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Reduction of Penalties for Legal Entities in the Criminal Law of Iran and Afghanistan in Light of Judicial Determination of Punishment

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Abstract

Legal entities, as one of the fundamental players in the realm of criminal justice, do not have a long history and have only attracted the attention of legislators in recent centuries. Given that these entities may, in the course of their activities, engage in a series of criminal behaviors, legislators consider these cases in criminalization and sentencing, taking into account the unique characteristics and other features of legal entities, and allow judges some discretion in sentencing. Thus, in certain cases, legal entities benefit from certain attributes or eligibility that allow for leniency, including mechanisms such as penalty reduction. Determining the circumstances under which these entities are eligible for reduced penalties, identifying the types of reductions, and assessing the resulting implications are topics worth exploring. This study addresses these questions through a descriptive-analytical method and library-based data, defining penalty reduction as a judgment for the minimum prescribed penalty, which can be categorized into degree reduction and specific reduction. When penalty reduction is applied to those committing criminal behavior, various effects can be expected, such as considering the offender's conditions, creating an environment for rehabilitation, and more.

Keywords: *Reduction; Conversion; Legal Entities; Judicial Determination; Punishment*

Introduction

Punishment has not always been the sole method for combating crime and achieving the objectives of penal sanctions. Instead, certain factors may exist that justify the reduction of penalties for individuals and legal entities in certain cases. This reduction stems from the offender’s eligibility to benefit from social leniency mechanisms. Furthermore, when reduction of penalties is discussed in courts, the unique authority of the judiciary to impose a sentence below the minimum prescribed by law, or to convert the sentence to a more appropriate type, immediately comes to mind. Thus, "reduction" linguistically means to lessen or decrease (Amid, 2010: 443). However, the critical aspect here is the placement of the word “penalty” alongside reduction. In legal terms, penalty means "the punishment or sanction for offenders." Therefore, based on the meanings of "reduction" and "penalty," it can be defined as the reduction of penalties imposed on offenders as anticipated by the legislator.

The most common method of sentencing and the best mechanism for aligning punishment with the offender's character, the severity of the crime, and the reasons for its commission is through penalty reduction. This serves as a prominent indicator of the principle of individualized sentencing (Tajik, 2019:

11). A subtle difference also exists between the terms "reduction" and "mitigation" of punishment; mitigation is broader, encompassing both reduction and conversion of the penalty. As mentioned in Article 37 of the 2013 Islamic Penal Code, mitigation is employed for reducing or changing the penalty, or even substituting one punishment for another. Consequently, the relationship between "mitigation" and "reduction" is one of general to specific, where “mitigation” is the broader concept. Nevertheless, in Iran’s legal system, any reference to penalty mitigation in criminal laws should align with Article 37 of the Islamic Penal Code to determine if substitution is possible (such as replacing confiscation of property with fines ranging from grades one to four, or substituting permanent dismissal with temporary dismissal for a period of five to fifteen years). Otherwise, the term refers to the concept of penalty reduction.

Penalty Reduction can be understood in three ways: legal mitigation, governmental reduction, and judicial mitigation. Legal reduction refers to specific cases anticipated by criminal laws where reduction is mandatory, with legislators identifying a clear need for reduction in specific, well-defined conditions. For instance, family ties in crimes provide a compelling reason to apply penalty reduction. According to the 1996 Islamic Penal Code of Iran, anyone aware of a crime who attempts to help the offender evade prosecution (such as preparing a hideout, concealing evidence, or creating false evidence to acquit the offender) may be sentenced to one to three years in prison.

Additionally, Article 710 of the 1996 Islamic Penal Code of Iran specifies that individuals who assist in establishments used for gambling or alcohol consumption, as referenced in Articles 701 and 705, are considered accomplices and are subject to the same penalty as the principal offender. However, the court may reduce the penalty based on the accomplice’s circumstances, intentions, and impact. These provisions lack binding legal status regarding penalty reduction and merely serve as guidelines, without obligating the judge to reduce penalties.

Legislative mitigation is also foreseen by lawmakers. For example, Article 17 of the 2011 Law on the Punishment of Arms and Ammunition Trafficking specifies that cooperation by defendants or convicts with military and law enforcement agencies in uncovering arms, ammunition, controlled items, or identifying and prosecuting accomplices can lead to a one-degree reduction for punishments ranked from one to six, and full exemption for penalties ranked seven and eight.

In Afghanistan’s legal system, penalty mitigation is legally recognized and emphasized. According to Article 212 of the Penal Code, mitigating circumstances refer to situations that may exempt or reduce the punishment or lead to acquittal. According to clauses 2 and 3 of Article 212, grounds for exemption, mitigation, and acquittal include, first, the court’s obligation to specify mitigating factors in its judgment, and second, these factors prevent criminal liability. Furthermore, such mitigating circumstances prevent the issuance of primary, secondary, and complementary penalties.

As defined in Article 212 of the Penal Code, legal excuses include circumstances that may lead to exemption, penalty reduction, or acquittal of the offender. The legislator divides legal excuses into three categories: 1) cases that exempt from punishment (complete barriers to criminal responsibility); 2) cases that mitigate punishment (partial barriers to criminal responsibility); and 3) cases that lead to acquittal (justifying factors). Thus, Afghanistan’s legislator has also considered and defined penalty mitigation factors from a legal standpoint.

Governmental Mitigation is another form of penalty reduction, granted by the head of state to a convicted individual, and it can only be implemented after a final conviction. Unlike legal reduction, which is reflected in the court’s verdict, the head of state’s reduction applies post-conviction.

