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Commutation and Intensification of Judicial Punishment after Award Issuance in Procedure Code of Iran

Mehdi Najafi¹, Gholamreza Soltanfar*²

Abstract

Punishment commutation is one of issues considered by legislature in different periods. In Islamic Penal Code approved in 2013, this issue is also addressed by legislature and some conditions and regulations are considered for it. In total, the attitude of Articles 37 and 38 of Islamic Penal Code approved in 2013 is more clear, transparent and organized than Penal Code approved in 1991. Seemingly, Islamic penal Code 2013 has chosen a better approach than Islamic Penal Code 1991 to address punishment commutation issue and it is closer to Law of European countries. Islamic Penal Code approved in 2013 expresses cases related to punishment commutation or exemption from it in detail through Articles 37, 38, and 39; also, *Ta'zir* punishments are divided into eight degrees in Article 9, which is a creative manner. It is legislated by New Criminal Procedure Code and other new rules through new Articles, the final award can be deviated or defendant can be exempted even after award issuance and its sentencing at the award enforcement step. In this case, some conditions are considered as follows: good manner or lack of good manner, commitment of crimes that had been enforceable before but have not been prosecuted still (multiplicity of offenses) or crimes that their final award is issued without any influence on punishment of sentenced person. Commutation or intensification of judicial punishment, which the subject of this research, is distinguished from commutation or intensification of legal punishment and only reduction or increase in punishment, with any level, can be case of commutation or intensification because the criterion for punishment commutation or intensification is the punishment contained in awards not the legal punishment addressed by legislature.

Keywords: Commutation, Punishment intensification, After award issuance.

¹ Department of law, Shiraz Branch, Islamic Azad University, Shiraz, Iran. E mail: mehdinajafi26769@gmail.com

² Corresponding Author, Dr., Department of law, Shiraz Branch, Islamic Azad University, Shiraz, Iran.

First Discussion: principles and bases of punishment intensification and commutation after award issuance in new codes

The principle of individuality of punishments is one of the most important principles that is accepted in criminal law in different countries and since people have various personalities, criminal judge is responsible to issue the award using his authorities based on the family, cultural, social, etc. characteristics of accused person considering the situation of defendant in order to meet punishment goals in a best way.

Justice makes the judge responsible to consider the conditions and situation of criminal person at the time of issuing award for punishment or sentence besides the committed crime. Presence of some foundations such as mitigation circumstances, regardless of some problems, can be an accurate and effective instrument to issue a fair award considering justice. The subject of punishment commutation is one of issues with different processes in different periods. In criminal regulations of Iran such as regulations enacted before or after Islamic Revolution, some regulations related punishment commutation can be seen.

It can be stated about the implications of punishment commutation in new Code that legislature has expressed the extents of mitigations for *Ta'zir* punishment below the Article 37. According to this Article, if there is one, or more, mitigating factor(s), the court may mitigate or replace the *Ta'zir* punishment as explained below in a way that is in the interest of the accused:

- 1) Reducing the imprisonment period from one to three degree(s)
- 2) Replacing the confiscation of properties with a fine of the first to fourth degree
- 3) Replacing the permanent dismissal to temporary suspension from five to fifteen years
- 4) Reducing one or two degrees of the same or other types of punishments for other *Ta'zir* punishments

According to Article 39 of this Code,

In *Ta'zir* crimes of the seventh and eighth degree, when mitigating factors are recognized, if the court finds the accused guilty but believes that the offender will be corrected even without execution of the punishment, provided that s/he has no effective criminal record and the complainant has forgiven the offender and the losses are already compensated or appropriate measures are taken to

compensate the loss, the court may decide to exempt the offender from punishment.

Of course, this case should be considered that in some crimes (such as fraud), legislature has clearly banned application of mitigated punishment from the minimum level (Article 1 of Law for increase approved in 1988) and Note of Article 666 of Islamic Penal Code banned any punishment mitigation for three final criminal convictions for theft.

