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## LENITY BASED INSTITUTION OF DEFERMENT OF JUDGMENT IN IRANIAN AND FRENCH LAW

### INSTITUCIÓN BASADA EN LA LIBERTAD DE APLAZAMIENTO DE SENTENCIA EN LA LEGISLACIÓN IRANI Y FRANCESA

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#### ABSTRACT

It seems that although the issue of deferment has been always disputed by the theoreticians and legal experts and some scholars are of the view that the convict after committing a crime must be punished following the criminal procedure, investigation and sentencing and of course, considering the proper penalty abatement, because postponement leads to the failure of appropriate action as regards the antisocial crimes. However, given the fact that a crime might be committed by individuals under certain conditions, e.g. the convict may be young or the crime might have occurred for noble causes or the crime would be antisocial, there is always a need for lenity and providing the proper opportunity and ground so that these convict could return to the society again and the institution of deferment can be an appropriate tool for the judge to provide the convicts with the required opportunity. The basis of the philosophy of deferment of judgment is the theory of labeling. In fact, by deferral of the judgment the judicial authorities seek not to judge the convicts with the conviction label. According to law, the court does not have the jurisdiction to defer the sentence in all types of crimes. However, in the domain of discretionary crimes, which indeed hosts most of the crimes, the court can defer the judgment after finding the convict guilty.

#### Keywords:

Lenity Based Institutions, Deferment of Judgment, Simple Deferment, Surveillance Deferment.

#### RESUMEN

Parece que, aunque el tema del aplazamiento siempre ha sido discutido por los teóricos y expertos legales y algunos académicos opinan que el condenado después de cometer un delito debe ser castigado siguiendo el procedimiento penal, la investigación y la sentencia y, por supuesto, considerando el debido reducción de la pena, porque el aplazamiento conduce al fracaso de la acción apropiada en relación con los delitos antisociales. Sin embargo, dado el hecho de que un delito puede ser cometido por individuos bajo ciertas condiciones, p. el convicto puede ser joven o el crimen pudo haber ocurrido por causas nobles o el crimen sería antisocial, siempre existe la necesidad de ser indulgente y brindar la oportunidad y el terreno adecuados para que este convicto pueda volver a la sociedad nuevamente y a la institución del aplazamiento puede ser una herramienta apropiada para que el juez brinde a los convictos la oportunidad requerida. La base de la filosofía del aplazamiento de la oración es la teoría del etiquetado. De hecho, mediante el aplazamiento de la sentencia, las autoridades judiciales intentan no criticar a los convictos con la etiqueta de condena. Según la ley, el tribunal no tiene la jurisdicción para diferir la sentencia en todos los tipos de delitos. Sin embargo, en el ámbito de los delitos discrecionales, que de hecho alberga la mayoría de los delitos, el tribunal puede diferir la sentencia después de declarar culpable al condenado.

#### Palabras clave:

Instituciones basadas en la libertad, aplazamiento de la sentencia, aplazamiento simple, aplazamiento de vigilancia.

## INTRODUCTION

In criminal affairs procedure the third stage is preliminary investigations which are conducted by prosecuting attorneys and inspectors or the judicial executives who work under the supervision of the public prosecutor. After finishing the preliminary investigations and when the case is ready for bringing to the court the next stage of prosecution starts at trial. In this stage the judge hears the statements of the parties and evaluates them and if finds the convict guilty he proceeds to issue the sentence and determination of the punishment. After the issuance of the sentence it is sent to the execution unit in order to be executed and then the convict is released. But in some occasions this procedure is not completed due to certain reasons.

One of the common penalties that constitute the majority of the sentences due to various reasons is imprisonment. This penalty as one of the social reactions is executed after the issuance of the sentence for punishing the criminals and establishment of order and security. This penalty was gradually replaced with alternative penalties and this is indeed an indication of the failure of jails as a place for rehabilitation of the convicts. Experts of criminal law have adopted numerous institutions and principles for the sake of functional improvement of judicial procedure from the stage of discovery of crime and prosecution up to the issuance of sentence and its execution. Principle of situationality of prosecution, deferment of sentence, postponement of sentencing, deferment of penalty execution and probation are among these principles. Among these institutions, the institution of deferment of sentence plays an effective role in suspension of imprisonment along with the provision of the most important goals of the criminal justice system, which is the rehabilitation of the convict and control of crime.

