

Punitive Alternatives: Challenges and Perspectives

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Abstract:

Most advanced societies are rethinking their legal and penal systems, focusing on addressing causes rather than outcomes. They are prioritising rehabilitation and reintegration through reform centres and parallel activities, improving skills and vocational training, ensuring employment opportunities, and promoting alternative sanctions and conditional release. This involves developing a shared vision with those affected of their future plans after release, and helping them to prepare for this while in prison through education and rehabilitation programmes. In order to achieve comprehensive results, it has become essential to coordinate the improvement of prison conditions with the renovation of buildings, the training of prison staff and the monitoring of the necessary financial resources, especially for minors. In addition, it is crucial to improve the working conditions of the judiciary, which issues sentences and sends people to prison, by increasing the number of judges and preventing the executive from overstepping its bounds with regard to the judiciary in order to satisfy its demands.

Keywords: Alternative sanctions, prison, penal system, offender

1. Introduction

In order to mitigate the disadvantages and drawbacks of prisons, those responsible for and interested in prison reform are currently advocating a rehabilitative approach that goes beyond prison walls and opens the door to reform within free society itself. The aim is to break down the severe isolation imposed by prisons, which has led to numerous negative consequences, by proposing alternatives that involve the implementation of measures other than imprisonment and by discussing the relevance and usefulness of imprisonment today.

The excessive use of punishment has led to counterproductive outcomes and serious consequences. As a result, contemporary criminal justice policy has shifted towards rationalising and avoiding the overuse of punitive measures. The pressing question is: how can punishment be limited? Some legal scholars suggest that minor offences should be excluded from criminal law provisions in order to reduce the burden on the judiciary, and that administrative agencies should be allowed to investigate, prosecute and impose sanctions on offenders - this is known as limiting punishment outside the scope of criminal law (administrative sanctions), all under judicial supervision. These matters are regulated by a law known as administrative penal law, which has been implemented in both Germany and Italy. It is worth noting that the idea of limiting punishment was first presented at the Bellagio Conference in 1973, and this concept has since been developed and crystallised in numerous conferences and studies, driven by a growing awareness of the need to reassess the penal system after its failure to protect interests and reduce crime.

This issue has led contemporary jurisprudence to sound the alarm that the results could be disastrous. It is therefore essential to rationalise punishment, redefine the limits of criminal policy and avoid the overuse of punitive measures to achieve social order, while seeking alternative methods that can replace punitive solutions and meet the necessary objectives in the fight against crime¹.

Significance of the study

What concerns us in this study is the effectiveness of sentencing reduction and alternative sentencing policies in addressing the shortcomings of short prison sentences, particularly as the courts are faced with a large number of cases, which is detrimental to the very objectives for which they were established. The backlog of cases places a burden on the judiciary and slows down the judicial process, with serious consequences. The importance of this study is further emphasised by its novelty and innovation, as few legislatures have managed to implement such policies. The existing literature on the subject is scarce. Therefore, this study aims to make a modest contribution to the Arabic library by providing serious research on the policy of reducing punishment and the key ideas associated with it.

Aims of the study

This study aims to achieve a primary objective, which is to clarify the policy of reducing punishment, its applications, its advantages and the main drawbacks that arise during its

¹ - Safaa Outani, "Rationalizing Punishment in Contemporary Criminal Policy," published in the Journal of Sharia and Law, College of Law, United Arab Emirates University, Issue 60, p. 101.

implementation, as well as its effectiveness in achieving the goals of punishment, namely the reform and rehabilitation of offenders.

Research Problem

Based on the above, the problem of this study revolves around: What is meant by the policy of reducing punishment as an alternative to imprisonment? What is the effectiveness of alternatives to imprisonment in reducing crime?

Methodology of the study

Given the nature of the problem posed and in order to achieve the objectives outlined, we considered it appropriate for this study to be based on a basic approach, presenting the concept of reducing punishment and clarifying its nature, as well as addressing the various effects of imprisonment and the proposed alternatives to it.

Study plan

In line with the methodology adopted, the study will begin by clarifying the concept of reducing punishment by defining it and distinguishing it from the policy of decriminalisation. We will also examine the various effects of imprisonment. Consequently, we have divided this study into two main sections, as follows

1. The nature of the reduction of punishment

In the mid-twentieth century, a penal reform movement raised several doubts about short-term imprisonment and its role in reforming and rehabilitating offenders. It was therefore necessary to explore the meaning of the policy of reducing punishment (first requirement) and to distinguish this policy from other similar expressions (second requirement).