Islamic Revolution in Iran and establishment of Islamic Republic of Iran had a significant effect on different rules such as criminal rules and laws. Since basic criminal discussions issue in favor of convict, discussions related to punishment commutation have considerably changed. Misdemeanors and felonies were common expressions in criminal law before the revolution and these expressions changed to some Islamic terms such as *Hadd*, *Qisas*, and *Ta'zir* and Islamic jurisprudence emerged in frame of different Articles of Islamic penal Code. According to the serious manner of legislature in definition of *Hadd*, *Qisas*, and *Ta'zir*, it can be stated that subjects related to punishment commutation are not consisted in these subjects but also subjects related to *Ta'zirs* encompass a vast range of crimes in which, option related to punishment commutation exist. The issue of mitigation circumstances and its application is an accurate and sensitive discussion that plays a considerable role in correction of offenders. Since there is constraint in current criminal rules of Iran to apply these mitigations, the judge should use these mitigations favorably considering the personality and circumstances of criminal person and conditions of crime.

Punishment intensification is one of the most important institutions of rules to fight against people who severely harm the society; also, sometime circumstances require severe punishment for some offenders. It means that various factors in crime commitment make the righteous judge to show a severe reaction. Some concepts are presented in Persian dictionary for meaning of intensification; these concepts include stabilize, making something hard, opposite of mitigation, strictness, etc. In this dictionary, punishment is defined as rewarding and punishing for goodness and badness, retribution, and hardness for criminal person. The purpose of punishment intensification in Islamic Penal Code is convicting of offenders to the maximum punishment (more than maximum punishment considered in law equal to one and half, one fourth or half of punishment). According to award 2743 and 2764 30/8/1941 of Supreme Court of Iran, (presence of causes for punishment intensification determine of maximum degree of punishment but also punishment between the minimum and maximum degree is based on circumstances of action and the opinion of court under its authority). Also,

award 2771-14/12/1937 of Branch 2 of Court stipulates that, (presence of causes for punishment intensification is not related to award of court for maximum punishment because punishment of between maximum and minimum level is based on the circumstance of criminal action and opinion of ruling court under its authority). Also, in accordance with the consultative theory 7/327-18/1/1985 of Legal Office, (punishment intensification means determining punishment more than its maximum or another kind of punishment that is one-degree severer. However, in accordance with the Article 5 of *Diayh* Law, which permits punishment intensification to one-third of it, it can be stated that in case of punishment intensification that maximum punishment for crime is its one-third not more. In other words, the ruler can determine a punishment, in case of punishment intensification, more than the major punishment but he is not permitted to exceed the maximum level of one-third. Therefore, it is not correct to issue maximum award of lashing in addition to imprisonment in case of punishment intensification).

Reasons, directions, and circumstances that lead to punishment intensification are called aggravating circumstance in punishments. The main difference between mitigation circumstances with aggravating circumstances not only is related to their effects on reducing and increasing punishment but also is related to the case in which, application of mitigation circumstances is under the authority of judge, whereas aggravating (intensification) is a kind of prior prescription. Aggravating circumstances divide into general and specific reasons. General aggravating circumstances consist of crime multiplicity and recidivism and are general because they are considered in general principles of punishment intensification. Usually, crime multiplicity and recidivism are considered as general or public circumstances for punishment intensification. In contrary, specific circumstances or reasons exist. Specific reasons lead to punishment intensification due to some features and results of crime such as destruction of movable and immovable objects using explosives (Article 678 of *Ta'zir* Law and Preventive Punishments Approved in 1996).

These causes and circumstances can be called typical reasons for intensification. Sometimes, intensification occurs because of criminal person or victim; in this case, these circumstances are called individual causes for intensification such as punishment intensification for swindlers based on the Article 1 of Punishment Intensification Law for Perpetrators of Embezzlement and Bribery approved in 1968, crimes against children and relatives in criminal rules, and Punishment Intensification Law for Kidnappers approved in 1974. Multiplicity of crimes and recidivism are aggravating circumstances of punishment because

