

## **Replacing Traditional Punishment of Imprisonment for Fine View of penological Teachings**

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**Received:** 12 March 2015, **Accepted:** 15 April 2015, **Available online:** 15 May 2015

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### **Abstract**

Among financial penalty is fine of time as original sentences and sometimes additional or complementary penalties such as article 660 of the penal code or optional punishment (article 532 the IPC) which is placed under the court order, however, since the application of the provisions relating to suspend the implementation of article 46 of the penal code punishes the court, and also the court should consider the interest of society and the rule of law such as the merits of offenders in its granting and can be considered to be somewhat severe objections and criticisms can be leveled against the cassette. Fine has some functions which the most important role is replacement of fines.

### **Introduction**

#### **First speech: History of jail alternatives**

First, we examine a brief history of the implications of the alternatives (what are interpretations and perceptions of lawyers and criminologists of replacement and alternative sentence? what is the meaning of the alternative sentence? In this study, what interpretation is our replacement? ...)

#### **Section I: Alternative History of Iran**

Penal system in direction of evolution of the impact of efforts to limit freedom depriving punishment is not far. In the course of legislative punishment depriving liberty to preserve the necessary measures in order to avoid the disadvantages and negative effects of imprisonment is anticipated. (Ashouri, Mohammad, p55.)

Although the teachings of penology and criminology and international action in this case has been effective as probation and suspension penalty can be considered an example of this effect but in some cases motivated by economic considerations, social beliefs played a role. Both before and after the revolution it is considered.

## **Section II: The concept of prison alternatives**

In this section, it is been referred to the concepts and the different perceptions of alternatives to imprisonment and which one of the meanings and implications of this research is to be noted.

Before removing and replacing the original concept and narrow (literally) to pay, different perceptions of the criminal policy of the attention that criminologists and lawyers has now been put under review.

For the first time was one of the founders of the school, who replaced the term "penal substitutes" into the criminal law. (Ardebili, Mohammadali, p292) In his view, the successor must become the main tools of social defense because, "iPod toxins are great for social causes of crime." In other words, according to Frey, "penal substitutes" the preventive measures and social protection which are both in society and in the field of administration of justice (Taqikhani, Behrouz, the same page 32) examples of these substitute s are: creating wide streets in cities, lighting at night because it helps to reduce theft and assassinations institutions or insurance and social assistance to the needy and to prevent fraud beg for a living and so on. After Frey, a founder of the school community, Fylypogramatyka, offers a new interpretation of the concept for an alternative policy and that he believes that, firstly, to sociopathic (based on the works) must be replaced with the authorities (on offense). Secondly, a person must sociopathic symptoms and severity of the crime as an act put into place. Thirdly, social protection measures in accordance with the needs of each alternative punishment fits the crime was a misdemeanor." Also Mark Ansel believed replacement policy in the context of the criminal law. His aim from the replacement is to replace the penalties which are anticipated for avoiding harmful consequences and imprisonment punishment. Jan Pynatl also refers to replacement policy and uses the exact meaning of the term "substitute penalties". Natel in the following the term "penal substitutes" Ferry with "substitute penalties" believes that: " the comparison is based on appearances suggest that there is some sort of an agreement between these concepts. (Pradel, Jan, the same page 30)

It is agreed that both of them have a role to alternative, however, the wider the scope of the successor's successor and criminal penalties, but their essence is the same. The difference is that it substitutes for criminal punishment aside instead, actions are criminal in character, but instead of punishment depriving liberty substitute penalties, additional penalties imprint. They also say: Here (penalties successor) instead of punishment is appropriate that the first rotation that short prison sits such as suspension and the suspension of care provided to determine the penalty that has been entrusted to the court (judicial replacement policy). The punishment that they can "substitute penalties" in such as working for the benefit of society inspired by social care system in England and has been a fine day in the systems which the legislative term of imprisonment penalty is eliminated and replaced them (legislative replacement policy) as we identify them separately". (Taqikhani, Behrouz, the same page 86). Finally, we note that the aim of replacing is what Ansel and Natel remember it that they can be an alternative to replacing the legislative and judicial division that follows, we will examine each.

### **Section III: various alternatives**

#### **A) Traditional replacements**

Replacing traditional alternatives that since the legislation was referred to replace traditional materials was set as follows: Parole is relative to the alternatives - suspension penalty is still relative substituents, fines and penalties of deprivation of civil rights, that among the alternatives to punishment depriving absolute freedom.

