

Community Sanctions under the Jordanian Penal Code

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Abstract

In the past, all societies were keen to place restrictions on personal freedoms to protect public freedoms. Gradually, countries pursued enacting laws that protected human freedom, showed respect for them, and protected society and rehabilitated individuals who committed criminal acts. These efforts resulted in the introduction of the concept of alternative penalties. This study aims to introduce the amendments of alternative penalties, the Jordanian Penal Code, and highlight the importance of community sanctions on the individual and society through the use of the descriptive and analytical approach. The findings demonstrated the lateness with which Jordanian legislators made modifications to the Jordanian Penal Code and added alternative penalties. Additionally, specifics regarding procedures must be taken to ascertain the requirements that must be met for a judge to decide whether to sentence a criminal to community service.

Keywords: *Community punishments, community service, alternative punishments, punishments, crimes.*

Introduction

Historically, societies have struggled to balance individuals' rights with public goods. Therefore, they tended to enact oral or written codes and establish legal frameworks and systems to create safe spaces marked by stability, control, and the protection of public rights. Sanctions have been put in place to deter individuals from jeopardizing the stability and security of the society.

Various approaches have been employed to impose penalties on violators or individuals involved in prohibited activity. Many forms of punishment have been used throughout history, including electric shock, hanging, shooting, burning, and projectile execution with stones or bullets. Today, due to the development of humanitarian thoughts for protecting and respecting human life, these disciplinary tactics have changed dramatically, taking on new forms like the first injection of a narcotic drug followed by a fatal dosage. In response to the development of humanitarian efforts in protecting human life, numerous nations have gravitated towards the abolition of capital punishment in favor of imprisonment. The trajectory of this developmental paradigm persisted, culminating in the emergence of a novel principle in the realm of punitive measures, termed alternative punishments to imprisonment. This innovative approach is applied to certain acts categorized as criminal offenses and subject to legal sanctions.

The application of alternative sanctions, mainly within the monitored and controlled behavior framework, such as electronic surveillance, has been a controversial topic, which some have regarded as insulting and derogating individual dignity. Conversely, others perceive it as a strategy that contributes to the augmentation of an individual's

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social role and raises the bar for his protection and respect for humanity. Therefore, the researcher will discuss the definition, nature, and necessity of alternative penalties in this work.

The legislative amendments contained in the Jordanian Penal Code and its amendments No. (27) of (2017) and the Code of Criminal Procedure No. (32) of (2017) stipulate alternatives to community reform as an alternative to custodial sentences. The legislator grants the court discretionary authority to enforce these penalties according to certain procedures established by the law and regulations.

The amendments were prompted by scenarios that called for establishing non-custodial penalties for some crimes within broad guidelines adhered to by many nations that respect and regard humankind. The amendment conformed to the ideas presented in the sixth discussion paper by His Majesty King Abdullah II bin Al-Hussein: "To me, it is the main underpinning of a properly functioning nation. It is the one factor that differentiates between a 'developed' and 'developing' nation. It is the very foundation upon which successful democracies, prosperous economies, and well-functioning societies are built. It is the guarantor of individual and public rights." The commitment of His Majesty the King was palpable in his endeavor to formulate laws that would fortify the legal system, reinforcing its autonomy. His vision extended beyond mere punitive measures, aiming to provide viable alternatives to dissuade offenders from relapsing into criminal behavior. Moreover, these laws' underlying philosophy was to allow individuals the opportunity for positive transformation, aligning with the principles of a fair and impartial criminal justice system.

Alternative sanctions involve the offender performing unpaid work as a community service for a restricted period imposed by the legal system as an alternative to traditional incarceration.

Problem Statement:

One of the best examples of democracy in any nation is respect for humankind. Even though alternative punishments are commonly used in families for educational purposes, they are nevertheless seen as a novel type of rehabilitative sanctions that society is unfamiliar with within the context of the legal system. As applying them is seen more like education than punishment, enforcing this kind of punishment may result in numerous challenges that may not be consistent with the character of society or may not be acceptable to them. Therefore, the researcher believes addressing this kind of alternative sentencing is crucial.