In other words, deferment is one of the policies which have been adopted for rehabilitation of the convicts and it is focused on the provision of the needs of the convict and not the intensity of the crime. Administration of justice has been informed by the past experiences in the course of time. In the stages of justice administration in criminal system particularly in sentence determination the judge plays a decisive and distinguished role for fulfillment of the objectives of the criminal system. Giving jurisdiction to the court for determination of the penalty from among various options of penalty is considered to be the freedom for determination of criminal policy. System of deferment of sentence has its root in English law and the judges in England in past whenever were suspicious of the evidence or experienced certain conditions would have deferred the sentencing so that the request for remission to

be made of the King and this system in the course of time changed to the system of deferment of penalty and postponement of the sentence. Postponement of sentencing as one of the policies of the rehabilitation of the convicts has had a close relation with criminology as well as the interest in supporting the criminals and reforming their behaviors and adoption of a decision that is in harmony with the crimes. It is for the first time that this institution has been introduced into the Islamic penal system and it has no legislative record in Iran.

In Iran the postponement of sentence and the rules related to it have been adopted from French Law and have been foreseen along with the exemption of punishment. Some legal experts are of the view that deferment cannot be considered as an alternative for the imprisonment rather it is an act of withdrawal of punishment. It seems that if we do not defer the penalty of a crime we are forced to determine jail term for the convict and it is in this place that it becomes clear that we can regard deferment of penalty as an alternative for the imprisonment and take advantage of it for reduction of jail sentences. A cursory look at the articles 40 to 45 of Islamic Penal Code adopted in 2013 under the discussions of the postponement of sentence shows us the attention paid by the legislator to the rehabilitation-centered approach to the convicts. However, we need not to neglect the fact that what makes the law effective as regards the destiny of the convicts is the positive or negative approaches of the judges to the new institution. The current essay is an effort for comparative study of the institution of deferment of sentence by the judge in Iranian and French laws.

## DEVELOPMENT

Deferment of sentence is done in two forms, i.e. simple deferment and probative (Article 41, Islamic Penal Code). Of course, in French law there is a third type of deferment that is known as the obligation based deferment (article 132-66). Here we first discuss the simple deferment and then we turn to the probative deferment.

### Simple Deferment

The clause A of article 41 of Islamic Penal Code reads as follows: *"In simple deferment the convict promises in written form not to commit any crime in the time determined by the court and his behavior must show that he will not commit the crime in future either"*. This clause insists on the future actions of the convict while in the article 40 the legislator is concerned of the convict's past which unavoidably affects the future. In addition to this past the court also takes the current behavior of the convict into account. In fact, past, present and future are interrelated and they

together prepare the ground for deferment of sentence. Given the final part the article 40 of Islamic Penal Code it seems that the court must postpone the determination of penalty even if the conditions are prepared for sentencing instead of issuing the sentence and deferring its enforcement. In this case there will be no difference between the postponement of sentencing and deferment of its enforcement. In the articles 13260 to 132-62 of French Penal Code the court is required to take the following cases into account before deferring the sentence (Ukhuwat, 2014):

1. Convict is resocialized and it is expected that he will not commit any crime again.
2. The damages of the victim must be paid.
3. This must put an end to the chaos resulted from the crime in the society.

### Probative (Surveillance) Deferment

The clause B of article 41 of Islamic Penal Code suggests that *“in probative deferment besides the conditions of the simple deferment the convict is obligated to observe the orders and policies adopted by the court during the deferment time or perform them”*. Therefore, observation of the conditions related to the simple deferment is obligatory. One can say that probative deferment is a mixed type of deferment. In this type of deferment two issues can be studied: A. Deferment measures; B. court orders.

Then during the probative deferment, the convict does not have an absolute freedom rather the court can obligate him to perform measures or orders which are intended to provide security and deterrence. The main goal of the court's orders is control and surveillance of the convict's behavior during the probation (Aqaei Janat Makan, 2013). In this type of deferment, the convict is obliged to observe the measures determined by the court in the course of probation. Also he might be obligated to perform certain order.

### Measures of Deferment of Judgment in Iran and France

These measures include those cases that the legislator has adopted for better enforcement of the orders. According to the article 42 of Islamic Penal Code, probative deferment is associated with the following measures:

- A. On time presence of the convict in the place where has been determined by the judicial officials or the probation officer (supervising social worker).
- B. Presentation of information and documents that facilitate the supervision of the enforcement of the obligations of the convict for the social worker.

