Pathology of legal system of semi-freedom in the new Islamic Penal Code 2013

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Abstract. Gradually the great criticisms of excessive recourse to imprisonment extended the necessity of alternatives to the phase after the verdict or the penalty, causing the criminal system to minimize the disadvantages of prison according to the reform and professional training program and the review of its rules in this context. The emphasis on reform approaches in the law has been effective in this regard. The result of this is the acceptance of institutions such as the system of semi-freedom. The new Islamic Penal Code expected this institution in Articles 56 and 57. The system of semi-freedom is a way based on which the convicted can do professional activities, education, vocational training, health and so on the outside do with their consent, at the time of execution of the sentence of imprisonment of five to seven and after the commitments and provide the necessary deposit. Since the implementation of the semi-freedom system relied Iran's penal policy is subject to regulations, in this study, it is tried to demystify the existing Legal Notice and outlining the points that should be considered in the formulation of semi-freedom system regulations.

Keywords: Semi-freedom system, prison alternatives, new Islamic Penal Code

INTRODUCTION

Imprisonment is an accepted and undeniable punishment in the world. However, the lawyers have considered many disadvantages for this punishment. One problem of imprisonment is to create a variety of educational, technical facilities and communication in an enclosed prison so that meeting the diverse needs of students is impossible and very expensive. Therefore, the modern criminal systems try to apply the new institutions for preventing the disadvantages of imprisonment for an individual, his family and society and use the positive points of this punishment to punish and reform offenders¹.

Semi-freedom system is one of the methods which has agreed with conditional and partial freedom of the offender and insists on continuous monitoring. This method on the one hand has maintained the offender's family stability and guarantees the principle of penalties' being personal and on the other hand leads to the offender's reform.

The findings also indicate that same management practices (same for all) in prison cannot provide the desired corrective changes to prisoners. This message reveals that instead of applying the same approach and unified management for all prisoners, other models such as the use of semi-freedom can be

¹ In jurisprudence and Islamic views, it should also be considered that promoting personality is one of the great goals which Islamic government should strive to achieve it, and though imposing hardship and punishment of offenders in cases does not facilitate this goal but makes them away from the community and sent them to prison, hurt his spirit, causing him to provide further falls and although it is possible that desecration and disgrace which is necessary for execution of any punishment, in some cases, due to some circumstances do not take self-correcting and training aspects, however, the penalty cannot be considered without educational value.

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implemented. This type of system based on which, the condemned had his the occupation or at least their work outside of the prison and spends the day working outside the prison and spend holidays in the prison can be considered as the end of the weekend imprisonments (Ansell, Mark, 2012: 19). According to criminology and criminal law and the law of semi-freedom gradually entered into the countries' criminal system. Semi-freedom emerged thanks to the implementation of the special education system which is known in penology as "the Irish" or "progressive system". This system for the first time began in 1828 at the initiative of the French Naval Minister Hyde Du Novil was applied on prison inmates. Then, in 1840 by the British naval commander named Makonovchy was applied in Norfolk Island (Ardabili, Muhammad Ali, ibid: 177). In France, semi-freedom system was accepted due to the reforms after World War II in imprisonment principles (Ibid: 178). Law of 17 July 1970 of the French Code of Criminal Procedure completed the semi-freedom system and took the new corrective measures into account (Paker, 2000, p.452). Until the adoption of the new Islamic Penal Code in 2013, the semi-freedom system was not applied in Iran and only was considered criminal law as one of the institutions solely in charge of issues related to the reform of prisoners as it was called; Unfortunately, the institutional criminal law lacked this system. Fortunately, with the recent passage of the law, legislators sought to solve the problem and support the system of semi-freedom by the protection of the Act and it was legally considered in Articles 56 and 57. However, since at the time of writing these lines, the law was still developing and not approved in terms of Regulations, the discussion of semi-freedom system in order to develop comprehensive regulations in the future will be very useful. In this regard, it should be noted that when the new facility enters into the legal system of a country, recognition of its legal aspects is considered very important for the legal system of the community. It explains how the scope of the institution about crime and criminals, and with the conditions for export; that is, the criteria on one hand and conditions for issue on the other hand.

A) Nature of Semi-freedom System

In Article 56 of the new Islamic Penal Code, the system is described: "it is a method in which the offender can be charged at the time of sentence and do professional activities, and so on the outside". Here's a point that should be addressed prior to the introduction of a definition. That is, semi-freedom system is considered in French criminal law in Article 723 not in French Code of Criminal Procedure. According to the article, "the semi-freedom system makes it possible for the convicted person to perform work outside of the prison under the supervision of the prison administration". In the criminal law of France, the semi-freedom as system is seen as a way for execution of sentence and that is why the French legislator in the Code of Criminal Procedure and the execution has pointed to this system and the institution.

