers: an expert in

rehabilitation schemes, who is in fact the court's liaison, and an expert in supervision. Groups with 40 people will be supervised by three officers.

Generally, supervision and protection include five weekly meetings at the starting stages of the scheme, as well as restriction or prohibition of movement, permanent house visit to control the offender, job verification, and casual urine and alcohol tests.

a) Objectives and Benefits of IPS

Most of criminologists, it seems, content that official and preliminary objectives of IPS include reducing prison population, to saving on costs, protecting public safety, and imposing a kind of punishment that is more interventionist and retributionist than ordinary probation.

IPS schemes have been named as "the entry and exit doors programmes", a term which refers to the doors of the prison. IPS schemes are aimed at avoiding incarceration. As a result, these schemes significantly contribute to preventing offenders from entering prisons. The entry and exit door programmes, instead, provide the context for early release of the offender through IPS schemes in a way that expedites the release.

The most important benefits of this type of are as follows:

- 1) it gives the probation officer enough time for counselling the offender under probation so that, where necessary, the latter can be guided through centres and institutes where relevant services are available;
- 2) it empowers the probation officer to act independently in a way to protect the public order and prevent new crimes to be committed by the offender under probation.

b) Essence of the IPS

The IPS has various elements, including a combination of the following:

- 1) restriction or prohibition of movement and house-imprisonment (with or without electronic supervision);
- 2) certain conditions determined by the court (such as occupation, counselling, etc.)
- 3) collective supervision;

- 4) supervision and control on drug or alcohol consumption;
- 5) payment of a sum of money as probation costs;
- 6) instant punishment;
- 7) social supervision;
- 8) compensation for damages;
- 9) evaluation of needs.

The form and structure of IPS schemes are to some extent different. As seen earlier, these schemes involve daily meeting with officials, in a way that it can be argued that face-to-face contacts between officials and offenders constitute a key feature of IPS schemes.

2-Community Service

Community service as an alternative to punishment can be traced back to Roman time. Recent research indicates that in some African countries, before they begin to follow the European model of imprisonment, community service was deemed a reaction against criminality. During the Renaissance, Beccaria, in his famous book “Thesis on Crimes and Punishments” published in 1764, suggested community service be used for those convicted to theft.

After the World War II, community service received attention in Europe and North America. In 1960s in the United States, judges of Alameda in California, initiated this type of penalty on low-income females, who were not able to pay fine for road traffic offences. In Europe, judges from Switzerland and Belgium sentenced juvenile offenders to community service for the first time where no legal text was available on the subject.

I-Definition, Objectives and Conditions

Nowadays, community service is an institution according to which the court recommends an offender to make up for the offence committed via doing something of social utility instead of serving imprisonment. In other words, community service is an option for conviction, ordered by taking into account the dangerousness of the offender and for the purpose of restoration of the system disturbed by the offence, and via performing an unpaid work for the community. Given the physical and psychological restrictions

imposed by community service, consent of the offender must be sought in this regard. This is to say that offenders are entitled to be informed of what is expected from them. In this way, community service can be seen as a means of strengthening and developing the sense of responsibility in offenders, as well as an efficient and positive approach towards compensating damages inflicted by the crime. This approach promotes the offender's self-esteem and contributes to the development of his personality.

Thus, the main objective of community service includes reintegration of the offender to the community, which is realized through the following methods:

- 1- systematic, objective, and responsible performance of an unpaid job;
- 2- appropriate guarantees for compensation and social redressing through performing the work by the offender;
- 3- reducing recidivism;
- 4- increasing the possibility of rehabilitating and correcting the offender by acceptable social standards.

Following prerequisites are essential in successful performance of a community service scheme:

- 1- cooperation with judicial system;
- 2- cooperation by public and local communities;
- 3- cooperation with the media;
- 4- cooperation with the NGOs.
- 5- a legal text.

Those sentenced to community service will be sent to a public institute (e.g. schools, hospitals, clinics, or a public place like a park) in order to do the voluntary service at the determined time. It must be noted that offenders, although required to do the service, are not *recruited* to perform the work. Therefore, they will not be given a job as a result of the sentence. There are various and different services including the following;

- 1- working at hospitals and nurseries;

2-participating in archaeological deep searching;

3-participating in house buildings;

4-participating in educational, technical, vocational, driving, and health classes.

5-cleaning high ways, parks, and recreative places.

Community service time table is set by the relevant institute in accordance with the term to which the offender has been sentenced. This service must be supervised. Normally, community service is between 40 to 240 hours, which is the time during which work can normally be done during a week.