- C. Announcement of any change in job position, residence address or movement within 15 days and presentation of a report of it to the probation officer.
- D. Getting the permission of judicial officials for traveling abroad.
- E. These measures that can be referred to as surveillance-supporting measures are supposed to make sure that during probation the convict is surveilled by the social worker and also the convict knows that his behaviors are monitored and they are decisive in the destiny of the case and the courts' verdict. In the cause of the article 42 it is stated: *“The aforementioned measures adopted by the court can be associated with contributive measures including the introduction of the convict to the supportive institutions”*. Thus, if we consider the cases mentioned in the article 42 of Islamic Penal Code to be part of the surveillance process the latter clause is surely meant to help and support the convict so that the process of rehabilitation and resocialization to be accelerated.

### Orders of Deferment of Judgment in Iran and France

Given the fact that the probative deferment of sentence is supposed to resocialize the convict and help him to return to the society as a healthy citizen; the court will issue certain orders the performance of which will prepare the ground for the exemption from the penalty.

Article 43 of Islamic Penal Code discusses this issue as follows: *“In probative deferment the court which has issued the sentence can force the convict to perform a number of following order depending on the crime that he has committed and his life conditions”*:

- A. Vocational training or pursuing a specific job.
- B. Living or moving in/from a specific residential place.
- C. Treatment of a disease or drug rehabilitation.
- D. Payment of the livelihood of the people who are under his tutelage.
- E. Refusal of having transportation vehicles.
- F. Refusal of engaging in professional activities related to the committed crime by means of the tools used in it.
- G. Refusal of communicating with the partners or accomplices or other persons like the victim upon court's discretion.
- H. Participation in particular educational courses and learning life skills or taking part in the educational, moral, religious, training or sport course. “No doubt these orders have the following features:
  - Firstly, in issuing an order the committed crime must be taken into account; for example, if the convict has

committed a computer crime; the court can ban him from computer activities.

- Secondly, the life conditions of the convict must be taken into account and the orders should not change the normal course of the convict's family and personal life; e.g. if the convict is student at Tehran he should not be ordered to live in another city.
- Thirdly, the orders of the court can be one or a number of the cases mentioned in the article 43.
- Fourthly, the court is free to issue the order or choose the type of order or refuse to issue a special order. However, the court needs to take the life conditions of the convict into account in choosing any one of the orders. There is still a point of ambiguity in this law and it is the legislator's inattention to the necessity of the stipulation of these orders and the consequences of the refusal from doing them and this is indeed one of the negative and challenging features of the new code.

The eight cases mentioned in the article 43 with some modifications are the same cases that the legislator had mentioned in 1991 regarding the probative deferment. The difference lies in the fact that in previous law the refusal of engagement in a determinate vocation was mentioned while in new code these are limited and has been mentioned in the form of refusal of engagement in the professional activity related to the committed crime or use of effective tools. Therefore, if a goldsmith commits a crime related to his own profession like producing junk coins the court can ban him from the vocations related to gold but he can pursue other jobs like driving a taxi or having a supermarket. As to the communication the law of 1991 had referred to the ban of relations which are identified by the court as harmful relations while in the new code the relationship with the partners, accomplices and the victims has been highlighted and the phrase *"refusal from pretension of committing forbidden actions and leaving the obligations"* has been eliminated in the new law. It seems that the elimination of this phrase is due to the fact that this phrase did not have any practical profit and its control was impossible.

One can say that as to the communication, the previous legislator insisted on a generic perspective of the people who must be avoided and the identification of the individual identity of these people was within the jurisdiction of the court. But in new law the names of accomplices, partners and victims have been clearly mentioned. The attention paid to the victim in this context is due to the fact that sometime the action taken by the convict is so devastating for the spirit of the victim that the latter is not ready to see the convict even for a second. Of course, in some cases the convict's meeting with the victim's relatives can

reduce the pains and these cases have their own particular regulations.

In the new law participation in training course and taking part in educational, moral, religious and health courses and payment of the allowance of people who are under the convict's tutelage as well as vocational training or engagement in certain jobs and refusal from having car have been added. The penal law of France has mentioned the probative deferment in the article 132-63 and 132-65. Article 132-64 of this law reads: *"Deferments with probation follow the probation regime as set out under articles 132-43 to 132-46"*. The article 132-44 has mentioned the controlling measures that the convict must obey them. Iranian legislator has repeated the same points with some modifications in the form of article 42 of Islamic Penal Code. Moreover, the article 132-45 has also mentioned the obligations that might be enforced to the convict during the probation by the court.

What has been noted in article 43 of Islamic Penal Code is very similar to the aforementioned article (Koorepaz & Tavajohi, 2013). According to the article 132-46 of French Penal Code: *"Supportive measures aim at reinforcing the efforts of the convict for social rehabilitation. These measures which are enforced in the form of social aids or if possible material aids by the probation services and in collaboration with public and private institutions"*; this is indeed the same case that has been underlined in the clause of the article 42 of Islamic Penal Code.