Research Importance:

The importance of this research is demonstrated by reviewing the legal amendments stipulated in the Jordanian Penal Code related to community sentences. Since this type of alternative punishment is considered new to society, this study's results can be considered a documented reference for the criminal court in choosing the appropriate alternative to criminal punishment. It also provides a fundamental opportunity to benefit from the offender's ability and knowledge in serving his community.

Research Objectives:

This study seeks to illustrate the influence of legal modifications governing alternative sentencing and to underscore the significance of establishing community-based penalties to alleviate the strain on official authorities tasked with incarcerating individuals for specific offenses. The approach involves addressing the offense through community service, allowing the offender to remain engaged in both private and public spheres of life.

Research Questions

1. What is the importance of legal amendments?
2. How does establishing community sanctions impact the government and its agencies?
3. How does creating community sanctions impact individuals and their families?
4. How are community reform sentences implemented, and which entities oversee and enforce community service programs?

Methodology

The most compatible scientific methods for researching legal amendments and their impact on creating community sanctions are represented by the descriptive approach and the analytical approach, which initially helps in determining the features of this study by collecting information from its characteristics and details and then using analysis and criticism by inductive and deductive means to analyze legal texts and interpret them to come up with a sound understanding of these text under the principles of justice.

Chapter One: Legal Development of Community Sanctions

Section 1: Legal development of community sanctions

Numerous countries have welcomed the inclusion of alternative sentencing in their criminal codes due to their recognition of the significant impact on both people and society. Instead of focusing only on punishment, these creative strategies seek to address the underlying reasons for criminal behavior, support rehabilitation, and improve the general well-being of both offenders and the communities they live in. Community service as a punishment has proven effective in addressing the cultural and psychological effects of traditional punitive methods while reducing the economic impact of incarceration.

A. Community sanctions in Islam

States have implemented community penalties in diverse forms and frameworks since ancient times. Islam has endorsed numerous of these punishments and endeavored to adapt certain aspects. In Islam, three categories of penalties are recognized, namely:

1. Retaliation (qisās): for offenses against another person such as homicide and assault.
2. Punishments (ḥadd): These are the punishments prescribed by law, such as the punishment for crimes such as adultery and theft.
3. Ta'zir: It refers to punishment for offenses at the judge's discretion.

Penalties in Islamic Sharia are divided into three types. The penalty for retaliation and punishment is specified in the Quran and Sunnah as rules to follow when judging wrongful acts. In contrast, ta'zir is punishment applied to other offenses for which no punishment is specified in the Quran and Sunnah. It is a kind of discipline.

Hanafi school defines ta'zir as a "crime which has no specified punishment in shari'a. It is a crime either against the right of God, such as abandoning the prayer and fasting, or against the right of an individual, such as harming a Muslim with a word or deed." In another definition, they regarded ta'zir as "discipline less than ḥadd, the penalty specified is thirty-nine lashes at most and three at the minimum," It is also defined as: "beating less than in the ḥadd." Looking at this concept, we note that the Hanafis considered the punishment for ta'zir to be loss of beating, excluding any other punishments, such as reprimand, defamation, etc.

As for Al-Maliki, they defined ta'zir as: " a disciplinary punishment aimed to reform and rebuke sins for a crime which has no specified punishments or expiations. " We contend here that Al-Maliki's definition of ta'zir does not associate it with punishments and expiations. However, Shafi'i's defined ta'zir as: "a legitimate penalty for every sin for which there is neither punishment nor expiation ." The Hanbali definition of ta'zir is: "disciplinary penalty less than punishment" or "legitimate penalty for a crime for which there is no punishment. "

We argue that the jurists' definition of ta'zir punishment was inaccurate. They used the term discipline to define ta'zir, and they did not consider that discipline is the effect resulting from ta'zir, and it is impossible to clarify the concept's meaning by explaining its effect. However, we contend that ta'zir can be defined as the penalty that the ruler' imam' decrees for every act or statement that is not subject to punishment or retaliation, provided that this punishment meets the legal controls approved by Islam under the principle of preserving human life and dignity, including public goods.