both of them imply dangerous mood of offender to commit other crimes. Multiplicity of crimes and recidivism are expressed in Articles 131-139 of Islamic Penal Code approved in 2013 and specific aggravating circumstances are some of mentioned circumstances that lead to punishment intensification. Some cases such as rape, use of weapons in theft, drunkenness, infidelity, having the public mission and leadership are specific aggravating circumstances. One of innovations of Islamic penal Code approved in 2013 is in the Article 134 in which, punishment intensification discussion is changed compared to past. This Article has eliminated the different punishments for similar and different crimes existed in Article 47 of Islamic Penal Code approved in 1991 and has presented a quantitative and numerical criterion. In this Article, the offenses committed are not more than three, the court shall impose the maximum punishment provided for each offense; and if the offenses committed are more than three, [the court] shall impose more than the maximum punishment provided for each crime provided that it does not exceed more than the maximum plus one half of each punishment. The other innovations of this Article are punishment intensification to maximum plus the half and in each case, the most severe punishment is enforceable. The purpose of jurisprudential review is examination of issue based on jurisprudential principles, criteria, and regulations as well as religious verdicts. Aggravation in Arabic Language means sublimation and punishment intensification means as increasing punishment, which is not defined in jurisprudential books but there are some definitions in jurisprudential dictionaries. For instance, ordinary crimes are punished based on their punishments but sometimes circumstances such as time, place or quality of crime commitment implies unusual cruelty of criminal person; therefore, ordinary punishment is not enough for such person due to his/her unbalanced personality. Hence, he/she should be punished severely, that this is called punishment intensification. Jurisprudence Culture Book has divided strictness to two type of behavioral and verbal strictness considering it as punishment intensification. Legislature has organized the issue of punishment commutation in new code and in general, the subject of Articles 37 and 38 of Islamic Penal Code approved in 2013 is more clarified than Islamic Penal Code 1991.

New Islamic Penal Code expresses in Articles 219 and 37 precisely that punishment commutation is for *Ta'zir* crimes not for *Hadd*, *Qisas*, or *Diyah* because punishment of such crime is unchangeable. According to Article 219, "the court cannot change the conditions, type, and amount of *Hadd* punishments or reduce or replace, or remove the [*Hadd*] punishment. Such punishments can only be removed, reduced, or replaced through repentance

and pardon under the conditions prescribed in this law”. Also, Article 37 specifies this case and expresses, “If there is one, or more, mitigating factor(s), the court may mitigate or replace the *Ta’zir* punishment.”

As it was mentioned, punishment commutation has two types: 1- legal mitigation 2- judicial mitigation.

In first case, legislature has determined duty for court (judge) to mitigate crime punishment in some specific cases such as Article 531 giving authority to court (judge) for judicial mitigation in case of one or more mitigating factor(s) based on Article 37; hence, the judge can mitigate punishment in some cases based on his authority, while he is responsible to commute punishment in other cases. The new Code has accepted punishment mitigation in some cases and for some persons who are consisted in multiplicity and reoffending based on some circumstances and conditions expressed in Note 3 of Articles 134 and 139. According to Note 3 of Article 134, “In the case of multiplicity of offenses, if there are mitigating factors, the court can reduce the punishment of the offender down to the average between the maximum and minimum, and if there is no maximum and minimum provided for the punishment, down to a half”. Such regulations and conditions exist in Article 139 for reoffending.

Changes in Islamic Penal Code in recent years particularly in its last version in 2013 in subjects related to punishment mitigation beside stringent rules are in favor of criminal persons and punishment mitigation for them. Establishment of eight classifications about *Ta’zir* and postponed award issuance are some of these cases. The effect of criminal rules of European countries on Islamic Penal Code approved in 2013 is more than prior versions of this code and this exhibit new approach of this code toward substantive realities in Iranian society. These effects can be compared to jurisprudential regulations and implemented in Islamic Republic of Iran. Seemingly, replaced punishments for imprisonment and their application in Islamic Penal Code 2013 is a new method of versions related to imprisonment awards, which are matched with democratic principles of punishments and jurisprudential bases of these rules; meanwhile, these punishments should be more assessed due to economic, political, and social conditions of Iran as well as constraints in this field.

In case of punishment commutation, commutation means punishment less than legal minimum level for punishment in order to be called commutations (or mitigation), but in discussion of this paper (judicial punishment commutation), commutation does not mean its specific concept but also reduction in punishment even if it is not less than legal minimum

punishment is itself a kind of mitigation, because our base is the punishment level in award (judicial punishment) not legal punishment level.

Application of punishment commutation and intensification after award issuance is enforceable in two periods including after issuing award by the lower court until final award issuance and after final award issuance until award execution.

Limited judicial punishment intensification and commutation is possible after issuing the award in lower court until final award issuance, whereas, after final award issuance and at the time of award execution more extensive range of conditions are considered for punishment commutation or intensification.