The institution of deferment of sentence is the newest tool that has been invented for individualization of the penalties which had no record in the legal texts of Iran. To know this institution, we first study this concept and then assay the background of the idea of deferment of sentence.

In Islamic Penal Code adopted in 2013 six articles, i.e. 40-46, deal with the institution of deferment. These codes include the time of deferment of the sentence. The law does not provide any definition of the deferment of sentence. Given the aforementioned articles, one can offer the following definition: deferment means postponement or pausing of a work. Moreover, it refers also to the halt, prohibition, hesitation and slowing a work (Moein, 2003). Then, a type of suspension and postponement of a work is intended by this word.

Although in Islamic Penal Code no definition has been offered of this institution one needs to say that deferment of sentence implies giving the necessary jurisdiction to the authorized court for postponing the enforcement of the sentence of a convict.



Accordingly, deferment of sentence as a term refers to the fact that the court after finding a convict guilty of a crime defers the punishment of him, and contrary to the suspension of the enforcement of the penalty where the enforcement of a sentence is suspended in deferment no penalty is determined for the convict (Sabzewarinezhad, 2012). This difference means that the legislator in deferment of the sentence thinks of the possibility of the rehabilitation of the convict and determines no sentence.

To put it otherwise, terminologically speaking, deferment is indeed the refusal of the court from issuing the sentence of a convict after the completion of the trial and presentation of the evidence and finding the convict guilty. In fact, the judge defers the issuance of sentence in view of the social, personal and family conditions of the convict so that by this decision he may prepare the ground for the rehabilitation and resocialization of the convict. Thus, one can say that deferment of sentence refers to *“refusal of issuance of a convict who has been found guilty by the court given the features of the crime and individual characteristics of convict”*.

The institution of deferment was first noticed in 1975 under the inspiration of common law system. In other words, in French law before this date, criminal courts did not have the right to exempt the convict from the penalty unless based on the reasons that have been stipulated in the law. In those times the conditions were so that the public prosecutor's office had the jurisdiction to decide as regards the advisability of the criminal prosecution even when the crime occurrence was established; while the court did not have similar jurisdiction even when the convict corrected his behavior and covered the damaged incurred. Finally on July 11, 1975 the judicial cause exempting the convict from the penalty was added to the criminal procedure law under the title 469-1.

This law allowed the judge to defer his decision under certain circumstances. In the aforementioned law only the simple deferment was predicted. However, no single article was devoted to the cooperative and rehabilitation measures as regards the victim so that the court can obligate the convict. Finally, on August 6, 1989 by the creation of the institution of probative deferment of sentence this situation has been addressed and its regulations are delineated in the articles 132-63 to 132-65 of French Penal Code. In addition to the aforementioned two types of deferment, another type of deferment has been mentioned in the articles 132-66 to 132-70 which is referred to deferment with injunction. Now the articles 132-60 to 132-70 of French Penal Code are outlining the essential regulations of this institution and the articles 747-3 and 747-4 of

French Criminal Procedure Law indicate the obligations of the judge of monitoring the convict in his residence.

As we mentioned earlier, deferment of sentence as a legal institution does not have any record in legal texts of Iran and has been established in a special period based on the experiences of other legal systems.

Of course, we need to note that the aforementioned institution has emerged in some of the bills regarding the legal procedure of infants and adolescents but none of them has been legally enforced yet. Article 25 of legal bill of investigation of the crimes of infants and adolescents states: *“The court can defer the sentence for maximum 2 years after finishing the trial and finding the convict guilty given the conditions of the infant or adolescent based on the regulations mentioned in the articles 32 and 33”*. Whenever the infant or adolescent during this period performed the court order, after receiving the reports of the social worker about the good behavior of the infant or adolescent the court can exempt the convict from the penalty or issue a sentence with abatement”. The article 45 of the bill of support of infants speaks of the deferment of the sentence of the child's parents in special cases.

