

## **Conditions of the Semi-liberty System in Iran's Criminal Law; the Challenges and Solutions**

Today, as evidenced by international and domestic experiences, the ineffectiveness of the theory of reform and treatment and the lack of benefit of prison (short-term and long-term) have been proven to be a fact; therefore, for several decades, alternatives to imprisonment have been discussed in scientific circles and writings. Conditional release, suspension of sentence, suspension of prosecution, and the semi-liberty system are among these alternatives. The semi-liberty system, by granting a prisoner limited and restricted freedom, monitors his social reintegration and facilitates his return to society and normal life, rehabilitating and reforming him without the need to stay in prison all day long and preventing him from learning other crimes. It reduces the harmful effects of prison and takes steps towards maintaining family stability and leads to decriminalization and reduction of criminal inflation. Because today, it has been proven that imprisonment is not an appropriate punishment for many crimes. The application of imprisonment has disadvantages and destructive effects that have highlighted the need to avoid it in many cases. De-incarceration, through the application of the semi-liberty system, has significantly reduced the number of prisoners in prison. By expressing consent and acceptance for the application of the semi-liberty system, a person sentenced to imprisonment participates in providing the basis for his reform and rehabilitation and has an impact on its process and achieving the desired result. During the execution of the prison sentence, educational, vocational, therapeutic, occupational and other activities are carried out outside the prison and participation in family life continues. The complainant's forgiveness is achieved and appropriate provision is made. In the current situation, where the elimination of prison punishment from the judicial system is neither expedient nor possible, finding an alternative and a solution that leads to the control and containment of the offender is inevitable. In addition to Articles 56 and 57 of the Islamic Penal Code approved in 2013, the following note to Article 8 of the Law on Reducing Penalty Sentences approved on 23/02/2019 considers the provisions of Article 57 of the Islamic Penal Code to be applicable to penal sentences of degrees 2, 3, and 4, if a quarter of the term of imprisonment has been served; of course, with regard to penal sentences of degrees 5 to 7, there is no requirement for the convict to serve a period of imprisonment. Undoubtedly, the implementation of any penal system faces substantive and formal challenges, and therefore, the implementation of the semi-liberty system in Iran's criminal and penal policy also faces such challenges. What are the aforementioned challenges and what are the solutions to overcome them are questions that the following article aims to answer. In addition, the main goals of implementing alternatives, namely reforming and treating criminals and preventing recidivism, are not fully respected in this type of punishment. The court has the authority to impose a semi-liberty system on the convict in the event of expediency and the convict's absence of a request, the impossibility of the convict's objection to the rejection of the request for a semi-liberty system, the nature of the security that the court obtains from the convict, the possibility of obtaining security from the convict when granting a semi-liberty system beyond the cases and types of security mentioned in the Code of Criminal Procedure, the manner of obtaining consent from the convict and including consent in the type of job activity, the ambiguity in including the purpose of reform in the job activity intended by the court, the limitation of the application of the semi-liberty system, in the event of setting a condition for the private plaintiff's absolute pardon and the necessity of combining it with other methods of compensating the private plaintiff, the lack of allocation of the private plaintiff's pardon for serious crimes and the impossibility of eliminating the private plaintiff's consent for minor crimes, considering that the subject of the semi-liberty system is mentioned in Articles 56 and 57 of the Islamic Penal Code and Articles 553 and 555 of the Code of Criminal Procedure, the limitation of the explanation of the structure of the semi-liberty system to a few articles of the law in the Islamic Penal Code and the Code of Criminal Procedure, and the need for issues and examples of the semi-liberty system Freedom, in a broader and more detailed explanation than the aforementioned articles, is one of the challenges that the semi-liberty system faces. Therefore, the following article, using a descriptive-analytical method, examines the variables of: the type and nature of the crime committed, obtaining the consent of the convict, providing appropriate security, and taking a commitment from the convict in employment leading to the reform of the offender or compensation for the victim, in order to achieve solutions to the formal challenges, and examines the variables of: the necessity of the finality of the defendant's conviction,

absolute pardon and the necessity of combining it with other methods of compensation for the private plaintiff, the discretion of the court issuing the final verdict or the convict's request from the court, the feasibility of assessing the existence of the convict's right to object to the semi-liberty verdict, and the necessity of supervision by semi-liberty centers over the convict's professional activities. Since the semi-liberty system has conditions that are related to the crime, the punishment, the sentencing authority, and the court's decision-making process, the present article, in order to ensure the reality of the research topic, has gathered some of its data through interviews with thirty judges working in different parts of the country and by reviewing and following the decisions and rulings visible in the judicial decisions system.