1-2 Concept of Limiting Punishment:

Limiting punishment is a modern and robust term in criminal policy, characterized primarily by moderation. It is one of the mechanisms employed by some criminal legislations to reduce the overwhelming number of cases. The policy of limiting punishment often takes the form of removing certain actions from the scope of criminal law in favor of another penal system outside the penal code, subjecting them to administrative, commercial, or civil sanctions, known as administrative penal law².

Dr. Amin Mustafa Al-Sayed defines limiting punishment as: “a complete shift away from criminal law in favor of another legal system, where the criminal nature of an illicit act is removed according to another law, which imposes legal sanctions other than criminal penalties, often administrative financial penalties imposed by the

² Mahmoud Taha Jalal, "The Foundations of Crime and Punishment in Contemporary Criminal Policy: A Study on the Strategy of Using Criminal Sanctions," Dar Al-Nahda Al-Arabiya, Cairo, 2005, 1st edition, p. 291.

administration through administrative procedures and under judicial oversight. The law regulating these matters is known as administrative penal law.³

Dr. Ahmed Fathi Surour believes that the policy of limiting punishment does not necessarily mean the complete abolition of punishment; rather, it may involve abolishing some penalties or preventing the multiplicity of penalties⁴. Notably, Dr. Surour's definition bases the idea of limiting punishment on the option of preventing the multiplicity of custodial penalties, advocating for their unification, a concept first proposed by the French jurist Charles Lucas in 1830⁵. He suggests that abolishing certain penalties, particularly short-term penalties that cannot achieve specific deterrence for the offender, only increases the burdens on the state and hinders the success of contemporary penal policy

In addition, the jurist Marc Ansell argues that the policy of limiting punishment aims to weaken social reactions, which sometimes abandon criminal paths in their narrow sense, and at other times mitigate them or replace them with less confrontational and more effective methods⁶. This definition makes it clear that Ansell views the policy of reducing punishment from a social perspective, advocating the defence of society, which he considers to be the main stakeholder in the success of this policy, as it is the first to suffer from its shortcomings.

The European Committee on Crime Problems defines the policy of reducing punishment as 'all forms of reduction of punishment within the criminal system'⁷. This definition suggests that the Committee limits the policy of reducing punishment to the reduction of sentences and does not include the standardisation of custodial sentences. Furthermore, it restricts this policy to the criminal system only, without abandoning punishment in favour of any civil or administrative system.

Furthermore, an opposing view has emerged which claims that the forms of reduction within the criminal system do not constitute a limitation of punishment. According to this point of view, the reduction of punishment involves the transfer of behaviour from the realm of criminal law to another civil-administrative law, etc. For example, in a report presented by the Italian Minister of Justice at the Sixth Conference of European

³- Mohamed Nasr Mohamed, "A Concise Guide to Criminal Execution Law," Library of Law and Economics, Riyadh, 2012, 1st edition, p. 65.

⁴- Ahmed Fathi Sorour, "Constitutional Protection of Rights and Freedoms," Dar Al-Shorouk Publishing, Cairo, 2000, no edition number, p. 521.

⁵- Saleem Tarek Abdul Wahab, "Introduction to Modern Punishment Science," Dar Al-Nahda Al-Arabiya, Cairo, 2011, no edition number, p. 223.

⁶- Fahd Yusuf Al-Kasasbeh, "The Role of Punishment in Reform and Rehabilitation," Dar Wael Publishing, Jordan, 2010, 1st edition, p. 301.

⁷- Jalal Mahmoud Taha, "The Previous Reference," p. 291.

Ministers of Justice held in Hawaii in 1970, it was stated that the reduction of punishment involves the transition from forms of criminal offences to civil or administrative offences by replacing penalties with non-criminal sanctions⁸.

From the above, we can define the policy of limiting punishment as the abandonment of certain rules of criminal law in favour of another legal system. It is a contemporary approach to criminal policy that seeks to protect social interests and values through new methods and means, especially after the failure of the criminal system to protect these interests.