From this type of bills and legal regulations in other countries we can conclude that deferment of sentence is one of the special measures for prosecution of the crimes of infants because this legal institution prefers to think of the interests of the child instead of observation of the formalities. Then, this type of investigation can be found more in the courts of infants and adolescents and has no place in the courts of grownups (Jamshidi, 2003). For example, in the trials of the male infants and adolescents up to 13 years old who have been found guilty in the courts of England the most popular sentence had been deferment insofar as in 1994 in 52 percent of cases the sentence has been deferred (Douglas, 2004). However, today the institution of deferment in most countries across the world (like France and Germany) has been predicted in absolute form and it is also applied as regards the mature people because if the philosophy of this institution is prevention from the punishment of the non-dangerous convicts we can use this institution as regards both groups of the convicts. Then, this is why the French legislator (in article 132-60) and German legislator (in article 59) have not mentioned any specific age group and the convict under certain circumstances as stipulated in the law can be benefitted from this act of lenity. Islamic Penal Code has not distinguished between the infants and grownups as regards their criminal liability inspired by the French legislator unless in the article 94 of Islamic Penal Code adopted in 2013 more support has been made of the infants and the adolescents.

After assessment of the conceptual meaning of the term deferment of sentence we should shortly discuss similar concepts that can be confused by the main term.

The office of public prosecutor is obliged to prosecute all crimes which is reported in some way based on the law of prosecution (Ashuri, 2007). Today from the point of view of criminal policy the prosecution of all criminals particularly in the insignificant cases which leads to the accumulation of criminal cases might seem useless to the prosecutor. The prosecution requires another principle or maxim to be allocated under special title along with the criminal policy tools. Of course, the prosecutor's decision to drop a case once for all rather the law allows the prosecutor to suspend the prosecution for a determinate period (Ashuri, 2015); it needs to be mentioned that suspension of prosecution is one of the jurisdictions of the prosecutor's office while the deferment of sentence is one of the jurisdictions of the court and judge.

Postponement of enforcement of penalty means that the court has the jurisdiction to defer the enforcement of the penalty after the issuance of the sentence. Sometimes legal issues cause the enforcement to be postponed like the institution of suspension of enforcement of punishment and conditional releasement and sometimes personal causes like illness or pregnancy and when these impediments are lifted the penalty is enforced and here the difference between two concepts is clear. In postponement of penalty the court has issued the sentence of penalty but this sentence has been temporarily deferred while in deferment of sentence no penalty is decided yet.

According to article 501 of Law of Legal Procedure of Public and Revolutionary Courts: ***"Enforcement of penalty is postponed in the following cases upon the discretion and order of the judge"***:

A. Pregnancy; B. After childbirth up to six months; C. Breastfeeding the baby up to two years; D. Enforcement of lashing sentence during the period;

It is clear that the goal of deferment of penalty in article 501 is not rehabilitation of the convict in view of the conditions of the crime scene rather the legislator in this article makes use of the jurisprudential principles in order to postpone the penalty enforcement with such goals as keeping the embryo or health of child. Moreover, in article 502 of the same law it is argued: ***"Whenever the convict suffers from a physical or mental illness and the enforcement of the penalty would exacerbate the situation the executive judge can postpone the enforcement based on the views of forensics."***

If in discretionary crimes there is no hope for rehabilitation of the patient, the executive judge can change the sentence and penalty based on the health conditions of the convict according to the records and medical reasons". There is a clause attached to this article: ***"Whenever during the enforcement of the penalty an illness occurs and there is an urgent need for deferment of execution the executive judge will suspend the enforcement and act according to the regulations of this article"***. In Article 503 it is stated: ***"When the convict in discretionary crimes becomes insane after the issuance of the decisive sentence, the enforcement of the penalty will be deferred until the full medication; unless as to the financial penalties which can be paid through the properties of the convict."*** In this article the goal of deferment of penalties is the conditions of mental health of the patient; because punishment of mentally ill person will not lead us to our goals. This is different from what is pursued by the institution of deferment (rehabilitation of the convict and leading him back to the society).

In French Criminal Law the title of archiving the case is used as an equivalent of the suspension of prosecution in Iranian law. However, suspension of enforcement of penalty in both systems is performed in different forms. Thus, we first study the title of archiving the case and then we discuss the suspension of penalty in independent form.

In French legal system, the police immediately reports the details to the public prosecutor right after receiving the information of the occurrence of a heavy and dangerous crime. After completion of the inspection by the police ***"the cases containing the written documents of the statements of the persons, the reports and views of the experts are referred to the prosecutor's office"*** (Bushehri, 2011, p. 31). The prosecutor before starting the prosecution based on the January 4 1993 law tries to bring the suspect and the hurt party together and if the mediation works the dispute to be resolved and the case to be archived before the prosecution starts (Elliot & Vernon 2003). Article 40 of French criminal procedure law stipulated: ***"Provincial prosecutor collects the complaints and evaluates them"***. According to the clause 1 of article 40 of the criminal procedure law. When the provincial prosecutor becomes convinced of the veracity of the information he makes one of the following decisions: 1- he starts the prosecution; 2- he decides to perform the articles 41-1 or 41-2 and follow an alternative prosecution; 3- he archives the case based on the circumstances. Therefore, the prosecutor decides that despite the occurrence of the crime prosecution is not in the interest of the public; because what has occurred is a crime that does not cause any harm to the people. Then, archiving the case is a right for the prosecutor of court based on rational reasons that can justify his decision if

the victim sues him in the civil court. Therefore, in France contrary to Iran's legal system that is based on the legal nature of the prosecution, the prosecutor has the right to halt prosecution due to the situation.