However, Islamic law stipulates that discretionary punishment must not violate the law for the public good . The punishment cannot be burning, and the penalty should align with the severity of the offense, meaning it must not surpass the limits set by the act. In other words, the consequences should be commensurate with the wrongdoing, limited to the wrongdoer, and maintain a sense of equilibrium.

Jurists contended that ta'zir may differ according to people and their words and deeds, even if they commit the same wrongful act. The frequency of engaging in unlawful actions varies based on individual traits, with some being accustomed to such behavior, while others may repeatedly commit serious offenses without hesitation. This school supported their opinion with the hadith of the Messenger (PBH): "Forgive the people with high moral values when they slip but not what calls for the infliction of Hudud. " Al-Shafi'i interpreted this hadith by saying that the people with high morals in this hadith are people known for their good reputation and commonly do not commit wrongful acts, but under some circumstances, they made a mistake. Among the controls that must be met in punishment is considering the circumstances surrounding the commission of the act, whether they are aggravating circumstances or diluted.

B. Community sanctions in Laws

Over time, states have adapted punitive systems in response to shifts in societal behavior. They have intensified certain penalties, decreased others, eliminated some sanctions, and implemented new ones. It is worth noting that community sentences were included in these punitive systems under the title of work for public goods. In 1970, the United States of America worked to create a community service system . This system assigns the judge the authority to decide the appropriate penalty for petty crimes, such as traffic violations. The judge is authorized to reduce the fine in exchange for working a specific number of hours in community service. In France in 1983, the Solidarity Law was introduced , which aimed to show solidarity with the convict, as it made working specific hours in community service an alternative to a specific punishment or part of it. In Egyptian legislation, community service work has been stipulated as an alternative to short-period incarceration or fines imposed on violators if they cannot pay.

Finally, the Jordanian legislator made some amendments to the legal texts of the Penal Code, plainly approved alternative punishments, and stipulated multiple types of alternative punishments. The last of these amendments included community service as an alternative to the original penalty. It is important to highlight that the inclusion of alternative sanctions in Jordanian legislation occurred belatedly. Legal amendments to the Penal Code in 2017 introduced the concept of community sentences despite the global trend of many countries adopting measures for the public good as alternatives to traditional penalties, such as incarceration or fines.

Chapter Two: The Importance of Community Sentences

When someone is imprisoned for a short time for a minor offense, society's traditions still impact them; therefore, applying the penalty of working for the public goods shield many individuals from criticism and stigma. States have thus always sought to identify these penalties, develop them, and incorporate them into legislative texts. The judiciary is assigned to rule on them whenever their requirements are satisfied. As a result, penalties that serve the public goods are of the utmost importance.

Section 1: Community Sanctions Conditions

The Jordanian legislator stipulates working for public goods as an alternative sanction under the title "community punishments," as stipulated in Article (25 bis) of the Penal Code. The Article stipulates that:

1. In misdemeanors, and based on the social status report, except in cases of repetition, the court may rule, even if the ruling becomes final, one or more of the following alternatives:

1. Community service, 2. Community monitoring, 3. Electronic surveillance. 4. Prohibiting the convict from visiting specific places.

2. In felonies that do not occur against individuals, except for cases of repetition, when mitigating reasons are used. The penalty is reduced to one year, and the court may replace the adjudicated penalty, based on the marital status report, with an alternative, if not more, than the alternatives to the custodial sentences stipulated in Paragraph (1) of this Article.