2-2 Distinguishing between the policy of reducing punishment and the policy of decriminalisation

In the aftermath of the reform movements that swept through most international criminal legislation after World War II, a new ideology emerged that advocated a reliance on more than just criminal law to combat crime. This perspective holds that all sectors of society have a responsibility to combat crime and discourages excessive reliance on the criminal justice system. The policy of decriminalisation, or what is often referred to as the policy of non-criminalisation, emerged as a step towards effective crime control and the mitigation of its harmful effects on society. We will now examine the concept of decriminalisation and its nature.

This policy was clearly articulated at the Sixth Conference of Ministers of Justice in Europe in 1970 and at the Third Scientific Symposium of International Associations of Criminology, held in Bellagio, Italy, in May 1973. It was also the subject of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1975⁹.

1-2-2 The concept of decriminalisation

The European Committee on Crime Problems has defined decriminalisation as “the withdrawal of the power of the criminal justice system to impose penalties for certain forms of behaviour”. This can be achieved through legislative action that fully recognises the legality of certain behaviours, as seen in some European countries where certain moral offences such as adultery or sexual deviancy have been abolished¹⁰.

⁸- Jalal Mahmoud Taha, "The Same Reference," p. 292.

⁹- Ahmed Fathi Sorour, "Constitutional Criminal Law," Dar Al-Shorouk Publishing and Distribution, Cairo, 2002, 2nd edition, p. 164.

¹⁰- Naseefa Faisal, "Oversight on General Administrative Sanctions in the Algerian Legal System," PhD Thesis, Biskra University, Faculty of Law, 2011, p. 29.

Dr. Ahmed Fathi Sorour argues that there is no need to resort to criminalisation and punishment to combat social deviance, a stance reflected in France's abolition of certain acts such as adultery in 1975 and abortion in 1992¹¹.

Professor Leclercq defines it as the abolition of criminalisation and, consequently, the abolition of punishment. This definition is quite precise and clear; it defines the concept by its opposite. If criminalisation is the attribution of illegality to a certain behaviour, then decriminalisation is its negation. However, this definition contains some confusion between decriminalisation and the reduction of punishment, as evidenced by the acknowledgement that any instance of decriminalisation is a form of depenalisation - meaning that decriminalisation is essentially a variant of the reduction of punishment¹².

2-2-2 The nature of decriminalisation

Decriminalisation is fundamentally objective in nature, as it seeks to give legality to acts that were previously considered crimes, regardless of the nature of the perpetrator, whether the principal or an accomplice. It does not depend on whether the act was attempted or completed; rather, it aims to completely eliminate criminal responsibility against any individual and to consider the commission of certain acts as permissible, outside the scope of the law. This is true even if the subject of decriminalisation sometimes meets with social and religious disapproval, as is the case with the decriminalisation of certain acts of adultery in European and Muslim countries, where such acts are regarded as violations of divine limits that should not be mocked.

3-2-2 The nature of limited punishment

The policy of limiting punishment is purely objective in nature, as it lacks personal elements. It reflects specific considerations related to the concept of punishment in terms of its purposes, objectives and the extent to which it can achieve its goals, as well as the feasibility of replacing it with alternative forms of punishment. Its effects are limited to the behaviour that is punishable, regardless of the personal characteristics of the person who committed the behaviour¹³.

3- Effects of imprisonment

A discussion of alternatives to imprisonment requires an examination of the effects of imprisonment, both positive and negative. The following sections outline these effects:

1-3 Positive effects of imprisonment

¹¹- Ahmed Fathi Sorour, "Constitutional Criminal Law," previous reference, p. 165.

¹²- Jalal Mahmoud Taha, "The Foundations of Crime and Punishment in Contemporary Criminal Policy," previous reference, p. 248.

¹³- Ahmed Mohamed Al-Barak, "Consent Punishment in Islamic Law and Contemporary Criminal Systems: A Comparative Study," International Scientific House, Amman, 2017, 1st edition, p. 103.

At present, prisons represent a pressing and important need to contain offenders and protect society from their dangers. As such, imprisonment has positive effects that manifest themselves in reform programmes designed to rehabilitate inmates and reintegrate them into society as productive individuals. Prisons can provide inmates with the necessary religious education, provided that appropriate methods are used, and enable them to attend religious seminars and fulfil their duties in a timely manner. In addition, prisons aim to educate inmates morally by inculcating proper social values and noble principles.