Due to the place which can be considered for the semi-freedom system, the complete definition is presented as follows: " semi-freedom system is an adjustment approach for the implementation of imprisonment based on which the offender can do professional activities, education, vocational training, health and so on outside the prison under the supervision of the centres of semi-freedom at the time of sentence ". The new Islamic Penal Code in Articles 56 and 57 provides the definition of a semi-freedom system and also predicted the conditions and implementation of this approach. Semi-freedom system is implemented by the centres in prisons and Security and Corrective Measures Organization so that using the beneficiaries of the system, environment and culture institutions is prevented from boarding. Furthermore based on these articles, the implementation of semi-freedom system is predicted as the beginning of the implementation of imprisonment response and also as the stage of the anticipated incremental system (Safari, Ali, 1998; 113). Implementation of semi-freedom system, as a step between freedom and prison environment (kept in boarding institutions) is not possible for all offenders.

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"In prison terms of 5 to 7 degree, the court issued a final decision can be over the complainant and subject to appropriate security deposit and a commitment to do a job, career, education, vocational training, participation in the continuation of family life, or treatment for addiction or illness in the process of correcting or compensating for damage which affects the victim, be sentenced to consent, under semi-freedom system, and also the offender can request semi-freedom sentence during penalty in case of having legal status, and the court would be obliged to deal with. " Thus, offenders who are sentenced under this system should be obedient and mentally healthy and do not have inspired characters. This system, particularly in short-term prison sentence, it is appropriate to reduce the influence of corruption and harms the prison (Danesh and Tajzaman, 1994: 24, 339).

Finally, it is necessary to consider the new Code of Criminal Procedure. Articles 551 to 558 of the Act has assigned as "the implementation of the suspension of execution of sentence, probation, the postponement of the verdict, the semi-freedom system and freedom under the supervision of electronic systems". The issuing and executing institutions mentioned above as well as the semi-freedom system is mentioned here. Article 553 states that: "in the crimes covered under the system of semi-freedom and freedom under electronic systems control, Judge of criminal sentences after receipt of the classification report of the Council of Prison and Penal Enforcement Department of the theory of social workers, based on the execution of a job or profession, education, professional training, continuing participation in family life or medical treatment by the offender the outside of the prison, which is effective in the process of correcting or compensating for losses of victim, recommended the court issuing the sentence for the implementation of semi-freedom, freedom under electronic systems in accordance with the regulations on electronic procedures and in accordance with the decision of this court ".

Then, also in accordance with Article 554 "Criminal Judge after the court approval of the proposed subject matter, by securing the appropriate sentence, ordered the execution of the issued decisions by the court and shall announce to prison." Section 555 also provided that "the issue of the suspension of execution of sentence, parole sentence, the postponement of the verdict, the semi-freedom system and freedom under the electronic systems in accordance with regulations on electronic procedures, judge orders and enforcement orders or criminal, sentenced or accused of failure to comply with them and the new offense of plaintiff or private claimant is notified. Tasnim news agency reported, in this matter as follows:

If convicted on either the offender charge no excuse for the criminal enforcement of the order or has not followed the orders by the judge, or commit deliberate offense, the complainant or the private prosecutor may shall declare to the judge sentences a criminal to apply the rules".

**B) Criteria for semi-freedom sentence**

For the pathology of the proper legal system based on the sentence of semi-freedom, it is very useful to define a stage based on this institution. Accordingly, in order to identify the challenges that these institutions are debatable, in the first place, the criteria should be considered which relate to the issuance of this institution. On this basis are primarily offenses, penalties and persons subject to export and the granting of semi-freedom will be assessed and analyzed. The issue of export of semi-freedom crimes with regard to the issue of semi-freedom restrictions in terms of the type of crime has not been identified with freedom. However, the range of alternative or imprisonment modulators in new Islamic Penal Code is limited and some crimes are the exception, for example in relation to the suspension and delay penalty sentence in Article 47 of the new law penalties³.

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³ According to the article, "the verdict and penalty for crimes and its start cannot be postponed or suspended: A-offenses against internal and external security of the country, sabotage of water, electricity, gas, oil, telecommunications,
Due to these crimes and their punishment and to impart legal ban for the offenders to make use of semi-freedom, it seems possible to consider some crimes such as crimes against punishable by five to seven degrees in the area covered by the system but how much a person can be committed to their obligations is something that judicial authorities should be able to continue and assess this institution according to the criminal character; which will be explained in detail.