It is worth noting that the Jordanian legislator has defined community service as: "obliging the convict, with his consent, to perform unpaid work to serve the community for a period determined by the court of not less than (40) hours and not more than (100) hours, provided that the work is carried out within a period not exceeding one year." In this text, the legislator has offered the convicted party the option of completing his original penalty or performing community service.

It is worth noting that the law stipulates the following conditions for the application of community penalties:

1. The offense against which the convict is accused must be a misdemeanor with a maximum sentence of one year, or the felony must have one of the mitigating factors that resulted in the one-year sentence being imposed.

2. The convict has not previously been convicted of the same crime.

3. Prior to issuing the ruling, the judge shall clarify to the defendant that he has the right to perform community service instead of the original punishment for the act if he is proven guilty, and a specialized social worker can examine his situation. The judge is entitled to consider the defendant's request to be sentenced to community service instead of the original punishment if he is proven guilty.

4. The ruling for community sentences must be no less than the prescribed minimum of 40 hours and no more than the prescribed maximum of 200 hours.

5. The community sentences must be implemented within a period not exceeding one year.

These conditions illustrate that the Jordanian legislator has limited the application of community sentences to the case of misdemeanors and felonies in which extenuating circumstances exist and the penalty is reduced for one year or less.

Therefore, we suggest applying community sentences in cases of violations and enabling the convict to replace the fines with community sentences. We entrust approval of this replacement to the judge's discretion because it relieves members of society, especially

individuals unable to pay fines. Furthermore, judges shall be entrusted to re-apply the original punishment in the event that the convict does not comply with the community sentence.

Section Two: The scope of applying community sentences and its procedures

Article (25 bis) of the Penal Code empowers the designated judge to enact alternatives to penalties, with the Ministry of Justice overseeing the enforcement of these alternatives. The defendant's social status report mainly has a serious role in determining the application of community sentences. Following this text, the Ministry of Justice worked to issue instructions for the tasks of the Directorate of Community Penalties in the Ministry of Justice (2018), which aims to achieve several benefits, including preserving human rights, rehabilitating offenders as a first step for reintegration them into society and achieving societal reform. Furthermore, it seeks to prevent crimes and reduce expenses allocated to custodial penalties.

The process for imposing community penalties is outlined in these regulations, which also appoint experts to gather information on the case that the dispute judge has assigned to them. The judge should notify the offender that community service may be used instead of the mandatory sentence. The social supervisor takes over after the case is submitted to them to generate a community status report if the offender consents to this or makes the request with the judge. This report includes information about the convict's social, economic, and health conditions and the type of employment that would suit them. Based on this report, The judge makes a decision requiring the defendant to work for a predetermined time.

Conclusion:

This study highlights the need to create community-based penalties and demonstrate the impact of legislative modifications governing alternative sentencing in The Jordanian Penal Code, Article (25 bis), as community sentences have been proven to reduce the costs involved with incarceration, reduce overcrowding in prisons and help in the rehabilitation of criminals and reintegrating them in their society.

It was observed that although community sanctions, often referred to as working for the public good in the past, have long been a feature of social norms and included in state legislative frameworks, the Jordanian lawmakers took a while to make these significant modifications. The study concluded that there should be a clear framework for outlining the conditions of the alternative sentencing that must be fulfilled for a dispute judge to determine the applicable sentence of community service instead of the original punishment. The judge has the right to apply the original punishment for the offense in case the convicted person refuses to follow through on the community penalty.

Recommendations:

1. Jordanian legislators are advised to actively include community penalties as an alternative to more conventional sanctions, going beyond incarceration cases.
2. The Jordanian legislature must create a specific system for community penalties to improve uniformity and clarity. Rather than depending entirely on the social supervisor's judgment, this system should define the prerequisites for such punishments and the places in which they are to be applied.
3. It is suggested that instead of relegating community penalties to an alternate status, Jordanian legislators should consider community penalties as a primary type of punishment for certain crimes, especially those falling under juvenile legislation.

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