According to Article 110, Section 11 of the Constitution of the Islamic Republic of Iran, the power to pardon or reduce the sentences of convicts within the framework of Islamic regulations, upon the recommendation of the Chief Justice, is among the prerogatives of the Supreme Leader. Similarly, Article 99 of the 2013 Islamic Penal Code states that pardons or reductions in the punishment of convicts

are granted within the framework of Islamic regulations, based on the Supreme Leader's decision following a recommendation from the Chief Justice. In addition to granting special pardons, the Supreme Leader has the authority to order a reduction or even conversion of penalties at the time of punishment. In Iran's legal system, even certain severe punishments can be converted. According to Note 2 of Article 278 of the 2013 Islamic Penal Code, for cases under Clause (b) of this article and for other prison sentences not categorized as *Ta'zir* (discretionary) punishments, if the offender repents during punishment and the Supreme Leader deems their release appropriate, they may be freed from prison. The Supreme Leader may also convert their punishment to another form of discretionary punishment.

In Afghanistan, until the year 2021 (1400 AH) when the 2004 Constitution was in effect, the legislator had provisions for governmental mitigation. Under the previous republic system of Afghanistan, the President, as the highest-ranking official, held this power. Thus, governmental mitigation was also among the President's prerogatives.

According to Article 64 of the 2004 Constitution, which addresses the powers of the President, one important point is outlined in Section 18 of this article. Here, the legislator specifies one of the President's key judicial powers: the ability to grant pardons and reduce sentences according to the law. Therefore, in criminal matters, the President can both pardon the offender and reduce the sentence, which are considered two of the President's most significant powers in criminal affairs.

The third type of penalty reduction is **judicial mitigation**, determined by the judge and generally applicable to various offenses. In *Hudud* crimes, due to their defined and fixed nature, reduction is not applicable. However, based on the silence of Note 2 in Article 115 of the 2013 Islamic Penal Code, reduction of specific *Ta'zir* (discretionary) punishments with a religious basis is permitted. Sentence reduction in *Qisas* (retaliation) is also not allowed, though it can be converted to *Diyah* (compensation) with the consent of the victim's heirs or the injured party. *Diyah* functions as a form of compensation, and the recipient may reduce it as they wish. In essence, sentence reduction applies to discretionary punishments (*Ta'zirat*) (Tohidi Nafe, 2015: 156).

Regarding judicial mitigation in Afghanistan, Article 209 of the Penal Code stipulates that the court, in addition to legal mitigating factors specified in this law, may also consider judicial mitigating factors based on circumstances related to the crime and the offender. According to this article, judges must consider legal mitigating factors but may also take specific judicial circumstances into account that may lead to either the reduction or intensification of the sentence.

In light of these points, the following sections will examine the types of criminal penalty reduction, methods of reducing sentences, and the effects of these reductions.

1- Types of Sentence Mitigation

There are two types of sentence reduction: general (or graded) reduction and specific (or non-graded) reduction. Since the core of applying the general rules of the 2013 Islamic Penal Code lies in the eight grades of discretionary punishments (Ta'zirat), reduction of punishment, as a fundamental judicial sentencing institution, is based on grading. Any reduction outside of this framework is considered specific rather than general, although the number of specific reductions is significant.

In criminology, mitigation, referred to as sentence reduction, is essentially synonymous with reduction. This is because "mitigation" in linguistic terms has multiple meanings, including easing, alleviating, lessening, soothing, calming, and providing relief (Mo'in, n.d.: 1050). Therefore, mitigation is synonymous with reduction. The legal definition of mitigation aligns with its linguistic meaning, referring to a process through which the court, when determining punishment, sets a penalty below the minimum legal threshold for the offender or, in some cases, replaces the prescribed punishment with one more suitable for the defendant's condition (Aghaeinia, 2004: 5-10).

According to Clause 1 of Article 213 of Afghanistan's Penal Code, mitigating circumstances are conditions or situations whose presence reduces the offender's sentence. In Iran's penal system, according to Article 37 of the Islamic Penal Code, if one or more mitigating factors exist, the court may reduce or substitute a discretionary punishment in a manner that is more appropriate for the defendant. Mitigating circumstances are general, encompassing both legally defined and judicially determined mitigating circumstances. Legally defined mitigating factors are those explicitly stated by the legislator in the law, while judicially determined factors are cases in which the judge has the authority to mitigate the punishment. In these cases, the court may consider issuing a severe sentence for the offender to be unjust and thus sees it as necessary to apply a reduced sentence. By taking this action, the court essentially moves towards the principle of individualizing crimes and punishments, aiming for justice while considering public opinion, such as when a crime is committed due to the offender's naivety or trustfulness.

The Afghan legislator has addressed both types of mitigating factors in Clause 2 of Article 213 of the Penal Code.

The first to eleventh clauses include legal mitigating factors, while the twelfth clause refers to judicial mitigating factors. This is because the phrase "other circumstances specified in this law" points to legal mitigating factors, whereas the phrase "circumstances that the court infers from the facts related to the crime and the offender" refers to judicial mitigating factors.[1] Thus, it is clear that the legal mitigating factors outlined in the eleven clauses are illustrative, and the phrase "other circumstances specified in this law" in part 12 refers to the aforementioned claim.