In addition, it should be noted that in the parole system unlike other institutions, in the first book, no limitation is considered in terms of the type of crime and in absolute crime, over half or a third of the sentence was determined by the operation of the system. So it seems that in the semi-freedom system similar to probation, the criteria of the type of crime and to amend the conditions of the victim circuit and other circuits are essential in the system. The other types of crimes in connection with the issue of semi-freedom are surely offenses over and beyond that. Then, as the debate over the condition will be referred and different opinions in this regard are discussed below.

**Imprisonment; the punishment of semi-freedom**

The scope of application of the semi-freedom system only includes the mandatory detention and imprisonment that may be not be included. The IPC legislator in Article 57 outlines the circumstances to grant the semi-freedom and is expected to be sentenced to prison terms of five to seven degree in the court which issued the warrant decisive action. This system is applied on mandatory prison terms of 91 days to 5 years that is the degree 5, 6 and 7 imprisonments. The new Islamic Penal Code, the prison sentences are classified in 19 ratings and 8 degrees. Severe categories in this regard include imprisonment of more than 20 years which gradually has been reduced in the following categories in this division. Thus, according to Article 57 new Islamic Penal Code puts mandatory only in terms of section 5 to 7 can be use and the court sentenced to chastising can obtain appropriate financing for activities such as addiction, treatment or ill, with his consent, under the legal protection of semi-freedom. Including the release of up to 5 years in prison for half it seems that Imprisonment up to 5 years in prison in harsh know what type of crime the offender is identified with. This leniency is so violent that the institutions issuing the so-called offenses more serious than this ban have been created. In addition, the legislature has considered this type of crime in a particular system function and is usually done with work and other activities, the judges, after qualifying, the offenders punished for responding to choose the punishment of imprisonment and forced conversion to provide community-based penalties effects so that in light of the punishment they offender tries to reform and rehabilitate.

**The persons subject to the semi-freedom system**

The semi-freedom sentence, according to the person, is considered somewhat important. Given the character of this place, it can be explained in two categories; One the natural persons and other the legal entities. However, the new Islamic Penal Code does not mention the legal entities and on this point the obvious answer may be presented and that with regard to the obligations arising from the system of semi-freedom, considering them to be real people. Among the most important aspects in regard to the accused person indeed, is concerning the stage after the issuance of semi-freedom. That is, judicial officials instructions given for the criminal. For example, if the offender has some psychological problems and diseases, judicial authorities may order him introduce to the special issue centers and institutions. Other B-organized crime, armed robbery or cost harassment, kidnapping, acid throwing,
C-power and interfere with a knife or any other weapon, offenses against public decency, formation or management of centers of corruption and prostitution,
D-major smuggling drugs or psychotropic substances, alcohol and weapons and human trafficking,
E-chastising instead of death, murder and waging war against God and corruption on earth deliberate,
F-economic crimes and the crime more than a hundred million Rials

This has been noted in Article 56, professional activities, education, vocational training, health and so on the outside the prison

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people who doubt the possibility or impossibility of issuing the semi-freedom include the children. Can Children and adolescents be placed under the semi-freedom system? The possibility of postponing or suspending the issuance of new Islamic Penal Code considered children and adolescents but does not mention semi-freedom directly.

Article 93 states that "if the court can establish discounts ways and reduce punishments at least by half and change them into Security and Corrective Measures for children and young people to take another action ", However, compared to the semi-freedom, institutions of suspension or postponement are more convenient and more leniency, but lawmakers did not refer to it.

**The condition for granting semi-freedom System**

Some conditions should be met for granting semi-freedom system. In accordance with Article 57 of the Penal Code stated that to impose a system of semi-freedom 3 types of the consents of the offender, the court and the plaintiff is required which must exist. To grand the semi-freedom system the judge should determine the appropriate security for the offender. In addition, he must promise to redress damage to the victim. Accordingly, here the condition for three types of satisfaction should be considered here primarily in order to export, and then consider the obligations arising from the issue.

**The consent for semi-freedom system**

The court issued a sentence could subject him to a system of semi-freedom due to the forgiven complainant and the accused consent to take advantage of outside the prison. The satisfaction of the court system is in line with institutional freedom of the individualization of punishment and adjustment of imprisonment (Elham, GH and Borhani M., 2013: 136) In this view, the judge must state the characteristics of the offender, the circumstances in which the crime is committed and the reasons and motives for the crime fit the punishment due to his personality. According to this view, the judge is not obliged to apply the system of semi-freedom and it could be imposed regarding the discretion sentences although the judge is free in the exercise of a penalty and the opposition as well.