The semi-liberty system has conditions that can be examined from various aspects and can be divided into substantive and formal conditions; some are related to the crime and some to the punishment, some to the authority issuing the sentence and some to the court's decision-making method. The conditions governing the semi-liberty system mentioned in the law are incomplete and limited, and therefore, the semi-liberty system cannot be implemented alone with what is mentioned in the law. It can be implemented; its implementation requires the expression of more conditions and details. The legislator's criterion regarding the semi-liberty system is ambiguous and it is necessary for the legislator to clearly state it; whether the degree of the crime is the criterion or the conviction; whether the general consent of the plaintiff is intended or the consent to the type of job activity; whether the determination of the type of job activity is with the convict or the court? According to the study, it can be said: the declaration of the general consent of the plaintiff is sufficient. The determination of the type of job activity is with the court. The subject of commitment is not exclusive and can be considered to include many activities. By amending the law or issuing a unanimous decision of the General Board of the Supreme Court, the plaintiff's pardon can be eliminated or, at least, only left for serious crimes, or the defendant or the convicted person can be required to compensate the plaintiff for the losses and damages, respectively. If the court determines and considers it in the interests of the convicted person, it has the authority to apply and enforce the semi-liberty system on the convicted person without his request. If the convicted person's request and request for the semi-liberty system is not accepted, the convicted person has no right to object. The court of appeal can, in the event of a violation of the verdict of the court of first instance, make a decision regarding the acceptance of semi-liberty. The need to establish semi-liberty centers and create appropriate organizations with sufficient funding and post-release care for the convicted person is among the necessities, in order to prevent re-offending and to take necessary measures to reform him. In the case of conditional pardon of the plaintiff, it can be said: there is no need for explicit and complete pardon; Because the legislator has not mentioned any condition for forgiveness in Article 57, and usually, the plaintiff, in unforgivable crimes, declares forgiveness when his losses have been compensated. Considering the unity between the semi-liberty system and other similar legal institutions, such as: conditional release, postponement of the issuance of the sentence, and suspension of punishment, in which the arrangement of establishing the payment of the losses and damages subject to the sentence or agreed upon by the private plaintiff is sufficient for the enjoyment of those privileges, it can be considered that the arrangement of compensating the damage caused to the plaintiff and declaring the plaintiff's forgiveness, conditional on the payment of the losses and damages of the plaintiff and the private plaintiff, is sufficient for the convicted person to benefit from the semi-liberty system. Regarding the taking of security from the convicted person, the judge is required to observe the principle of proportionality of security; meaning that the security order must be proportionate to the crime committed by the accused. The law has not specified the type, amount, and manner of depositing the security. Whether the purpose of the provision is criminal provisions or another type, the legislator's intention is that the previous provision be considered valid until the full execution of the sentence and the court is exempted from obtaining a new provision. If the appellate court observes an error in the conditions and regulations of the semi-liberty system from the court of first instance, it will correct it or issue a new sentence. Also, the appellate court can overturn the verdict of the court of first instance of acquittal and issue a sentence of imprisonment. In such a case, issuing a sentence of semi-liberty by the appellate court is inevitable. Usually, judges pay less attention to instructions or circulars and are more compliant with the implementation of laws and regulations formulated by the legislator, the main and important provisions of which are approved by the legislative authority in the form of a law. The manner and extent of cooperation

between government, public and non-governmental organizations or semi-liberty centers, and the type of cooperation between employers and the private sector, if explained in the provisions of the reform laws, can be more effective in advancing matters, given that the law is binding. Considering the remarkable effectiveness of the semi-liberty method in relation to reform, rehabilitation and crime reduction, in addition to the necessity of adopting some special measures regarding the pre-release stage, such as: providing scientific, technical and professional training, it is necessary to pay more attention to the establishment and strengthening of post-release institutions, including post-release care and supervision, and by implementing centralized supervision programs, avoid releasing criminals subject to the semi-liberty system into the community.