The rehabilitation of prisoners is a continuation of the treatment and moral education they receive during their incarceration. In addition, vocational rehabilitation offers inmates various benefits, such as adapting to a structured environment, alleviating boredom caused by idleness, and engaging their minds in constructive activities that reduce the likelihood of criminal thinking. Above all, it prepares inmates for honest work in the trades they learn and master in prison.

2-3 Negative effects of imprisonment

The negative effects of imprisonment highlight the importance of considering alternatives to imprisonment:

- Influence of others: Prisons are known to house individuals who are rebellious and lawless, having committed various crimes. When these individuals are incarcerated, they often transfer their criminal behaviour to the prison environment. This can have a negative impact on new or less experienced inmates, who may be led into criminal activities that they would not have previously considered. After serving their sentences, these inmates may apply what they have learned in prison, causing further harm to society. This cycle can continue, leading to repeated incarceration and the acquisition of new criminal behaviours.

1. A drain on the public purse:

The establishment and management of prisons, including supervisors, officers and guards, as well as the adoption of rehabilitation programmes for inmates, require substantial resources from the state. These expenses are taken from the annual budget, increasing the financial burden on the state, especially considering that the majority of those entering prisons are capable individuals who could contribute to the community and the economy¹⁴.

The spread of crime and the corruption of society:

¹⁴- Awda, Abdul Qadir, "Islamic Criminal Legislation," 1987, p. 739.

It is undeniable that a first-time offender or someone guilty of a minor crime may be the head of a family. If they are imprisoned, their income ceases and they are no longer able to supervise their family, which may include teenagers who need guidance. In such cases, the family may succumb to temptation and deviate from moral and ethical standards because of their dire circumstances. When the shepherd is absent, the flock may go astray, leading to moral or religious corruption within the family.

Increase in crime:

Experience has confirmed that prisons are ineffective in combating crime; rather, they contribute directly to an increase in crime rates by producing unemployed people, drug addicts, professional criminals and those seeking revenge against society. One academic likened punishment to a slap in the face, suggesting that those with ingrained criminal tendencies will retaliate against society many times over¹⁵.

Decline in health and morale among prisoners:

The prison community is often one of the most morally degraded, with few healthy people entering due to circumstances beyond their control, such as financial problems or cases of self-defence. Inmates from different backgrounds are crowded together, which has dire consequences for their health, including the spread of disease and increased sexual harassment, leading to many ethical problems.

Exposure to bad influences:

Prisons bring together individuals who are criminals and delinquents, creating an environment with values and principles that differ from those of law-abiding citizens. These individuals often adopt behaviours that are contrary to societal norms, leading to a lack of conscience and diminished feelings of guilt about their actions.

Empowerment of criminals:

Some criminals leave prison only to become a burden on society, using their past crimes to intimidate, terrorise and extort money from others. This behaviour prevents them from considering honest work or legitimate means of earning a living. Statistics and studies show that harsh punishment tends to raise the status of a criminal among his peers, with leadership among criminals often held by those who are the most dangerous or who have served the longest sentences.

Unemployment and a weakened sense of responsibility: In addition to being a disincentive, imprisonment leads to a weakened sense of responsibility among offenders and fosters a preference for idleness. Many inmates spend relatively long periods in prison, enjoying a break from work while their basic needs for food, clothing and

¹⁵- Al-Ajrafi Ali Hamid, "Previous Reference," p. 167.

medical care are met. These individuals often fear leaving prison to face the demands of work, resulting in a loss of responsibility to their families and themselves. They often return to prison not out of a love for crime, but rather for the comforts of prison life, which allow them to avoid the burdens of work.

Disintegration of the prisoner's family and financial disruption: When a spouse is imprisoned, the emotional bond between partners often deteriorates. The wife may perceive her husband's imprisonment as a source of shame for the family, which may lead her to seek a divorce or to avoid interaction with the community in order to avoid derogatory remarks that could offend her dignity. This stigma can lead to many problems. Similarly, children may feel embarrassed by social perceptions, leading them to withdraw socially and possibly seek revenge against society or escape to other environments. The stigma attached to the prisoner and his or her family may persist after release, making it difficult for them to reintegrate into the labour market and fostering feelings of being unwanted and unfit for employment because of their criminal record. This situation exacerbates the challenges faced by both the prisoner and his or her family.