The consent of the complainant, the conditions of which are predicted in Article 57 of the Penal Code for acts of semi-freedom system, is the plaintiff's consent. Since the consent of the complainant on the basis of Article 100 of the Penal Code offenses means decline of punishment. Therefore it can be concluded that the consent is considered by the legislator (Elham, GH and Borhani M., 2013, 137). As consent of the complainant in offenses subject to consent causes the court to reduce the sentence, the semi-freedom system also causes the court to use their discretion in sentencing (Shams Natery, M. et al., and 2013: 171).

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5 Article 94 committed by the juvenile court can be sentenced on all charges, sentencing him to postpone or suspend the execution of punishment.


7 It should be noted that one of the ways to reform the offender is Repentance. Guilty do not have comfort after committing the crime. As a result, he gets a mental breakdown which led to isolation. Inner torment cause him never be comfortable. Repentance means inner remorse the following by internal apology and being prevented from returning to the criminal acts and sins (Seyed Mohammad Marashi, New criminal law of Islam, p. 105). It seems that this organization and its export base in terms of repentance is to be able to consent to the committeeman (Vsael al Shie, C 18, introductory chapters (Chapter 10, H-1 and H-2, pp. 329 and 333.)
In my opinion this expression by the legislation means that according to his diagnosis in the presence of conditions the offender is favoring the institutional reform, and if the offense has a private plaintiff, naturally, the conditions of its consent should be if the offense meets the private complainant others will have an opportunity to consent. In addition, very narrow interpretation cannot limit the scope of the judge's decision in use of the leniency, evidence of a reduction in his prison flaws adds to its legitimacy. In France the penalty should facilitate the social rehabilitation of sentenced persons and also prevention of repeat offenses or opening facilitates ensuring the rights of victims and the interests of society (paragraph 2 of the 707 BC .d.k). This helps to identify Rights for the victim in the process of running a small revolution8.

Sentenced consent: the answers that are already predicted in the criminal justice system, especially as the number of responses imposed to criminal acts and lack of consent can be a challenge with the criminal justice system (Najafi Abrandi Abadi, Ali Hussein, 2007: 117) So one of the ways that it is sufficient for the granting of semi-freedom is the written consent of the sentenced person to apply for the judgment of the court which issued the verdict the points to consider by the court but this requires all the conditions set out in Article 56, Therefore, the legislator stated that the court is required to address these issues in this case, as stated in the opening phrase. The court's issued the final decision would be subject to compliance All the conditions mentioned in the above article it is attempted (Waleed Mohammed Saleh, 2014: 131).

Obligations related to the issuance of Security t: In order to ensure the presence of the accused at all stages of the criminal justice process, including the preliminary investigation, trial and execution, the competent authorities are always based on the type of crime, its severity and damage claims of private claims criminal expected to issue a security appointments based on the Code of Criminal Procedure. One of safeguarding arrangements in semi-freedom system is according to Article 57 of the Penal Code in which a judge can consider proper security deposit along with other conditions, with the consent of his sentence under the semi-freedom system.

It should be noted that the principle of proportionality 9 should be respected. Therefore, the appointment for the person who committed the crime with a penalty of 5 is different from a punishment for the crime of 7 degree. Naturally, since the warrant based on Article 57 of the Penal Code is semi-free, therefore, the temporary detention is automatically canceled and other passages should be considered by the judge on issue or bail.

Activities intended to achieve the objectives of supervision on the one hand as well as the full realization of the mission of reform and compensation of the semi-freedom on the other hand, judicial official made the accused to comply with one or more of the following commands of the entity are required. In addition, the statements of the entity and obligations deriving from it must be consistent with its principles. Thus, for the issuance of the set, in order to determine appropriate action and subsequently, by issuing it, the person is committed to these instructions. In other words, judicial authority is subject to a previous commitment offender that is a commitment to do some activities.

The point that should be mentioned is that the obligations according to Article 56 are not limitative and judicial authorities consider an activity in line with total commitment and absolute offender personality which according to the text of Article 56, is "... professional activities, education, vocational training, health and so on." In general, no specific measures has been taken into account, therefore according to the

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8 Daubigney Marie- Christine, La marche vers la dematerialistion de la proceduce penal, Aj pen. 2007, p. 409
9 Article 250 of the new Code of Criminal Procedure stipulates that "The security and judicial oversight must be reasonable and justified and fit the nature of the crime, the severity of the punishment, the reasons and causes of the accusation, the accused may flee or hide and loss of mass, charge history, mental and physical condition, age, sex, personality and dignity".
regulations that should be developed in line with the implementation of the system of semi-freedom, the orders and commitments of the offender should be taken into account\textsuperscript{10}.