This is to say that prosecutor is not obliged to prosecute all crimes. When a crime is discovered or announced, it is not so that the prosecuting officials immediately start to prosecution rather first an evaluation is made of the intensity of the committed crime, its impact on public order, various costs of the prosecution and enforcement of penalty. If all these conditions were OK then the prosecution will be started otherwise the case is archived.

Suspension was introduced into French law due to an act in 1881 which can be considered as one of the criminological achievements (Iv La Sal, 2000). In fact, in French law and under the influence of positivism the regulations of suspension of the implementation of penalty were adopted on March 26, 1891 for toleration of accidental criminals (Ukhuwat, 2006). Branger, the French senator in his lectures in 1890 depicted the outlines of suspension of penalty which led to the adoption of law of penalty execution in 1891.

In his lectures he notes that threatening the one who has committed a crime for first time to be punished is better than enforcement of penalty even in abated form; because enforcement of penalty has an antisocial effect. In this project the suspension of the penalty has been foreseen for the beginner criminals. The aforementioned law takes advantage of two policies in order to fight the repetition of crime, first, being hard on those who repeat the same crime, secondly, suspension of punishment for those who have committed the crime for the first time.

If during suspension the convict commits crimes that lead to retribution and penalty up to seventh degree, the court will cancel the postponement decision and issue the sentence. It seems that committing crimes that cancel the decision of deferment is concerned with the one who commits the crime and the one who is accomplice. Of course, if the crime is discretionary accomplice will be treated according to the article 127 of Islamic Penal Code. The penalty will be one to two degrees lower than the main penalty for the accomplice. As a result, if the punishment of the accomplice is part of the degrees 2 to 7, assisting the criminal will lead to the cancellation of deferment sentence. Article 132-65 of French Penal Code has taken the behavior of the convict during the deferment. Thus, the court can exempt the convict from the penalty by monitoring him during the deferment and the result will be either the enforcement of the penalty mentioned in the law or re-deferment of the penalty based on the conditions

stipulated in the article 132-63. Therefore, the convict might avoid committing crimes during the postponement and the court would cancel the deferment or the other way round; in other words, even with the crime the deferment would not be cancelled.

Violation of the orders gives the judge of the court the jurisdiction to either extend the postponement or issue the sentence. According to article 132-69 of French Penal Code, Where the prescriptions were not observed, the court calculates if need be the amount of the coercive fine, imposes the penalties and may in addition order the execution of these prescriptions to be prosecuted at the convicted person's expense pursuant to the conditions laid down by the law or regulation.

If the court is not informed of the criminal record of the convict in the time of issuance of the postponement verdict and later these records are revealed the court must cancel the deferment as soon as it becomes informed of the records. According to the article 55 of Islamic Penal Code: whenever after the issuance of suspension verdict the court becomes informed that the convict has effective criminal record or decisive conviction and the suspension verdict has been issued without paying attention to these records, the suspension verdict will be cancelled. The prosecutor or judge is obliged to ask for the cancellation of the suspension. The judgement of this article is also the case with the deferment of sentence. It should be noted that the one whose postponement verdict is cancelled due to his criminal record does not deserve any compassion and lenity and no toleration is due as regards him because the convict has failed to attract the trust of the justice system. To this end, he is no longer competent to be benefitted from these conditions.

The latter part of the article 40 of Islamic Penal Code has expressed the general conditions of deferment but in addition to its other results can be drawn from which are discussed here.

Issuance of deferment verdict is only possible in discretionary crimes. Therefore, religious penalties, retribution, ransoms and the discretionary penalties mentioned in religious texts are not deferrable. Moreover, mere discretionary nature of the crimes is not enough rather as it has been mentioned in the opening of article 40 of Islamic Penal Code "it in discretionary crimes of degrees 6 to 8" that the court is allowed to use this mechanism. The nature of these crimes show that the suspension or deferment is done by the legislator due to the unarmful nature of the crime in relation to the society. In French law when the court defers the sentence in case of petty offense.