The incarceration of a breadwinner also results in the loss of necessary financial support for both the prisoner and his or her family, disrupting the family's economic function. Family members are burdened with the costs of supporting and visiting the prisoner during his or her sentence. This financial burden can deprive the family of basic needs, leading to economic hardship, which has many negative psychological and social consequences. Poverty exposes families to harsh experiences and can lead to deviant behaviour and family breakdown. In addition, financial deprivation can lead to criminal behaviour as a means of survival, adversely affecting children growing up in inappropriate environments.

Sexual deprivation: Prisoners, particularly those serving long sentences who are married, may experience negative consequences from being deprived of legitimate sexual gratification. This deprivation may lead some to engage in homosexual activity as the prison environment is predominantly male. It has been reported that homosexuality rates in some prisons range from 30% to 85%. As a result, many countries are attempting to address these issues, which can lead to serious health risks and conflicts with legal and human values¹⁶.

Lack of deterrence of imprisonment

¹⁶- Ghanem, Abdullah Abdul Ghani, "Tobacco Smoking and Drug Use," Seminar on Raising Awareness of the Risks of Smoking and Drug Use, Naif Arab University for Security Sciences, Riyadh, 1995, p. 130.

Scientific studies have shown that imprisonment has become an ineffective and non-deterrent punishment. This is evidenced by the high rate of recidivism, with around 70% of prisoners having previously been imprisoned.

Acquiring criminal experience and corrupt behaviour

As mentioned above, the prison community is one of the worst environments in which inmates learn negative behaviours from those who preceded them. Examples include

- **Violence:** Violence is a widespread phenomenon in most prisons, stemming from mistrust between inmates. This creates an environment of instability in terms of security and order, as individuals use their influence to intimidate others, leading to a constant state of readiness to use violence in defence of their personal safety and interests.

- **Smoking:** Smoking is a common negative habit in the prison community, often used as a way of expressing feelings of distress and anxiety, as well as a way of forgetting worries and problems. There is a growing trend towards smoking, as evidenced by an increase in the number of smokers and the frequency of smoking.

A study conducted by Ghanem entitled “The Effect of Imprisonment on Inmate Behaviour” confirmed an increase in the number of smokers in prisons, noting that 25% of non-smokers who entered these institutions became smokers, leading to health problems due to overcrowding and inadequate ventilation¹⁷.

- **Substance abuse:** The abuse of alcohol and drugs contributes significantly to violence, crime, illness, disability and even suicide and homicide. Addiction to drugs and intoxicants facilitates criminal behaviour and the commission of offences.

- **Gambling:** Gambling is forbidden by Islamic law because it involves the unjust acquisition of other people’s wealth, and the conflicts and challenges it creates can lead to hostility and confrontation, sometimes resulting in injury or even murder. Allah says: “They ask you about wine and gambling. Say: “There is great sin in them and [some] benefit to people. But their sin is greater than their benefit. And they ask you what they should spend. Say: “The surplus (of what they need). Thus doth Allah make clear the Signs to you, in order that ye may reflect¹⁸.”

In the previous study by “Ghanem”, the majority of the sample population agreed that 58.3% of their peers gambled, while the percentage of gamblers before entering prison was only 8%. This suggests that gambling is a negative behaviour learned by inmates¹⁹.

¹⁷- Ghanem, Abdullah Abdul Ghani, "The Impact of Prisons on Inmate Behavior," Naif Arab University for Security Sciences, Riyadh, 1999, p. 122.

¹⁸- Surah Al-Baqarah, Verse 619.

¹⁹- Ghanem, "Previous Reference," p. 80.

- Exploitation: The environment of prisons does not meet all the needs of inmates, leading some to turn to their peers to meet their needs, exposing them to exploitation and physical and financial blackmail.

In general, imprisonment not only reinforces and increases the prevalence of negative behaviours among inmates, but also changes their behavioural patterns in a number of ways:

- Increased aggression and quick hostile reactions to others.
- Challenging others and doubting their credibility, leading to hatred and resentment of any success they achieve.
- Lying, resignation, pessimism and other negative traits.
- Silence in the face of injustice and concealment of the truth.
- Favouring the powerful and violating the weak.
- Hatred of, and lack of trust in, security personnel and judicial authorities.
- Compliance with laws and regulations while breaking them.