The Iranian legislator has explicitly outlined the legal mitigating factors in Article 38 of the Islamic Penal Code in eight clauses. However, the content of these eight clauses is such that it practically undermines the exclusivity of the list.[2] For instance, the phrases "specific circumstances" in clause (b) and "minor harm" in clause (j) are so broad that a judge can refer to them quite freely (Tavajjohi, 2023: 280-310). The judicial mitigating factors can be referred to in Article 115 of the Islamic Penal Code,[3] which states that repentance leads to a reduction in the penalties of Ta'zir (discretionary punishment) from levels one to five. The reduction of punishment will occur in accordance with the provisions of Article 37 of the

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[1] (2) The circumstances that mitigate criminal responsibility are as follows:
"1. Committing a crime based on noble motives. 2. Committing a crime as a result of strong emotional excitement caused by the illegal and provocative actions of the victim or a third party. 3. Committing a crime during self-defense, provided that it exceeds the limits of legitimate defense. 4. Committing a crime due to threats or coercion arising from material and moral power or occupational duty, provided that it exceeds the limits of coercive conditions, performance of duty, and compliance with orders. 5. The offender's attempt to prevent the consequences of the committed crime. 6. Voluntary compensation for the damages incurred or removal of the harm resulting from the crime. 7. Committing the crime for the first time. 8. The confession or acknowledgment of the accused regarding the crime and his serious expression of remorse in a manner that assists in establishing the facts of the case or in identifying, apprehending, or arresting the accomplices or collaborators in the crime. 9. Committing a crime by a pregnant woman or a woman with an infant. 10. Actions by the victim. 11. Old age, being seventy years for men and sixty-five for women. 12. Other circumstances specified in this law or circumstances that the court infers from the facts related to the crime and the offender."

[2] **Article 38 of the Islamic Penal Code:**
"The factors for reduction of punishment are as follows: a. Forgiveness of the complainant or the private plaintiff. b. Effective cooperation of the accused in identifying accomplices or assistants, obtaining evidence, or discovering assets and objects resulting from the crime or used in the commission of the crime. c. Specific circumstances affecting the commission of the crime, such as provocative behavior or statements by the victim. d. The declaration of the accused prior to prosecution or their effective confession during investigation and trial. e. Remorse, good character, and specific conditions of the accused such as old age or illness.
f. The accused's efforts to mitigate the consequences of the crime or their actions to compensate for the damages caused. g. The minor nature of the harm inflicted on the victim or the adverse consequences of the crime. h. The weak involvement of an accomplice or assistant in the commission of the crime

[3] **Article 115 of the Islamic Penal Code:**
"In cases of discretionary punishments of grades six, seven, and eight, if the offender repents and their remorse and intention for reform are established before the judge, the punishment shall be revoked. In other crimes subject to discretionary punishment, the court may apply the regulations regarding the reduction of punishment."

Islamic Penal Code, as indicated by the phrase "apply the regulations related to the reduction of punishment." On the other hand, the reduction of punishment, as stipulated in Article 207 of the Afghan Penal Code[4] and Article 37 of the Islamic Penal Code,[5] is applicable only to Ta'zir punishments, and the mitigating circumstances provided in the law cannot lead to a reduction of punishment in cases of Qisas (retribution), Diyat (blood money), or Hudud (fixed punishments)

Determining punishment between the minimum and maximum penalties established by law is the jurisdiction of the court, and in this regard, the court is not required to implement regulations concerning the reduction or intensification of punishment. Therefore, the issue of reducing penalties can only be raised when the court intends to lower the penalty below the minimum set by law or convert it to another penalty that is more suitable for the offender (Daleer and Kahzadi, 1397: 22). This principle is observed in the Penal Code regarding imprisonment but not regarding monetary penalties. As the legislator states in Article 215 of the Penal Code: "Whenever one or more conditions of mitigating circumstances exist in a misdemeanor, the court shall rule on the reduction of punishment as follows: 1. If the prescribed punishment is moderate imprisonment and has a minimum, it may be reduced to less than the minimum. 2. If the prescribed punishment is a maximum short-term imprisonment, it may be reduced to three months of imprisonment. 3. If the prescribed punishment includes both imprisonment and a monetary penalty, the offender will be sentenced to one of them. 4. If the prescribed punishment is either imprisonment or a monetary penalty, the offender will be sentenced to a monetary penalty." Therefore, the legislator’s intention regarding the reduction of monetary penalties does not include a punishment that is less than the legal minimum. The fact that the legislator accepts a reduction in the case of imprisonment to below the legal minimum but does not accept it for monetary penalties may present two perspectives, which will be examined below:

First, the monetary penalty must be collected, as it is the right of the state to ensure its resources through this means, which is not very effective, or the reduction of the monetary penalty may lead to the formal implementation of the punishment. The second perspective is that the legislator intended to emphasize greater deterrence, preferring that the offender refrain from committing the crime rather than carrying it out.

Clauses 3 and 4 of Article 215 of the Penal Code of Afghanistan can exemplify this principle; because if imprisonment and monetary penalties are considered the minimum penalties prescribed for a crime, the ruling on one of them or a ruling solely on the monetary penalty may reflect this principle, even though the legislator has not considered the punishment to be less than the minimum prescribed in these provisions. For example, in Article 533 of the Penal Code of Afghanistan, medium imprisonment and monetary penalties ranging from 60,000 to 300,000 Afghanis are provided for the offender. In the presence of mitigating circumstances, the criminal judge is obliged to sentence the offender to one of these two options and cannot impose a prison sentence of less than one year or a monetary penalty of less than 60,000 Afghanis. Alternatively, according to Article 538 of the Penal Code, medium imprisonment or a monetary penalty ranging from 60,000 to 300,000 Afghanis is anticipated. In the event of mitigating circumstances, the criminal judge is obliged to impose solely a monetary penalty determined within this minimum and maximum range, and cannot impose a monetary penalty of less than 60,000 Afghanis.

Therefore, the topic of the reduction of punishment for offenders is one of the most important components of the leniency institution towards them. With the increasing number of perpetrators in the criminal justice arena and the difficulty in determining their culpability, in many cases, the existence of

[4] **Article 207 of the Penal Code:**
"The determination of punishment by the court shall be carried out in accordance with the provisions of Articles 2 and 3 and other general principles and rules within the limits of the provisions of this law, which specify the responsibility for committing the crime."

[5] **Article 37 of the Islamic Penal Code:** "In the presence of one or more mitigating factors, the court may reduce or convert the punitive measures in a way that is more suitable for the defendant, as follows..."

certain factors known as mitigating factors in punishment raises the discussion of reducing punishment for these individuals (Noori, 1400: 82).