Article 442 of Islamic Republic of Iran's Criminal Code of Procedure approved in 2013 can be mentioned as an example for period between award issuance to its finality that under the submission to the award by sentenced person and violation of revisionism right or extradition of revisionism, the case can be included in punishment commutation to 1/4 of determined punishment in award, which this case has a basic proviso in which, prosecutor has not requested revision for issued award and is enforceable only in *Ta'zir* convictions and is not subjected to *Hadd*, *Diyah*, and *Qisas*. However, the law appearance and explicit text consists of *Ta'zir* punishment substitution of life and limb *Qisas*. According to Article 442, in all *Ta'zir* convictions, if prosecutor does not request revisionism for award issued, sentenced person can submit revisionism request to the court before end of appealing duration referring to the court in order to violate or extradite his request for punishment commutation. In this case, the court investigates the case at presence of prosecutor in extra time and mitigates one-fourth of punishment and this is final award of the court.

It should be mentioned that in this period (after award issuance until finality), punishment intensification about the Article 458 of Criminal Code of Procedure is enforceable based on the conditions in which, the punishment of first award issued is less than minimum legal punishment or the case is revised by prosecutor or claimant before.

This legal Article implies that revision court cannot intensify *Ta'zir* punishment or supportive and corrective action in revised award, but can do it based on the conditions considered in this Article.

At the second period (after finality of award and at award execution step), there are numerous options for punishment intensification and commutation such as reoffending, multiplicity of crimes, not following provisos in case of postponed punishment, semi-freedom system,

parole, good behavior of convict during award execution or insanity after award issuance or execution in mentioned crimes and if there is not hope for healing; in such cases, punishment is changed or person is exempted. Each of these cases requires discussions in details (Khaleghi, 2015: 90).

A. Intensification of judicial punishment after award issuance

In new codes and laws, legislature has tendency to mitigate punishments and limit punishment intensification to exceptional cases to promote justice more logically in order to protect human dignities and personality of convicted persons, to respect individuality of punishments, to win trust of people and society toward judicial system, to respect justice, to make punishments beneficial, to prevent from frustration of convicts and make them back to society and normal social life. In this regard, justice is promoted in society, personality and dignity of convicts is not destroyed. Legislature has not intensified punishments, except for some cases, because intensified punishments might lead to reoffending by dangerous criminals (Imani, 2013: 62).

Clause 1: Recidivism and punishment intensification

Respective offense of convict and again crime commitment after initial punishment is one of effective circumstances in punishment intensification. Sometimes, legislature intensifies punishment of offender due to the importance and dangerous degree of committed crime, for instance, leadership of a criminal group, for society under some circumstances. Sometimes, commitment of various crimes before prosecution leads to punishment intensification (multiplicity of crimes). These two states are applied before awards issuance at the time of prosecution. However, sometimes committing numerous crimes after conviction and award execution leads to punishment intensification. Reasons and factors that lead to punishment intensification are called aggravation circumstances contrary to mitigation circumstances, which are applied under the authority of the court. Punishment intensification requires renovation of prior law and the court should intensify punishment in case of legal cases.

Clause 2: Reoffending in crimes punishable by *Ta'zir*

According to Article 137 of Islamic Penal Code approved in 2013, Anybody who is, according to a final judgment, sentenced to one of the *Ta'zir* punishments of the first to sixth degree, and from the date the judgment has become final to either rehabilitation from the offense or lapse of time for execution of the punishment commits a further offense punishable by *Ta'zir* of the first to sixth degree, s/he shall be sentenced to the maximum up to one and a half of the punishment provided.

Conditions and regulations of intensification are as follows:

- A) Prior conviction of *Ta'zir* punishment of the first to sixth degree; hence, sentencing to *Ta'zir* crimes of the seventh to eighth degree would not lead to punishment intensification.
- B) Committing a new crime of first to sixth degree from the date of judgment become final until rehabilitation from the offense or lapse of time for execution of the punishment.
- C) It is not required that sentenced person commits a similar or primitive crime and committing any *Ta'zir* crime from first to sixth degree would lead to punishment intensification.