In order to address these negative attitudes and behaviours, which can be detrimental to society as a whole, it is essential to consider and implement alternatives to imprisonment. We should avoid prejudging these alternatives and instead give them the opportunity to prove their effectiveness, just as imprisonment has been given.

4- Alternatives to imprisonment

There are many alternatives to imprisonment, the most important of which are:

1-4 Financial Alternatives to Imprisonment

Financial penalties are often more effective than imprisonment because money can be more valuable to some people than many other things. Types of financial penalties include:

- Fines: This requires the offender to pay a certain amount of money into the public purse in exchange for the offence. Although fines are a practical alternative to imprisonment, they have several drawbacks:
 - They are a weak deterrent for the wealthy.
 - They do not ensure the personal nature of the punishment, as others can pay on behalf of the offender.
 - Many Arab legislations impose imprisonment on those who fail to pay fines, thus removing their status as an alternative punishment.
- Confiscation: This involves the seizure of items used in or related to the commission of a crime, as well as the confiscation of funds for the public benefit, such as in cases of commercial fraud or drug trafficking. Some argue that confiscation alone is insufficient as a punishment; it should be accompanied by some other deterrent punishment.

- Destruction: This refers to the removal of the object of the crime by destroying counterfeit goods, such as poorly made clothing or food that is unfit for consumption.
- Compensation: In addition to a fine, the convicted person may be ordered to pay the victim or his or her relatives additional compensation for the moral distress suffered, as well as compensation for any material or physical damage caused.

Therefore, we believe that the use of fines as an alternative to imprisonment for minor offences is more beneficial and advantageous to society and the State, as their impact on the offender is often greater than that of imprisonment, given the importance of money to the individual. This approach achieves the overall objective of such sanctions. Here's the direct English academic translation of the provided text:

2-4 Psychological Alternatives to Imprisonment

Psychological penalties serve as alternatives to imprisonment, particularly for novice offenders committing minor offenses due to oversight, ignorance, or unintentional acts. These penalties can have a more substantial impact on the offender's psyche than imprisonment, suggesting their adoption as viable alternatives. The primary psychological alternatives are as follows:

A. Admonition: This involves advising and reminding the offender of the consequences of their actions, helping them recognize their wrongdoing. It is suitable for those who commit offenses inadvertently. Admonition is one of the easiest and most accessible penalties, particularly for individuals known for their integrity who may slip into minor errors. In such cases, a judge may find admonition sufficient.

B. Reprimand: This involves verbally chastising the offender with a stern demeanor. It is applicable in cases of minor offenses committed out of carelessness. Reprimand is generally more painful than admonition, placing it at a higher level of severity. Those who require more than admonition, such as individuals displaying a disregard for correction, may be reprimanded with harsh words like "fool" or "sinner," which can be distressing for a reasonable person.

C. Threat: This involves warning the offender against repeating the offense and exposing them to possible penalties. A judge may impose a penalty if the offender reoffends.

D. Ostracism: This entails avoiding the offender, refraining from contact or interaction in any form. The psychological impact of ostracism can be profound, particularly for individuals with extensive social connections. Being ostracized diminishes their perceived value in the eyes of others and can lead to significant harm, potentially greater than that caused by other penalties.

E. Public Exposure: This involves publicizing the offender's crime, making their actions widely known to cause embarrassment and warn others. This penalty can be applied in various cases, considering the circumstances of the offender and the nature of the crime. Judges have notably used this approach in cases of perjury and other offenses that compromise moral integrity.

3-4 Alternatives to imprisonment

There are two types of physical alternatives to imprisonment:

1-3-4 Direct physical alternatives (flogging)

Flogging refers to beating the body in a way that causes pain. It is one of the basic forms of corporal punishment in Islamic law. It is one of the easiest and quickest alternatives to implement and does not have the negative effects associated with imprisonment for both the prisoner and his family, nor does it burden the state with the high costs of incarceration. In addition, flogging is a punishment that is limited to the offender and does not affect innocent parties such as spouses and children, nor does it create the unwanted complications of imprisonment.

Advantages of flogging as an alternative to imprisonment:

- The flexibility of this sentence allows judges to apply it to different crimes and offenders, taking into account their circumstances.
- It protects the offender from the harmful effects of imprisonment.
- It acts as a deterrent to dangerous, habitual offenders because it does not impose a financial burden on the state and does not prevent the offender from being productive.
- It is a punishment confined to the offender.