One of the conditions of the existence of reasons of abatement has been delineated in the 8 clauses of article 38 of Islamic Penal Code:

- A. Forgiveness of the plaintiff and private claimant;
- B. Effective cooperation of the convict in identification of the accomplices, acquisition of evidence or discovery of properties and objects acquired through the crime or used for committing the crime;
- C. Special effective conditions in committing the crime including provocative behavior or word of the victim or the existence of noble cause;
- D. Announcement of the convict before effective prosecution or confession;
- E. Repentance, good record or specific condition of the convict like old age or illness;
- F. Convict's effort for abatement of the effects of crime or his action for covering the damages resulted from it;
- G. Weakness of the damage incurred;
- H. Weak participation of the accomplice in crime occurrence;

The question is that if here the convict must again have all those conditions? Or one of them is enough? Given the fact that as to penalty abatement the existence of one of the reasons is enough for penalty abatement here again the establishment of one of the reasons like forgiveness of the plaintiff or claimant is enough.

In this case the court should predict that the convict in simple deferment will not turn to crime again and in probative deferment he must predict that the convict will execute the court's orders. Therefore, if the judge using the past record of the convict and his personality file reached the conclusion that he will be rehabilitated by deferment of the penalty he will issue the judgment of deferment of sentence. In French law instead of rehabilitation the term "reintegration or resocialization of the convict" has been used.

One of the other conditions of the deferment is covering the damages or preparing the ground for such thing and this is indeed the legislator's sensitivity of the rights of the victim. Therefore, any effort by the convict for reducing the damaging effects of the crime whether during the crime or after it can make the convict competent for enjoying this lenity because covering the damage resulted from the crime is itself a sign of enlightenment. The one who has repented and tries to cover the damages deserves to be forgiven. *"Adopting measures for covering the damage"* means that either the convict or his friends prepare the ground for covering the damages (Tawajohi, 2012). In

fact, according to the article 132-60 of French Penal Law: A court may defer sentence where it appears that the reintegration of the guilty party is making progress, that the damage caused is in the process of being repaired, and where the public disturbance generated by the offence will cease.

The article 40 of Islamic Penal Law defines the effective penal record as follows: "Effective conviction is a conviction that deprives the convict from social rights based on the article 25". Then, we need to refer to article 25 of Islamic Penal Code in which the triple clauses delineate the meaning of social deprivation. Then, the penalties that are decided for these clauses include the effective conviction and if someone is convicted of these crimes he cannot take advantage of the benefits of the deferment of sentence. The article 25 of Islamic Penal Code reads: "Decisive criminal conviction in intentional crimes after the issuance of the sentence or deferment will deprive the convict from the social rights as secondary penalty:

- I. Seven years in conviction of the crimes whose sentence is execution and life in prison since the date of suspension of the main sentence;
- J. Three years in conviction of mutilation, retribution if the ransom of the crime is more than half of the blood money of the convict; exile and imprisonment up to 4 degrees;
- K. Two years in conviction of lashing, retribution of body member if the ransom of the crime is half or less than the blood money of the convict and five degree imprisonment";

Therefore, having an effective criminal record is a sign of the convict's being dangerous. Then such a convict has a high potentiality for crime and we cannot allow him to be benefitted from lenity institutions like deferment. There is no such condition in French Penal Code. Therefore, if someone has committed a crime before and has a criminal record the court is allowed to consider each case and even issue the deferment sentence as regards the convicts with criminal records. In other words, the convict with criminal record has an equal right to take advantage of the deferment like the convict without criminal record.

There are some crimes that due to their intensity and significance and also their undesirable effects on the social security and economy are not subjects of lenity institutions because tolerance is not allowed as regards the crimes whose damages are very high. In this regard in the article 47 of Islamic Penal Code it is noted that the sentences of the following crimes cannot be suspended or deferred:



- A. Actions against national and international security of the country; destruction of the water, electricity, gas, oil and communicative facilities;
- B. Organized crimes, armed theft, abduction and acid throwing;
- C. Bullying the people with knife and other types of weapons; crimes against the public decency; forming fornication centers;
- D. Mass smuggling of drugs, alcoholic drinks, weapons, ammunitions and man;
- E. Conviction of alternative of retribution; accomplice in intentional murder and corruption on earth;
- F. Economic crimes with more than 100000000 Rials.