At this stage, the research turns to examine in detail the experience of other countries in community service. Zimbabwe, for instance, has been significantly successful in using such alternatives. To resolve the problems of the criminal justice system regarding the complexities of imprisonment, the government has established a national committee under the control of the Ministry of Justice. The committee produced a list of twelve key elements upon which attempts were made to organise prisons and to tackle problems.

These elements were:

1-political will towards maintaining the community service plan;

2-participation of all of the ministers and relevant high-ranking authorities, social welfare authorities, local authorities, ministries of interior and justice;

3-complete independence of executive committees regarding social limits and restrictions;

4-financial supervision and control on employees and the quality of executing the plan, as well as the power regulating and presenting solutions, and establishing administrative and executive controls by the national committee for community service;

5-efficient and responsible courts, and making judges responsible towards the promotion and improvement of the system;

6-establishing regional committees composed of a coalition of volunteer governmental and non-governmental organisations aiming at the execution of central policies;

7-participation of the supreme court and high court in supporting and development of the system;

8-willingness of heads and directors of the executive institutes and centres towards participating in the plan and providing sufficient control on offenders sent to their institutes;

9-requiring the executive committee to provide the financial resource for the plan;

10-cooperation between governmental and non-governmental organisations;

11- efficient supervision of the national committee on community service on the employment contracts of personnel, by avoiding bureaucracy;

12-efficient and timely use of the media to publicise the execution of the plan.

The research goes on with examination of the experience of some other Africa countries such as Kenya, Malawi, Zambia, and Uganda. Also, the experiment on community service of some other countries such as France, England, Czech Republic, and the United States has been studied.

3-Fine

For years and in different types, fine, as an early form of punishment, has been used as an independent punishment or combined with other penalties in reaction to many crimes. There are numerous examples in criminal system of different countries, indicating the ancient background of this type of penalty (Salic Laws, for instance).

Fine is an amount of money which must be paid by the offender as punishment. It includes damages, cash penalty, fine and other terms used for this purpose. Fine is different from personal damages, in that it is considered as punishment and has all its characteristics. Nowadays, fine is used as an intermediate sanction or as a social punishment.

I-Amount of Fine

In determining the amount of fine, various approaches have been taken to maintain its efficiency, by taking into account the status of the offender, and the nature of the crime.

This amount may be fixed or relative. The latter being the case, the power of judge is decisive in determining the amount of fine.

1. Fixed fine

Nowadays, it is rare to determine a fixed and inflexible amount of fine in written laws of countries. In this approach, rather than looking at the status of the offender, the dangerousness of crime and its deleterious consequences are taken into account. The most important problem with this approach is that fixed fine is influenced by the fluctuations of the value of money. Therefore, it is necessary to modify the amounts of fine according to financial and economic situation of the country. As such, it is more common to determine the minimum and maximum of fine. In this way, the judge will have more power to determine a sentence proportionate to the financial status of the offender and the crime committed. As a result, the intimidating-corrective impact of the punishment will increase.

2-Relative fine

The idea behind this type of fine is to impose a punishment that carries higher risk than the benefit made by committing crime and preventing the offender from gaining illegitimate benefit.

Relative fine is a penalty determined according to the extent and unit of crime. In other words, it is determined as equivalent, half, twice or several times of damages inflicted or the profit made by the crime in each case.

II-Benefits and Problems of Fine

Benefits:

- 1-Insignificant consequences;
- 2-Reinstatement of the punitive effect in recidivism;
- 3-Proportionality to the seriousness and importance of the crime committed;
- 4-Compatibility with the personality of the offender
- 5-Easy combination with other sanctions;

6-Best reaction towards financial punishments;

7-Governmental profit;

8-Possibility of correcting judicial mistakes;

9-Excitability in convictions *in absentia*;

Problems:

1-Conflict with the principle of individuality of punishments;

2-Conflict with the principle of equality of punishments;

3-Indefiniteness and uncertainty in execution;

4-Ineffectiveness where paid by the relatives of the offender;

5-Inability to ‘disable’ offenders.

III-Fine as an Alternative to Imprisonment

Due to its benefits and characteristics, along with using fine as an independent punishment; lawmakers of different countries tend to use fine, as an alternative to imprisonment particularly in petit offences and short-term imprisonment. “Daily fine” has been one of the most recent approaches towards making fine more efficient and just. The term refers to the link between the amount of fine and daily income of the offender.

Here, the amount of fine is determined at two stages:

At stage one, the judge decides the number of days during which the fine must be paid, according to the type and importance of the crime;

At stage two, the judge determines the amount of daily fine according the income of the offender. This is to say that part of the money is allocated to his necessary personal and family costs, and the other part is taken as punishment. Then, the amount taken is multiplied to the days determined before and in this way the total amount of the fine will be decided.