2-3-4 Indirect Physical Alternatives:

A. Exile: This involves moving a person who has committed a crime to a different region or city from where the crime took place. The person is required to remain in the new location, often reporting regularly to a police station to confirm their presence. Exile is an established punishment in Islamic law, having been applied by the Prophet Muhammad (peace be upon him) and his companions. It serves as an alternative to imprisonment by isolating the offender from his family and home.

B. Deportation: This is a spatial measure designed to separate the offender from a particular place that facilitates his criminal activities. In Islamic law, it is generally forbidden to deport a Muslim or a dhimmi from the Islamic community, as such an action could expose them to temptation or danger and prevent them from practising their religion. However, according to the basic principles of Islamic law, necessity permits the forbidden and every necessity is judged by its extent. This means that actions that are typically not permitted under normal circumstances may be permitted in cases of

necessity, provided they do not go beyond what is necessary. Therefore, in cases of necessity, Islamic states may deport any Muslim or dhimmi if no other means can prevent harm.

C. Travel ban: This is a precautionary measure that prevents individuals from leaving the country until a dispute is resolved, either through reconciliation, judicial decisions, or the expiration of a specified period without a renewal or cancellation order from the competent authority.

D. House arrest: This involves restricting an individual by confining them to their home with limited opportunities to leave, such as for prayer or work. The purpose is to distance them from potential contact with other suspects, and visitors must be known to the individual.

The aims of house arrest include

- To protect the detained person from circumstances that facilitate crime by removing him or her from an environment conducive to criminal activity or by requiring him or her to remain in a place that promotes good behaviour.
- Preventing social risks associated with the person's presence in a particular place or preventing the person from engaging in harmful activities that could endanger the community.

4-4 Suspension of sentence:

The suspension of a sentence is considered a form of individualized punishment by the judiciary. It means that despite the established charges against the defendant and the evidence supporting them, the judge may decide, based on the defendant's personal circumstances, to issue a conviction and sentence as a warning without enforcing the punishment. Instead, the defendant is placed on probation for a specified period, during which one of two outcomes will occur:

1. Successful Completion of Probation: If the probation period passes without any misconduct from the defendant that would undermine the judge's trust or indicate a misjudgment regarding the defendant's character, the conviction is treated as if it never occurred. This scenario represents a form of legal rehabilitation.
2. Conviction During Probation: If a conviction occurs during the probation period for a crime committed either before or after the suspension, or if a prior conviction that the judge was unaware of comes to light, this will prompt a reevaluation of the suspended sentence.

4-5 Community sanctions as an alternative to imprisonment

Community sanctions are measures that require the accused or convicted person to remain in the community, while restricting his or her freedom by imposing conditions

or obligations. They are carried out by specific authorities in accordance with the law. Most Arab legislations provide for community sanctions for both juveniles and adults in order to prevent imprisonment. Brief descriptions of these sanctions are given below:

A. Judicial probation: This is a judicial system that allows a judge to determine the appropriate punishment for an offender based on his or her level of criminality. It is applied to a category of offenders who are deemed to be amenable to rehabilitation and allows the judge to defer sentencing in order to spare them the disadvantages of short-term imprisonment and instead place them under judicial supervision.

B. Judicial pardon: This is granted when the court refrains from imposing a criminal penalty because it is convinced that the offender will refrain from future criminal acts. This pardon is based on a warning to the offender not to commit a new crime or violate the law. This approach is particularly effective for occasional offenders.

C. Parole: This is the release of a prisoner from a correctional facility before the full sentence has been served, subject to good behaviour during the probationary period.

D. Community service: This requires the convicted person to work for the public good in exchange for a nominal payment to meet their needs and the needs of their dependents, with a portion of this payment being used to compensate the victim.

4-6 Barriers to the implementation of alternatives to imprisonment

Despite the importance of alternative sanctions, many barriers limit their use. Some of these barriers are listed below:

A. Judicial preference for imprisonment: The strategy for implementing alternatives has often favoured imprisonment in the minds of judges, as alternative sentences are seen as lenient and insufficient to deter crime. This is a challenge that requires a change in judicial attitudes towards sentencing in order to alleviate the prison crisis.

B. Differences in organisational structures: Prisons are part of the formal criminal justice system and operate under official rules and regulations, which fosters judicial confidence in them as punishments. In contrast, some alternative sanctions do not enjoy the same level of confidence, making some judges reluctant to use them.