According to the Article 48 of the previous Penal Code (1991), realization of reoffending and punishment intensification was subjected to complete execution of judgment not a part of it defendant during suspension or conditional release did not commit crime again because of being in punishment duration, but in Islamic Penal Code of 2013 all conditions of reoffending are changed totally, which is like Public Punishment Code of 1973 and there is no need of judgment execution and if defendant committed a new crime (punishable by *Ta'zir* of first to sixth degree) after the judgment became final, s/he shall be punished intensified. Also, according to Article 60 of Islamic Penal Code 2013, if convict commits a new crime (one of intentional crimes punishable by *Hadd*, *Qisas*, *Diyah*, or *Ta'zir* up to seventh degree) during conditional release term, the rule of collective punishments, which is one of options for punishment intensification, is executed against convict (Khaleghi, 2015: 113).

Clause 3: Reoffending in *Hadd*

Legislature is stricter in *Hadd* due to divine aspect of judgments in *Hadd*; hence, punishment intensification is harder and severer in crimes punishable by *Hadd* and persons who recommit such crimes should pay heavier compensations.

According to Article 136 of Islamic penal Code approved in 2013, where anyone commits the same offense punishable by *Hadd* three times, the *Hadd* punishment on the fourth occasion shall be the death penalty.

It is stated in this Article that condition for punishment intensification and reoffending is full commitment of prior crime, whereas, the rule of complete punishment was not executed in crimes punishable by *Ta'zir* and only final award and reoffending (conditional) led to punishment intensification.

However, it should be mentioned that although intensification is hardly executed in crimes punishable by *Hadd*, legislature has considered more suitable conditions for punishment intensification in which, the convict should have committed the same crime three times and each time s/he should be punished by *Hadd* then on the fourth occasion punishment shall be death punishment.

Therefore, if a person commits crimes punishable by *Hadd* such as adultery, sexual foreplay, and adultery, he shall not be consisted in intensification based on this Article.

There is one crime punishable by *Hadd* that is subjected to death penalty on the first occasion of commitment and this is enmity with God that the committed person in this case might be sentenced to death penalty on the first occasion under the authority of judge.

According to Article 265 of Islamic penal Code 2013, the *Hadd* punishment for consumption of intoxicants is eighty lashes. However, enforcement guarantee will be more effective is along with prevention through expressing mental and physical losses to addicted person through medical treatment and mentioning Islamic opinion about prohibition of intoxicants. Addicted person continues his/her illegal and illegitimate because of fear of death, while he/she will engage better and more in social needs if is persuaded to treat his/her addiction and respect ruling principles in society for survival (Khaleghi, 2015: 115). Some cases are recognized in Criminal Procedure Code approved in 2013. Under some circumstances, punishment is intensified after award issuance or at the judgment execution term (judicial punishment). This part of study consists of these recognized cases.

B. Intensification of *Ta'zir* punishment or corrective-protective measurements in revised award

Revision court of province is not permitted to increase or change the punishment mentioned in award, while Article 458 of Criminal procedural Code approved in 2013 gives this right to revision court in order to intensify and increase the punishment under some circumstances.

According Article 458, Revision Court of Province cannot intensify the *Ta'zir* punishment or corrective-protective measurements contained in revised award unless in cases that punishment sentenced in first award is less than minimum legal level contrary to law and if claimant or prosecutor ask for revision. In these cases, revision court of province shall correct the award and determine the minimum punishment in law for the case (Azimzadeh, 2013: 101).

Clause 1: Circumstances

A) It is enforceable only in *Ta'zir* punishments and corrective-protective measurements not in cases of *Hadd*, *Qisas*, and *Diyah*.

B) It is lower than minimum level contrary to legal award. Hence, the court shall not change the punishment that is lower than legal mitigation even if claimant and prosecutor have objections.

C) Increase in punishment is possible just up to the minimum punishment determined by law and revision court cannot intensify it (Azimzadeh, 2013: 102).

C. Intensification of judicial punishment due to multiplicity of crimes after final award

In Islamic Penal Code 2013, multiplicity of crimes, which is one of aggravating circumstances, is enforceable during prosecution or award issuance. Multiplicity of crimes means that the convict has committed several crimes before investigation and there is not any punishment for these crimes, these crimes are not prosecuted and there is not any final enforceable award. However, this case is recognized in Article 510 of Criminal Procedural Code approved in 2013 in which, the judge should observe some circumstances after award issuance if defendant commits other crimes during this period.