Consequently, the types of punishment reduction can generally be divided into two categories: degree reduction and specific reduction. The first is more applicable according to the classification that the Iranian legislator has made regarding types of punishments. However, given that degree reduction focuses more on the maximum and minimum punishments, this institution is also applicable in Afghan law, which will be examined further in relation to both cases in the legal systems of Afghanistan and Iran.

1-1 Degree Reduction

The term "degree reduction" refers to a discretionary institution for the systematic reduction of punishment. In fact, the minimum and maximum punishments and the degree of reduction are predetermined by the legislator in the text of the law, but the specific degree that is ultimately determined within this legal framework is at the discretion of the judge. Degree reduction itself is categorized into two types. In this regard, both types pertain to the punishments prescribed in legal regulations and then the reduction from the specified punishment occurs.

1-1-1 Specific Degree Reduction

Specific degree reduction can only be applied to imprisonment. In this case, the imprisonment can be reduced by one to three degrees. Therefore, a seventh-degree imprisonment can only be reduced by one degree, which would be to the eighth degree. Specific degree reduction for crimes classified as eighth-degree offenses is also not applicable; however, imprisonment at this degree is necessarily converted into alternative punishments.

Reducing by one to three degrees of punishment involves the legal classification of the offense committed and subsequently reducing it to a lower degree than that of the committed offense. Consequently, on one hand, the reduction of imprisonment only applies to the punishment of imprisonment itself, and the conversion of its verdict is only possible in the cases expressly specified by law. On the other hand, reducing the degree of imprisonment does not necessarily determine a punishment that is simply one degree lower than the degree of the committed offense, but the level of punishment must also be less than the minimum legally prescribed punishment for the reduction to be meaningful.

As the Iranian legislator stated in Article 37 of the Islamic Penal Code (1392): "In the presence of one or more grounds for reduction, the court may reduce or convert the punitive measures in a manner more suitable for the defendant as follows: a) reducing imprisonment by one to three degrees; b) converting confiscation of property to a monetary penalty of grades one to four; c) converting permanent disqualification to temporary disqualification for a period of five to fifteen years; d) reducing other punitive measures by one or two degrees of the same type or other types."

Based on the legislator's statement in the above article, two points can be inferred:

First, the legislator in the above article has referred to the discussion of conversion and reduction under the title of "reduction in punishment"; that is, these two subjects are considered under the title of reduction in punishment.

Second, the legislator has explicitly mentioned specific reductions in two clauses (a and d). The first is applicable when the convicted person benefits from mitigating factors, allowing the judge to reduce the punishment from one to three degrees if the punishment is imprisonment. The second indicates the explicit provision of the aforementioned article; that is, the legislator has clearly stated in clause (d)

that if other punitive measures also undergo reduction in this law, the punishment must be reduced by one or two degrees of the same type or other types of punishments.

Clear examples of this in the Afghan legal system are stated by the legislator in Articles 213 and 214 of the Penal Code. As mentioned in Article 214 of this law: "Whenever one or more conditions of mitigating circumstances exist in a criminal act, the penalty shall be reduced as follows: 1- If the penalty for the committed crime is death, it shall be reduced to life imprisonment of grade 1. 2- If the penalty for the crime is life imprisonment of grade 1, it shall be reduced to life imprisonment of grade 2. 3- If the penalty for the committed crime is life imprisonment of grade 2, it shall be reduced to long-term imprisonment. 4- If the penalty for the committed crime is long-term imprisonment, it shall be reduced to medium-term imprisonment."[6]

Based on the statement of the Afghan legislator in the above article, reduction in punishment is applicable only to felonies, and this case is discussed under the title of specific degree reduction.

Considering the statements made in the legal systems of Iran and Afghanistan, it is evident that this type of reduction is specific to imprisonment, and imprisonment is also specific to natural persons, with no possibility of imprisoning legal entities. Therefore, specific degree reduction does not apply to legal persons.

1-1-2 General Reduction of Degree

General reduction of degree includes cases examined under the title of non-imprisonment punishments. According to the Iranian legislator, as stated in paragraph "n" of Article 37 of the Islamic Penal Code ratified in 2013,[7] the reduction of other punitive measures is applied by one or two degrees of the same type or of different types. Furthermore, the specific reduction of degree regarding imprisonment and the general reduction of degree concerning other punishments can be cumulative. Although penalties can be subject to reduction simultaneously, the possibility of reducing all of them exists unless the case falls under the concept of material plurality, in which case the reduction of degree is not applied, and the rules for reduction must be followed

In the legal system of Afghanistan, when a person commits a misdemeanor, according to Article 215 of the Penal Code, the offender, considering the reduction of punishment, shall be sentenced as follows: 1) If the prescribed penalty is medium imprisonment with a minimum, it may be reduced to less than the minimum. 2) If the prescribed penalty is the maximum of short imprisonment, the sentence shall be three months of imprisonment. 3) If the prescribed penalty includes imprisonment and a monetary penalty, the offender shall be sentenced to one of them. 4) If the prescribed penalty in law is imprisonment or a monetary penalty, the offender shall be sentenced to a monetary penalty. According to the concept of reduction of punishment, what is mentioned in paragraph one of this article is the clearest example for discussing the reduction of general degree of punishment.

However, the question arises in cases where only a monetary penalty is prescribed for the offender, whether the legislator has specified what the obligation is if mitigating circumstances exist. Can the criminal judge impose a monetary penalty that is less than the legally prescribed minimum? Or if a

[6] According to Article 147 of the Penal Code, the duration of imprisonment in the Afghan legal system is as follows: 1. Short-term imprisonment ranges from three months to one year. 2. Medium-term imprisonment ranges from more than one year to five years. 3. Long-term imprisonment ranges from more than five years to sixteen years. 4. Life imprisonment of grade 2 ranges from more than sixteen years to twenty years. 5. Life imprisonment of grade 1 ranges from more than twenty years to thirty years.