**CONCLUSION AND RECOMMENDATIONS**

Semi-freedom system is one of the methods which has agreed with conditional and partial freedom of the offender and insists on continuous monitoring. This method on the one hand has maintained the offender's family stability and guarantees the principle of penalties' being personal and on the other hand leads to the offender's reform.

The findings also indicate that same management practices (same for all) in prison cannot provide the desired corrective changes to prisoners. This message reveals that instead of applying the same approach and unified management. Implementation of semi-freedom system, as a step between freedom and prison environment (kept in boarding institutions) is not possible for all offenders. Second period of the legislation following the French law, the new Islamic Penal Code 2913 pointed to this new criminal institution that in prison terms of 5 to 7 degree, the court issued a final decision can be over the complainant and subject to appropriate security deposit and a commitment to do a job, career, education, vocational training, participation in the continuation of family life, or treatment for addiction or illness in the process of correcting or compensating for damage which affects the victim, be sentenced to consent, under semi-freedom system, and also the offender can request semi-freedom sentence during penalty in case of having legal status, and the court would be obliged to deal with. “Thus, offenders who are sentenced under this system should be obedient and mentally healthy and do not have inspired characters. This system, particularly in short-term prison sentence, it is appropriate to reduce the influence of corruption and harms the prison. With the approval of the Penal Code in 2013 and operational performance of the semi-freedom, although there are many disadvantages, including the escape of a person who is in prison and he has reduced the prison sentence but running this institution is subject to the regulations. For this reason, according to a note on the formulation of regulations, it can be closer to their cognitive functions of the crime. There are some suggestions for better enforcement semi-freedom system of the criminal justice:

1. According to the place of the social workers for better implementation of semi-freedom and the realization of the main objectives of the remedies and prevention of repeat offenses by the offender. Social workers can have a strong role in overseeing the activities and behavior of the convicts punished with semi-freedom system so that if convicted get out of the semi-freedom system, he could be guided.

2. The new semi-freedom system may cause the judges to lack true understanding of the use of this valuable institution to apply and continue to insist on the traditional penalties. The proper training of new institutions in the Islamic Penal Code of 2013 is predicted and can contribute to better implementation and it is the responsibility of the judiciary. That is why education and awareness in relation to the semi-freedom can be like training courses for judges and officials and the institutions and agencies that sentence, holding seminars and conferences, informing the press and the media in order to enhance trust and social participation and voluntary decision, and so did the people, particularly the enforcement agencies.

3. The stability of the semi-freedom system inferred from articles 56 and 57 of the Penal Code can prevent the punishment of the individual and it was better that the Lawmakers should increase or decrease the time expected for the semi-freedom system.

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\textsuperscript{10} in developing the specific regulations, it can also be noted that Article 43 of the new Islamic Penal Code and the orders should be considered
4. Some notes in connection with a system of semi-freedom, type of crime, persons subject to export and ... should be determined in the drafting of a regulation. In this context, there were doubts as to whether the remainder is same as the term of imprisonment. Can the crime be subject to this institution without private plaintiff; can adolescents benefit from leniency toward these institutions; there are all things considerable in contributing to proper implementation of these systems.

5. The first and most important step to the effective implementation of any criminal sanction is an inclusive and transparent legislation about the system of semi-freedom. The purpose of comprehensive and clear text of semi-freedom is the Law in which crime and punishment of the issuance of this institution are defined11. Different modes of semi-freedom issue, the exact nature of the conditions for issue and how to apply and implement them, and guarantees for the implementation of semi-freedom. About tasks and powers of authorities and institutions responsible for the determination and implementation of this system is clearly marked. In any form should be noted that if the legislator intends to introduce and enjoying the adjustment punishment is imprisonment which introduces criminal policy in this area as transparent (Goudarzi Boroujerdi, MR, 2005: 10-7) but after so many years, the attempts by scholars, researchers and policy-makers in Iran, finally, the new Islamic Penal Code has been recognized for the first time in the history of the Iranian penal legislation of semi-freedom; Legal integrity of this institution is essential.

6. Another suggestion is to strengthen the executive body. Executive body of semi-freedom system can be viewed from different aspects and the establishment of various institutions, including the judiciary and society (government, NGOs, and the public). The need for cooperation and interaction among institutions, especially the cooperation of enforcement agencies of semi-freedom and judiciary and the people and various groups and communities and increasing the trust between them and enforcing the most important part of the necessary administrative body of semi-freedom system, having a skilled and professional workforce, such as Judges, officials suspended the medical, social workers through specialized training courses for their culture.

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