Within those criminal justice systems (e.g. France) where the triple categorization of crimes (felony, misdemeanour, and minor offence) has been adopted, fine is only applicable to adult criminals and for misdemeanours, but not for military crimes and

corporate bodies. Although fine is an alternative to imprisonment, as soon as the offender fails to make the payment he will be imprisoned. It is important to note that when the judgement is being rendered, the accused is free to choose between daily fine and imprisonment.

IV. House-Imprisonment

House imprisonment involves a series of liberty restricting measures ranging from prohibition of nightly movements to house imprisonment at the time where the offender is not working. The concept of house imprisonment requires the convicts to spend most of their time in their houses as an alternative to incarceration.

Methodologically, house imprisonment assumes various forms. Some are performed by probation departments, while others are judicial orders handled by the supervisory officers. In some of these schemes, offenders are controlled more than 20 times a month, while others merely investigate a number of violations of movement prohibition. Also, some schemes use 24-hours imprisonment, aiming at promoting the punitive aspect compared to that of the IPS schemes, and being considered the last resort before incarceration.

Moreover, the goal of house imprisonment schemes is to reduce the prison population by keeping offenders at home. House imprisonment only involves those offenders who pose less threat to the society.

In order to control those under house imprisonment, the technology of electronic supervision is used. While the means are changing over time, four techniques are most commonly used:

1-Incessant signalling device;

2-Programmed contact device;

3-Radio signal;

4-Beeper

V-Electronic Control

Electronic control is rather a new way of ensuring the observance of house imprisonment regulations. To control the movements of the offender, an anklet is worn by the offender which is connected to a computer in a control centre (e.g. a prison) and sends signals to it. In this way, the offender is only able to go to work or to do certain activities. He is imprisoned in his own house and all his movements are controlled. Electronic control is known as a significant innovation of late 1980s, since, in addition to taking advantage of technology for correcting and rehabilitating as well as reducing prison costs, it has become a big industry since its preliminary use in late 1980s and thousands of offenders are controlled in this everyday.

a) Types of Electronic Control

Basically, there two types of electronic control:

1-Passive Electronic Control

In this system, a transmitter is attached to the offender's body (his wrist or ankle), and a dialler is connected to a telephone. Once the offender leaves the place, the signal will be disconnected and the dialler will automatically dial the number of the probation office. Since it is the convict who must answer the phone, failing to do so indicates that he has left the place.

2-Active Electronic Control

This is based upon the phone contact system involving a continuous and often casual phone contact with the offender's house. This may be done automatically by an apparatus or by the officer himself.

By sending permanent signals to the control office, the active system keeps offenders under permanent control. Whenever an offender leaves his house without being allowed to do so, the signals will be cut off and this will be recorded. In some cases, the control officer will become automatically informed of the incident by an electronic device.

Electronic supervision is applicable on non-violent offenders but not to violent criminals. In addition to the seriousness of the crime, motivation behind the offence and protection of the society are among the criteria used for determining the eligibility of offenders.

VI-Educational and Rehabilitative Camps

These are referred to as ‘boot camps’ and ‘shock imprisonment’, and are among the most recent alternative methods in criminal law. The first example of such military camps was inaugurated in 1983 in the Georgia state of the U.S. Using this institution widely developed during 90s, particularly in the United States, perhaps, alongside other intermediate sanctions, in order to put an end to the increase in prison population..

Educational and rehabilitative camps normally involve a short-term imprisonment of first time offenders. There are key elements to this scheme of which the most important are:

- an educational system with severe disciplinary regulations;
- a centre with military-like conditions;
- necessity of participation of individuals in physical exercises, hard physical activities, and hard exercises
- segregation of this institution and those engaged in it from ordinary prisoners.

Given the historical background of this scheme and its specific characteristics, it is usually contemplated for young, male, and non-violent offenders.

A-Objectives

Like other alternatives to imprisonment, this institution has multiple objectives: first, to decrease the prison population and, second, to decrease recidivism. In addition, it has been said that this scheme may contribute to the “thinking process” of young offenders by changing the way of their thinking and, as such, changing their ability of thinking about life style and behaviour towards the society and others.