[7] According to Article 37 of the Islamic Penal Code: “In the presence of one or more mitigating factors, the court may reduce or convert the discretionary punishment in a manner that is more appropriate for the accused as follows: a) reduction of imprisonment by one to three degrees; b) conversion of the confiscation of property into a monetary penalty from degree one to four; c) conversion of permanent disqualification to temporary disqualification for a period of five to fifteen years; d) reduction of other discretionary punishments by one or two degrees of the same type or of different types.”

relative monetary penalty is prescribed for a crime, it is also unclear what the judge should do in the event of mitigating circumstances. One viewpoint might suggest that in the presence of mitigating circumstances, the judge could reduce the relative monetary penalty up to five thousand Afghanis according to paragraph 2 of Article 140 of the Penal Code. However, this viewpoint lacks legal backing.

Furthermore, according to Article 508 of the Penal Code, which prescribes imprisonment, monetary penalties, and the dissolution of legal entities and confiscation, it is unclear whether the criminal judge can impose only a monetary penalty on the offender if mitigating circumstances are present. This is because Article 215 of the Penal Code refers to misdemeanors and does not include felonies. Similarly, regarding legal entities, it is unclear whether the criminal judge can consider mitigating circumstances and set their prescribed monetary penalty below the minimum established by law.

These issues are considered significant shortcomings in the Penal Code, indicating the necessity of amending the law in these areas to clarify these important matters. This would prevent confusion for the criminal judge at the time of issuing a ruling and help avoid administrative corruption by judicial institutions.

In the Iranian legal system, the grading system in Article 19 of the Islamic Penal Code can be effective in adopting leniency policies and can facilitate various effects, such as the more accurate application of individualized penalties. However, this grading system also has its shortcomings. One of the issues is: what degree does a relative monetary penalty belong to? The law is silent on this matter, leading to questions. For example, initially, it can be stated that relative monetary penalties do not fall within the categories of punishments, as the amount of the monetary penalty is determined after the case is processed in court. Including this penalty within the grading system leads to practical issues, such as the necessity of determining the degree of the committed crime to establish the competent court, which conflicts with the fact that the degree of the relative monetary penalty, which must be determined by the court competent to adjudicate the crime, cannot be predetermined.

Another question arises regarding whether this case falls under the provisions of paragraph 3 of Article 19 of the Islamic Penal Code, where the legislator states that if a punishment does not conform to any of the eight categories outlined in this article, it will be considered a grade 7 penalty. Another viewpoint is that the degree of this punishment can be determined according to the amount specified in the indictment, and based on that, the jurisdiction of the court can also be established.

If the relative monetary penalty does not fall within the degrees of punishment, it will create significant issues. These problems persisted in the Iranian legal system until the issuance of the Supreme Court ruling number 759 dated 20/4/1396. According to this ruling, relative monetary penalties are considered to be of grade 7 and their adjudication, based on Article 340 of the Code of Criminal Procedure, falls under the jurisdiction of the second criminal court. Crimes such as money laundering, which have only a relative monetary penalty as punishment, are classified as grade 7 offenses according to this ruling. Therefore, even in cases where the amount of proceeds from the crime exceeds one billion rials, the judge can, in accordance with Article 37 of the Islamic Penal Code, apply leniency provisions to reduce the penalty to a grade 8 monetary penalty or, per Article 39 of the Islamic Penal Code, grant exemption from punishment (Bahrami, 1396: 10-11).

In such cases, it is better for the legislator to adopt a strict approach. Offenders in these types of crimes have financial motives, and such exemptions may encourage them to commit crimes. It would be appropriate to grant the judge the discretion to determine which grade the relative monetary penalty falls under after reviewing the case. In the event of mitigating circumstances, the judge could reduce it by one or two degrees of the same type or other types. This way, the reduction in penalty would not be excessive, and it could also serve as a deterrent.

Sometimes, the reduction of monetary penalties is not permitted under certain specific laws. An example is the *Law on Combating the Smuggling of Goods and Currency*, enacted on 3/12/1392 (February 21, 2014), which was passed after the Islamic Penal Code. According to Article 71 of this law, the reduction and suspension of monetary penalties are prohibited. However, if offenders cooperate with government officials during preliminary investigations by confessing and facilitating the discovery of smuggled goods and currency or the arrest of trafficking ringleaders and other suspects, their sentences may be reduced. Article 72 of the above-mentioned law explicitly provides for the reduction of sentences for such individuals. The prohibition on reducing monetary penalties in Article 71 does not apply when offenders cooperate with government officials. When a court has the authority to exempt an offender from all penalties, including monetary fines, it can certainly also reduce the monetary penalty.

Therefore, the question arises: if a crime carries composite penalties, such as imprisonment and a fine, and the court decides to reduce the prison sentence, is it also required to reduce the fine? Since in this case it is a single crime, and the mitigating factors are general, if the court refers to mitigating factors such as the defendant's good character and specific circumstances, it is thus obliged to reduce all penalties associated with the crime. However, if the court finds it inappropriate to apply a reduction to certain penalties in the case, it may refrain from doing so with clear indication of its reasons (Dalir, 2018: 26). For instance, if the punishment involves imprisonment and a fine, the court may, considering the offender's situation, reduce the fine but deem the offender’s presence in society inappropriate. The Legal Department of Iran's Judiciary has confirmed this view, stating that if a crime involves prison, corporal punishment, and fines, the court is at liberty, according to Article 37 of the Islamic Penal Code, to reduce any or all of these penalties.[8]

However, this is not accepted in Afghanistan’s criminal justice system. According to Sections 3 and 4 of Article 215 of the Penal Code, if the prescribed punishment includes both imprisonment "and" a fine, the court is obligated to apply one of the two. If the prescribed punishment is imprisonment "or" a fine, the court must impose the fine. This cannot be considered a general example of penalty reduction.