#### **B) New Replacement**

New alternatives to detention and imprisonment until the adoption of the adjustment of the rights of other nations, as well as social penal code which currently are not listed in the penal code as follows: care period, public-service daily fines, imprisonment at home, work, public-suspension pursue employment of prisoners.

#### **Second Speech: fine**

Fine is one of the programs in many countries, including Iran, as it is used to punish offenders. For example, in England in 1990, compared to 34 percent of the fines as punishment for the offense and 3% of the indictment in court criminal offense has been determined in magistrate court indictment. In this article, we discuss the history, concept, advantages, and disadvantages of paying the fine and the nature of the detention, and the role of replacement.

First clause: concept and history of fine

### **A: The concept of fines**

Fines as punishment depriving liberty is absolute alternatives become part of the punishment. Disadvantages of short prison term thinkers and legislators to adopt various means to combat crime criminal convinced. And disadvantages of short-term negative effects of punishment depriving liberty legislator to choose a successor to the legislative and official criminal policy in this area has convinced the penal system and this punishment as punishment instead of punishment depriving liberty described. Fine is as follows: "The amount of cash required to pay the penalty for offenders as it is." (Pradel, Jan, the same page 63)

Fine or sentenced to invoke the obligation to pay cash for the benefit of the sentence.

Or sentence to pay a penalty payment to the Treasury or the UK fines as punishment for fighting is in the most common courts, and the offender is required to pay the money to the government.

Fine is divided into two types in validity

1. Fixed is a penalty that determines the legislator may have a minimum and maximum.
2. Relative is a proportion to the amount of compensation that can be given and the amount of crime.

#### 1. Merits of fine

1. Instead of creating corruption, especially in the criminal punishment of imprisonment not accidental.
2. Continuation of the excellent work is in fines and non-stop and, however, maintains the effect of intimidation (invert imprisonment).
3. Creating proportion is partly possible to the severity and magnitude of the crime.
4. The best response to crimes is against property and for criminal offenses that the only motive is profit offender is fairer.
5. Run of fine is both easy and affordable. (Taqikhani, Behrouz, the same page 152)

#### 2. Disadvantages of fine

1. It is against the principle of personal penalties because of ongoing work to spread the family.
2. It is opposed to the principle of equality of penalties, the suffering that it runs on a poor suffering far greater than that imposed on the wealthy.
3. Unlike other financial penalties and punishments certainty is uncertainty. The implementation of this method requires access to the property of the offender and the victim's cooperation in the property is introduced. (Ashouri, Mohammad, p113.)

4. Monetary penalty is a punishment that cannot judge the performance of individual assets and financial capability of the offender in the appropriate penalty.

### **B: History**

The conversion of fines to imprisonment as an alternative to it, we are witnessing the beginning of the drafting of legislative measures in criminal law (Penal Code 1304). Here are a few examples of this include:

Article 22 of the Penal Code Act 1992

It is a single article entitled by law in criminal detention and imprisonment that last two months or less to fine adopted 15/05/1928. The single article provides: "the custodial sentence is absolutely wrong for the last two months or less that can be converted into a fine. If the Court should apply to the different cases were sentenced to two dollars a day, five Quran into your punishment. "

Article 3 of the Law of receipt of revenues and expenditure in certain cases, adopted in 1994. Articles 3, 4 and 5 of the Penal Code offenses, the Armed Forces Act adopted in 2004.

Others: Historically, the first alternative punishment of imprisonment, which is considered as the main punishment. After the revolution of 1982 special place assigned to it yet but its scope was limited, however, with the approval of the first program of economic development and social and cultural developments in monetary penalty arose. The function of the judiciary is well evident in 1991 of the penal code continues to be considerable.

Section II: The nature of detention instead of fines

Several theories have been proposed about the nature of the detention instead of fines: Some believe that "prison instead of punishment in Iran, like Germany and Italy, is a fine alternative. For the duration of the legislature establishes criteria for the fine and as it reduces its amount to the extent that all fines and penalty wiped out, he will be sentenced to prison, thus, the tolerance of the arrest warrant is executed instead of punishment. " (Ashouri, Mohammad, p94.)

In contrast, some believe that "we held each punishment, the punishment is imprisonment under the rules of criminal convictions, including subtractive release, parole, but enforcement and collection are by the government."

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