B-Types of Educational and Rehabilitative Camps

From the point of view of function and executive plans, it can be said that there exists two types of such camps: military and educational-rehabilitative. The former normally takes eight weeks and is organised in a way that makes a soldier out of the participants who, in terms of physical and corporeal conditions, are in good conditions and have better motivation and self-discipline. Undoubtedly, the success of these educational schemes depends on the personnel and trainers take high level of responsibility and show good behaviour, so that offenders can make a reasonable relationship between the

disciplinary regime and objective available models, and also be able to learn self-discipline and accepting responsibility both theoretically and practically.

The second type of educational and rehabilitative camps involves those in which the focus is centred on education and vocational trainings. Particularly, they aim at correcting the individual in terms of the behaviour for which he has been sent to the camp. Focusing on education is what both schemes have in common.

C-Method of Selecting Offenders

Generally, it can be said that an offender is selected through one of the following ways and sent to the scheme: either it is mentioned in the court's judgement that the offender be sent to the camp to serve the sentence, or local prisons select the participant (offender).

D-Content and Stages of the Scheme

There are differences among American states in terms of the components of the programme. Nevertheless, a kind of harmony and integration can be seen within the overall content and stages of the scheme. The first stage of scheme, where the offender enters the scheme, can be named as "acceptance" that involves a medical test of the offender by which he is tested for the disease. Urine tests will also be taken continuously during a week. The second stage involves military exercises which last four weeks. At the third stage, which also lasts four weeks, military exercises are not insisted upon, rather offenders take part in other organised classes including vocational trainings and professions needed for an ordinary type of life. The fourth stage, which is prior to the release of the offender, is allocated to the counselling services, such as job searching, interview, and searching for accommodation.

It must be mentioned that this new method, used as an alternative to imprisonment in America, seems to come third after capital punishment and imprisonment. Although it has many proponents, it is still passing experimental stages.

VII-Treatment

Over the past decades, drug-related crimes became more complicated. This has led the governments involved in such crimes to adopt new laws. This approach, which has been

done through national strategies or schemes for combating drug, has been mobilizing influential public and private sectors against the outbreak and spread of drug abuse, in a way that addicts and their family can be saved. This is done alongside confronting the production, sale and distribution of drugs that are normally done in organised manner and with considerable financial support.

The prohibition of drug abuse in international and regional documents and by domestic criminal law, and criminalization of drug addiction in some countries, have been forming different ways and approaches within the context of the fight against drug abuse and dealing with drug addicts.

Official statistics indicate that there exist some 2 million drug addicts and occasional users in Iran. Similarly, there are appalling statistics on drug addicts in other countries such as Turkey, European countries, the U.S., and South American countries. A glimpse on the problem of drug-abuse and its spread among people and even prisoners doubles the necessity of paying appropriate attention to the treatment of addicts.

Given the numerous problems caused by drug addiction, treatment has immediate impact on the level of abuse as well as commission of related crimes. Continuous treatment has significant effect on the behaviour of the addict in the future in a way that, according to some studies, by entering the process of treating drug abuse, related criminal activities drop significantly. As a consequence, public and social security, as well as level of individual and public health hand sanity will increase. On the other hand, by taking into account the unpleasant situation within prisons, one can conclude that, in addition to other problems it causes, the prison is itself a good place to create tendency towards drug abuse. Thus, it can not be seen as an appropriate punishment for the crime of addiction, especially due to the growing belief among doctors who tend to consider addiction as a disease that needs treatment, but not a crime.

Methods of Treatment

Traditionally, two methods are used for reducing drug consumption: one method involves a change in the passive status of addicts to prevent consumption, i.e. treatment by using medical model. The other method involves an increase in the costs and harms caused by drug consumption. That is, using the penal model and imposing punishment.

A great number of those working on drugs are of the opinion that drug abusers may not be treated against their will. They argue that those who do not enter the process of treatment voluntarily are unlikely to take it seriously. This means to achieve the desirable result, specific resources must be provided for those willing to be treated. Nonetheless, in some countries such as the United States, treatment is based upon widespread compulsion. Those who believe in legal compulsion often argue that the impact of such compulsion is not different from the pressure posed by the family of those brought in for treatment.

Compulsion must be studied at various stages:

1-With regard to the judgement, offenders may face an offer that they are not able to accept. That is, refusing treatment as a part of a social judgement may entail imprisonment;

2-Where treatment is accepted as a condition to probation and its violation results in the punishment such as imprisonment being imposed;

3-Even where treatment is not a condition to probation, persisting in the abuse or commission o crime may cause violation.

This section is concluded by an examination of the conditions of drug addicts in the U.S. and European countries that have recently taken significant steps in this regard, in a way that new methods on treatment of addicts have been introduced. Among others, treatment by using (ORLAAN) and Boprophine has become a new method for treatment of heroine addicts. Other methods are under examination.