The question here is why the legislator has allowed for the reduction of imprisonment but not for fines. The nature of the crime in question is economic, and since legal entities are often the perpetrators of economic crimes, the legislator has aimed to adopt a strict approach to ensure that fines are collected in every possible way, thereby achieving a deterrent effect. Additionally, the legislator adopts a strict stance on the amount of fines imposed on legal entities. According to Article 21 of the 2013 Islamic Penal Code, the enforceable fine for a legal entity must be at least twice and at most four times the amount specified for the same crime if committed by an individual. There is no similar policy in Afghanistan's criminal justice system, where the judge is obligated to act according to general principles.

1-2 Special Reduction

Another type of reduction, known as *special reduction*, is applied differently from the standard reduction in the degree of punishment. Special reductions are specifically outlined by the legislator within the text of the law. For instance, in cases of *material multiplicity of crimes*, according to Note 3 of Article 134 of the Islamic Penal Code (2013), if mitigating factors exist, the court may reduce the offender's punishment to the average of the minimum and maximum range. If no minimum or maximum punishment is specified, the sentence may be reduced by up to half.

The legislator has also provided for special reductions regarding the punishment of *legal persons*, as indicated in Clause (P) of Article 20 of the same Code: "Prohibition from one or more occupational or social activities permanently or for a maximum period of five years." This clause sets a specific reduction mechanism for legal entities.

[8] Legal Opinion No. 972/92/7, dated 28/5/1392, from the General Office of Legal Affairs of the Judiciary

Furthermore, in the case of *repeat offenses*, Article 139 states: "For repeat discretionary offenses, if mitigating factors exist, the following procedures apply: (a) if the legal punishment has minimum and maximum limits, the court may reduce the sentence to the average of these limits; (b) if the punishment is fixed or has no minimum, the court may reduce the sentence by up to half." The article further stipulates in a note that if the offender has three or more final convictions qualifying as repeat offenses, reduction measures cannot be applied.

In addition to the above, reductions also apply to alternative sentences, mandatory discretionary punishments (ta'zir), and juvenile offenses. However, these forms of reduction do not apply to legal persons, indicating that such entities are excluded from these special reduction measures (Sheikh al-Islami, 2016: 17-20).

The Afghan legislator has similarly adopted a policy of special reductions, affirming Iran's approach. Articles 74 to 77 of the Afghan Penal Code address this, stating: "A person (whether legal or natural) who is sentenced to a lighter punishment for an offense but subsequently receives a harsher punishment for a related offense will have the latter punishment applied, with any prison time served for the first conviction credited accordingly." Additionally, Article 77 states: "If a person (legal or natural) is convicted of one offense and later convicted of another unrelated offense, both sentences will be applied consecutively, even if the prison term exceeds thirty years."

In both Articles 74 and 77, the legislator uses the term "person," indicating that the provisions apply to both natural and legal persons. This means that the special reductions outlined in these articles apply to both individual and corporate offenders. However, considering the nature of imprisonment, this type of punishment cannot practically apply to legal entities. Therefore, a judge may apply an equivalent punishment, such as prohibiting the activities of a legal entity, as a substitute.

2. How Sentencing Conversion Works

One important aspect of sentencing conversion is understanding the method of its application—in other words, determining how a sentence can be converted from one form to another. In the following sections, we will examine this topic comparatively within the legal frameworks of Iran and Afghanistan.

The Iranian legislator has explicitly addressed sentence conversion in Article 65 of the Islamic Penal Code (passed in 2013), which clearly specifies the conditions and methods for converting certain sentences.

This comparative analysis will further explore the mechanisms for converting punishments as outlined in both Iran's and Afghanistan's legal systems, providing insight into the differences and similarities in their approaches to penal reform and sentencing adjustments.

1.Under Article 65 of the 2013 Islamic Penal Code, offenders of intentional crimes with a maximum legal penalty of three months' imprisonment are instead sentenced to alternative punishments. This means that when a legal entity commits an intentional offense punishable by up to three months of imprisonment, this sentence is converted to an alternative penalty, and alternative forms of punishment are applied accordingly.

2.According to Article 66 of the same law, offenders of intentional crimes with a maximum legal penalty ranging from ninety-one days to six months' imprisonment are also sentenced to alternative punishments, unless they have a criminal record for intentional offenses that meets specific conditions and within the past five years. These conditions are: a) More than one prior conviction for either up to six months' imprisonment, a fine exceeding ten million (10,000,000) rials, or ta'zir flogging. b) One prior conviction for either more than six months' imprisonment, a sentence of hadd (fixed punishment), qisas (retribution), or a fine of one-fifth of the full blood money (diyya).

3)According to Article 67 of the Islamic Penal Code of Iran, the court can sentence offenders of intentional crimes with a maximum legal penalty of more than six months to one year of imprisonment to alternative punishments. However, the application of alternative punishments is prohibited if the conditions specified in Article 66 of this law are met.[9] This means that if the judge has considered a penalty of more than six months to one year of imprisonment for the intentional crimes committed by the offenders, their punishment will be converted to an alternative penalty.

However, the legislator of the Islamic Republic of Iran has outlined specific conditions in Article 66, indicating that if these conditions apply to the defendant, the defendant will not benefit from a reduction in penalty.

4)According to Article 68 of the same law, the legislator specifies that offenders of unintentional crimes are sentenced to alternative punishments instead of imprisonment, unless the legal penalty for the committed crime exceeds two years of imprisonment. In this case, the imposition of alternative punishments is discretionary. This means that all offenders who commit unintentional crimes can benefit from alternative punishments; however, if the penalty specified by the legislator is more than two years of imprisonment, the judge has the discretion to apply or refrain from applying the alternative punishment.