French Criminal Law has not predicted such a ban for committing some crimes and when the social rehabilitation was achieved and the damages were arranged to be reformed the sentence could be deferred. This is why some scholars have considered the ban of inclusion of some crimes in the deferment of sentence unjustified because the intensity of the crime should not deprive the convicts of the lenity and compassion that are key to the rehabilitation and reintegration which are in turn the final cause of the criminal system (Ardabili, 2014) of course, some other authors have justified this ban based on certain reasons (Aqaei Janat Makan).

The convict has finished the probation and deferment period. After this period given the article 45 of Islamic Penal Code and based on the reports of the social worker the sentence of conviction or exemption is issued. To this end, three factors have been taken into account:

1. The convict's loyalty to the orders of court: the court must identify that if the issued orders have been handled or not. How much has been done on the behalf of the convict for their accomplishment;
2. Role of social worker: As to the quality of implementation of order the report of the social worker is of key role. In the article 42 of Islamic Penal Code in three points the name of social worker has been mentioned. Continuation of the deferment depends on the reports of the social worker. This requires the existence of an organization of social work which is managed by the educated people and without the existence of such an organization these articles can be considered merely regarding the simple postponement and deferment. It is needless to state that such an organization needs to hire expert and seasoned human resources.
3. The court will consider the conditions of the convict for adoption of a decision regarding the penalty enforcement or exemption from the penalty. These conditions reveal the overall situation of the convict, firstly, if any

change has happened in his attitude and behavior due to the deferment, secondly, whether his individual, family, social and mental conditions allow exemption or enforcement from/of sentence; all these measures are intended to prepare the convict to reintegrate with the society after his rehabilitation. Of course, this requires individualization of the criminal prosecution based on plans and time.

4. After legislation of an act we need expert people either in public organizations or private offices in the form of judge, attorney and legal expert to implement it. Otherwise no substantial step will be taken towards the full implementation of an act like the deferment of sentence that remains in simple deferment stage. Secondly, our judicial system is based on the statistics while as to the deferment of sentence the case remains in the court and the criminal judges pay little attention to such cases and this would cause the deferment to be neglected. Then some practical measures are required to be adopted so that this problem to be solved. Here we need to mention that according to the article 40 of Islamic Penal Code deferment period is 6 months to 2 years.

Longer period is in the interest of society and against the interests of the convict. It is against the interests of the convict because he is forced to take care of his conduct for longer time. It is in the interest of the society because the social order is secured in this way and less harm occurs (Tawajohi, 2012).

## CONCLUSIONS

The legislator in Islamic Republic of Iran has made innovations in adoption of the Islamic Penal Code 2013 under the influence of doctrines of European law including the French law. If these innovations are noticed by the judges and judicial officials, they would adopt different policies in their dealing with the convicts. One of these innovations is deferment of sentence. Deferment is an institution that violates the necessity of prosecution after the collection of evidence.

This institution has been devised for supporting the non-dangerous convicts and it is justified based on such ideals as prevention from labeling the convicts. Although deferment of sentence has been derived from French criminal law this is not to say that this institution is the product of mere translation and the legislator has not paid any attention to Iran's social conditions. However, judgment of its functionality and popularity is soon and as long as this institution has not been officially tested it is not clear that if it is neglected like other similar institutions or not.

**According to the totality of our discussion the following results can be inferred:**

Given the content of article 40 of Islamic Penal Code deferment of sentence is merely for the discretionary crimes and it is of no use as regards religious terms, retribution and ransom. Even as regards the discretionary crimes mentioned in the religious texts given the clause 2 of article 115 no deferment of sentence is possible.

The legislator's indication of the necessity of consideration of the personal, family and social conditions of the convict in deferment of sentence shows his concern of individualization of penalties.

The phrase "deferment of sentence by the court defers its issuance" has been rephrased in French Law as "issuance of deferment of judgment announcement".

The deferment period given the article 40 of Islamic Criminal Code is between 6 months and 2 years in Iran while according to the article 132-60 of French Penal Code in France it is one year.

In French law the decision of the court as regards the deferment is read in the presence of the convict after the completion of trial while in Iranian law according to clause 1 of article 41 of Islamic Penal Code the court can issue the verdict of deferment of sentence in absentia; therefore, in our law the minimum defense by the convict in trial is enough for deferment. In French law this deferment can be done in absentia as regards the infant and after the end of the period of deferment the court can take the final decision.

In the laws of both countries the court can decide to defer the sentence when the convict has been found guilty; then the deferment verdict can be issued when the trial is completed and the court is in the stage of issuing the final sentence.

Deferment of sentence is within the jurisdiction of the court that investigates the case both in Iranian and French laws. Then, like the suspension verdict, the implementation of the verdict is optional.

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