C. Ambiguity of alternative sanctions: The unclear presentation and application of alternative sentences has led to much debate and misunderstanding, making traditional sentences of three to six months more acceptable to many judges. This lack of clarity has led to disagreement among judges as to when and for what offences these alternatives should be used.

D. Uncertainty about implementation: There is disagreement about who should implement community service and other non-custodial sentences. In many countries, the Ministry of Social Affairs, a civilian body, is responsible for their implementation.

The different methods of implementation can create doubts among judges, leading them to opt for simpler, more straightforward sentences that ensure uniformity and a sense of retribution.

4-7 Barriers to implementing alternatives to imprisonment

Despite the importance of alternatives to imprisonment, these options face several challenges that limit their use. The main barriers are as follows:

1. **Judicial preference for imprisonment:** Imprisonment has been prioritised in the minds of judges and in practice. Alternative sanctions are often seen as lenient and insufficient to punish offenders effectively.
2. **Lack of confidence in alternative sanctions:** Compared to imprisonment, which is carried out in prisons that are part of the formal criminal justice system and operate according to established rules, alternative sanctions lack similar credibility. This disparity affects judicial confidence in these alternatives.
3. **Ambiguity in application:** There is considerable ambiguity surrounding alternative sanctions and their implementation, leading to much debate and misunderstanding, and resulting in judges imposing short prison sentences instead.
4. **Uncertainty in implementation:** There is a lack of clarity about who is responsible for implementing non-custodial sentences and how they are to be carried out, leading to doubts among judges.

4-8 Optimal use of alternatives to imprisonment

In order to increase the effectiveness of non-custodial alternatives and to achieve their intended purposes in the future, it is essential to activate religious values and establish centres for the implementation of these alternatives. These centres should guide offenders to engage in a variety of activities, some of which may be external, such as community service such as cleaning public spaces, while others may be internal activities carried out within the centres during official working hours.

5- Conclusion

Since the goal of society is to protect the mutual relationship between itself and its customs, values, traditions, and all social laws that ensure the continuity and survival of each, society has entrusted its institutions with the responsibility of punishing those who violate this social contract. Penal institutions have been responsible for enforcing criminal sanctions, including both short-term and long-term imprisonment. Over time, as human thought has evolved, it has become evident that such punitive measures often have more negative than positive effects. Consequently, attention has shifted toward alternatives to imprisonment, recognized for their numerous benefits for both individuals and society.

The issue of deprivation of liberty, especially short-term imprisonment, represents one of the most complex criminal and penal problems facing current penal policies and criminal jurisprudence. This complexity is linked to the effectiveness of punitive policies and the ability of imprisonment to achieve its objectives—rehabilitation, reform, and deterrence. Therefore, various legislations have adopted a conciliatory approach that maintains deprivation of liberty while introducing alternatives such as electronic monitoring or conditional release, in line with the requirements of contemporary penal policy.

Conclusions:

- Contemporary penal policy aims to change the perception of punishment. It no longer focuses solely on the infliction of pain or on general and specific deterrence, but rather seeks to achieve rehabilitation, refinement and reform. Most modern penal codes have embraced these changes.
- Prisons as places of imprisonment have failed to achieve their intended goals due to a number of problems, particularly with short-term sentences. Critics argue that the negatives outweigh the positives, whether it is the burden on the state budget without good outcomes, or the damage to families when the prisoner is their sole breadwinner.
- The use of alternatives to imprisonment, or the transfer of certain offences to other legal systems, has become a major demand advocated by many international conferences and implemented by several contemporary countries.

Recommendations:

- Promote the culture of alternatives to imprisonment because of their many benefits. There should also be a call to transfer certain offences to other legal frameworks, such as administrative, commercial or civil law, in order to avoid overburdening criminal courts and penal institutions.
- Encourage Algerian lawmakers and Arab legislators to open up to comparative laws, such as French, German and Dutch laws, as these countries have successful experiences in the field of penal policy.
- There is a need to accelerate the adoption of modern penal measures in order to avoid exacerbating problems and the inability of penal institutions to implement reform and rehabilitation programmes. Otherwise, these institutions may inadvertently contribute to crime in society through poor interaction with inmates and the exchange of criminal experiences.

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