In the legal system of Afghanistan, similar to the legal system of Iran, the effects of penalty reduction manifest under the title of alternative punishments. The legislator of Afghanistan has addressed this issue in various provisions of the Penal Code

1)As stated in Article 151 of the Penal Code: (1) The court may sentence an offender of a crime with a maximum legal penalty of up to five years of imprisonment to an alternative punishment instead of imprisonment, in accordance with the provisions of this law; (2) The court is obligated to state the reasons for using or not using alternative punishments in its ruling based on the provisions mentioned in paragraph (1) of this article; (3) Offenders of crimes against internal and external security, terrorism, financing terrorism, sexual assault, administrative and financial corruption, genocide, crimes against humanity, war crimes, and offenses against the state are excluded from the provisions stated in paragraph (1) of this article.

This article addresses one of the most significant topics regarding alternative punishment for imprisonment, namely the conditions for using alternative imprisonment. Undoubtedly, the conviction of an offender to an alternative punishment has specific conditions related to the principle of alternative imprisonment or the determination of the type of alternative punishment, each explained as follows:

According to paragraph 1 of Article 151, this paragraph outlines one of the substantive conditions related to the principle of allowing an alternative punishment. One important aspect in determining an alternative to imprisonment is clarifying the scope and limits of using alternative imprisonment, which is detailed in Article 148 of the Penal Code. According to paragraph 1 of Article 151, this applies to crimes whose primary penalties are categorized as medium or short-term imprisonment.

Secondly, regarding the nature of the crime, according to paragraph 3 of Article 151, offenders of the aforementioned crimes, as well as offenders of crimes specified in Article 10 of Annex 2 of the Criminal Procedure Law, are exempt from the provisions of paragraph 1 of Article 151 of the Penal Code

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[9] According to Article 66 of Afghanistan's Penal Code: "Perpetrators of intentional crimes whose maximum legal penalty is imprisonment for a period of ninety-one days to six months shall be sentenced to alternative punishment instead of imprisonment, unless they have a criminal record for intentional crimes as follows, and less than five years have passed since the enforcement of the sentence."

a. A record of more than one final conviction of imprisonment up to six months, or a fine of more than ten million (10,000,000) rials, or discretionary whipping.

b. A record of one final conviction of imprisonment for more than six months, or a conviction for hadd, qisas, or the payment of more than one-fifth of blood money (diyah)

concerning the application of alternative punishments and its benefits. Therefore, offenders of these crimes cannot benefit from the leniency and reduction offered by the alternative imprisonment policy.

According to paragraph 1 of Article 151 of the Penal Code, the convicted person may be sentenced to an alternative punishment without being sent to prison from the beginning of the conviction, provided that certain conditions are met.

In paragraph 2 of the same article, the legislator outlines the procedural conditions for using alternative imprisonment. This requirement is a legal procedural condition stating that the court's ruling on alternative imprisonment must be substantiated and reasoned. The term "substantiated" means that the relevant legal provision regarding alternative imprisonment must be mentioned in the judgment. Meanwhile, "reasoned" implies that the court must provide the reasons and justifications for deciding on alternative imprisonment, as outlined in Article 149 of the Penal Code.

The legal effect of this requirement is significant: if the court fails to specify the legal basis and the rationale for using or not using alternative imprisonment in its judgment, it may serve as grounds for the convicted person or the prosecutor to appeal the court's decision. This ensures transparency and accountability in the judicial process, allowing for scrutiny of the court's decisions regarding alternative punishments.

Since the use of alternative punishments is not always acceptable for all crimes and may conflict with the principle of proportionality of crime and punishment, there are additional limitations on the application of alternative imprisonment based on the nature of the committed crime. If a legal entity commits serious and criminal offenses, the court cannot initially sentence it to an alternative punishment.

Paragraph 3 of Article 151 of the Penal Code specifies the crimes that are excluded from the provisions of paragraph 1, which include crimes against internal and external security, terrorism, financing of terrorism, sexual offenses, administrative and financial corruption, genocide, crimes against humanity, war crimes, and crimes against the state. Thus, individuals committing these crimes cannot benefit from the leniency and concessions provided in paragraph 1 of Article 151.

The legislator has indicated in paragraph 3 of Article 151 the types of crimes that do not qualify for a reduction in punishment. Most of these crimes can be committed not only by natural persons but also by legal entities. For example, a terrorist act can easily be committed by a legal entity established for that purpose, as well as by an individual with no connection to a legal entity. Similarly, crimes such as genocide, crimes against humanity, territorial aggression, and war crimes can be perpetrated by both legal entities and natural persons. This highlights the significant role legal entities can play in committing serious offenses, which necessitates a stringent legal response.

2) According to Article 153 of this law: "Crimes for which the legal penalty is imprisonment for more than five years cannot be eligible for an alternative punishment if the penalty is reduced to less than five years." The legislator has stated in paragraph 1 of Article 151 of the Penal Code that the primary condition for allowing the use of alternative imprisonment is applicable to crimes with a medium penalty. Article 153 explicitly clarifies that crimes with a legal penalty of imprisonment exceeding five years, such as long-term or indefinite imprisonment, do not permit the use of alternative imprisonment even if the sentence is reduced to less than five years.

Thus, the limitation on the use of alternative imprisonment based on the type of penalty is restricted solely to those penalties where the main and legal punishment is short or medium imprisonment. For example, if a company commits a crime that carries a long-term imprisonment penalty, and for any reason, the penalty is reduced, resulting in a reduction of imprisonment to five years, that individual is not eligible for the leniency and alternative punishment provisions according to Article 153 of the Penal Code.

This provision reinforces the notion that serious offenses carry a more stringent legal framework and limitations on leniency, reflecting the gravity of the offenses committed.

3) According to Article 161 of this law: (1) The court, considering the type of crime committed and the character of the convict, determines the manner of supervision and monitoring over the convict. (2) The convict is obliged to inform the supervising authority of any changes in employment, permanent residence, and relocation to another area.

Thus, in accordance with Article 154 of the Penal Code, the court must specify the supervising authority in its ruling regarding alternative imprisonment. Article 161 clarifies the importance of individualizing the punishment in determining the supervising authority. Therefore, based on paragraph 1 of the above article: "The court, considering the type of crime committed and the character of the convict…," the court must take into account the psychological, familial, and social characteristics of the offender when determining the supervising authority. The manner of supervision over the convict should also be adapted to the type of crime committed and the circumstances of the offender. For example, if the offender is a representative of a water company, the supervising authority and the method of supervision should be established and implemented in accordance with the specific context and status of that water company. This individualized approach ensures that supervision is relevant and effective, reflecting both the nature of the crime and the unique situation of the convict.

3- Effects of Sentence Reduction

When a judge utilizes the mechanism of sentence reduction for legal entities, it undoubtedly must have a series of accompanying effects. Therefore, the following will examine the aforementioned effects.

3-1. A Basis for Reforming the Offender

One of the most important effects of sentence reduction, particularly concerning legal entities, is the provision of an opportunity for the reform of offenders. In criminal law, after the eighteenth century with the rise of penal schools, various objectives regarding the imposition of punishment were presented by thinkers. Among these objectives, ranging from social benefit to the reform and rehabilitation of offenders, formed the core of the discussion and philosophy of punishment by these schools.

In this context, when the discussion of sentence reduction arises, it inherently encompasses a series of objectives related to its implementation. The judge's intent behind reducing such punishments may be to seek justice, to pursue social benefit, or to focus on the reform and rehabilitation of the offender. Therefore, all of the above considerations may be taken into account by the legislator and the judge.

3-2. Right to Benefit from Sentence Reduction

The philosophy behind the implementation of sentence reduction is always the mitigation of the punishment for the offender. This means that whenever a person (whether legal or natural) benefits from a sentence reduction, there must be a decrease in their punishment; otherwise, the implementation of the reduction would be futile, and the objectives considered at the time of determining the sanctions cannot be realized.

3-3. Determining Minimum Punishment by the Judge

Based on the judicial determination of punishment, one of the effects of sentence reduction is the judge's discretion to set a punishment within the minimum and maximum range. Given that discussions of reduction often involve lighter punishments, the judge may choose from among the punishments provided by the legislator. This punishment could be the minimum penalty prescribed by the legislator, or it could be a medium punishment—less than the maximum but more than the minimum—ensuring that the essence of sentence reduction is reflected in the offender's punishment.

Therefore, in the judicial determination of punishment for legal entities, there is no possibility of resorting to the maximum punishment. This means that whenever individuals (whether natural or legal) demonstrate conditions and characteristics related to the commission of the crime that suggest they could benefit from leniency such as sentence reduction, the judge cannot impose a harsher punishment under the title of reduction. Instead, based on the nature of this title, the judge should maintain a lenient position and apply a reduction in the offender's punishment.

It should be noted that the discussion of sentence reduction is contingent upon the presence of certain conditions in the offender and the manner in which the criminal behavior was committed. Generally, it cannot be applied to the offender without these conditions. Therefore, it is essential that there are a series of mitigating factors present in the offender or in the manner of committing their criminal behavior to substantiate a sentence reduction.

3-4. Legislative Prediction of Minimum Punishment

Another effect of sentence reduction is the requirement for the reduction to be stipulated by the legislator. This aspect can be considered one of the most important discussions regarding sentence reduction. That is, as long as the legislator does not explicitly mention sentence reduction in the legal text and does not grant the judge the discretion to determine it, one cannot impose a reduction based on undocumented reasoning.

3-5. Consideration of the Circumstances of the Offender

The final point can be summarized as follows: sentence reduction provides a degree of discretion to the judge, allowing them to consider the circumstances of the offender. The judge can take into account a punishment that aligns with their conscience (within the framework of minimum and maximum penalties) based on the specifics of the case and the offender's situation.

Conclusion

To establish a balance between crime and punishment, while addressing the goal of rehabilitation and considering the offender's circumstances, the most common approach is sentence reduction. Sentence reduction refers to the legislatively sanctioned decrease of penalties for offenders. It can be categorized into three types: legal, governmental, and judicial. Legal reduction pertains to the provisions established by the legislator through legal articles that decrease the punishment for the offender. Governmental reduction is determined by the highest authority in each country regarding the convicted individual and can only be implemented after a final conviction. Judicial reduction is specified by the judge's discretion and applies generally to individuals.

However, in the case of fixed punishments, reduction is not applicable, and the same principle holds true for offenses punishable by qisas (retribution). If the heirs of the victim or the victim themselves forgo retribution, this can lead to a reduction in the form of blood money (diyah).

Reduction can be conceived in two forms: gradual and specific. In gradual reduction, both the minimum and maximum penalties and the extent of reduction are determined by the legislator, while the final determination of the extent of reduction within that range lies with the judge. Specific reduction is legislatively prescribed for exceptional cases, such as reductions in cases of multiple offenses. In the case of multiple offenses, if mitigating circumstances exist, the court may reduce the offender's punishment to the average of the minimum and maximum penalties, or, if no minimum and maximum exist, to half of the penalty.

The manner of sentence reduction is also outlined by the legislator, with relevant provisions found in Articles 65, 66, 67, and 68 of the Islamic Penal Code and Articles 151, 153, 161, and 154 of the Penal Code. Additionally, sentence reduction may have associated effects, with the most significant considerations being the circumstances of the offender, the potential for rehabilitation, and the establishment of minimum penalties by the judge.

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