According to Article 510 of Criminal Procedural Code approved in 2013, where it is revealed that defendant is involved in other final convictions after award issuance and if this multiplicity of crimes has impact on enforceable punishment then the judge of criminal awards shall act as follows:

A) If the final judgments are issued due to lack of revisionism and if courts are equal and same, cases will be submitted to the court that is last issuer of award; otherwise, the case is submitted to a court with higher jurisdiction to violate the previous award and issue the award for multiplicity of crimes based on the relevant circumstances.

B) If one of awards, at least, is issued in revision court of province, the cases will be submitted to this court in order to issue the same award for multiplicity of crimes observing all relevant circumstances. If awards are differently issued by revision court of province, the last issuer court of revised award has prosecution jurisdiction.

C) In other cases, if one of issued awards is approved in Supreme Court of country or various awards are issued in different judicial copies or different courts with jurisdiction, cases will be submitted to Supreme Court to issue the award based on mentioned clauses A and B after violation of issued awards by previous courts.

In this Article, legislature has deviated from mentioned circumstance for multiplicity of crimes, which is lack of issuance of final enforceable awards and regulations of multiplicity are based on the mentioned circumstances after award issuance. This criminal policy of legislature for dangerous criminals is in favor of justice and guarantees rights of victims and society.

Application of multiplicity in Article 510 of Criminal Procedural Code approved in 2013 should be before the punishment execution after the judgment become final and if it is at the step of award execution, then it is not included in this Article and will be the case of Article 511 of Criminal Procedural Code.

According to clause B, Supreme Court of Country can only prosecute judgment without considering the nature of case; hence, this court cannot apply regulations of multiplicity and submits the case to primitive or revision court (Azimzadeh, 2013: 104).

D. Recidivism during award execution

According to Article 511 of Criminal Procedural Code 2013, when it revealed during award execution that defendant has had other final convictions that are effective in regulations of recidivism, the judge of criminal awards would submit the case to the issuer court of final award. In this case, if the court approves the previous convictions, the award will be issued based on the relevant regulations.³

In this Article, contrary to previous Article, the judge submits the cases to the issuer court of final award although the courts are at a same or different level.

According to the Article 524 of Criminal Procedural Code approved in 2013, investigation is included in mentioned regulations about punishment after award issuance and this Article leads to intensification of punishment at the time of award execution under some circumstances. All of the mentioned options in this Article are in favor of punishment intensification against defendant (Khaleghi, 2015: 116).

Conclusion and Recommendations

The subject of punishment commutation is one of issues considered by legislature during different periods. Although there was not any limitation in Penal Code 1991 and the judge a wide range of authority to mitigate the punishment when legislature permitted it, gradually legislature tried to express and determine commutation circumstances precisely in order to limit and organize authorities of judges. Therefore, legislature has organized the subject of punishment commutation in new penal code and Article 37 and 38 of Islamic Penal Code 2013 are more clarified than Islamic Penal Code 1991. The New Islamic Penal Code exhibits in Articles 37 and 219 precisely that punishment commutation is associated with *Ta'zir* punishments not crimes punishable by *Qisas* and *Diyah* because these crimes have fixed punishments. According to Article 219, "The court cannot change the conditions, type, and amount of *Hadd* punishments or reduce or replace, or remove the [*Hadd*] punishment. Such punishments can only be removed, reduced, or replaced through repentance and pardon under the conditions prescribed in this law." According to Article 37, "If there is one, or more, mitigating factor(s), the court may mitigate or replace the *Ta'zir* punishment." Changes in

³ Whenever the award is approved in Supreme Court of country, the case will be submitted to this court in order to accept convictions, violate the award and submit the case to the issuer court in order to issue the new judgment.

Islamic Penal Code over the years particularly in its last version in 2013 related to punishment commutation and intensification (in some cases) have been in favor of criminals so that eight classifications about *Ta'zir* and postponed award are some of these issues. The effect of criminal rules of European countries on Islamic Penal Code 2013 have been more than previous versions in past years and this indicates the new approach of this law toward substantive realities in Iranian society that can be compared to jurisprudential regulations and implemented in Islamic Republic of Iran. Seemingly, replaced punishments for imprisonment and their application in Islamic Penal Code 2013 is a new method of versions related to imprisonment awards, which are matched with democratic principles of punishments and jurisprudential bases of these rules; meanwhile, these punishments should be more assessed due to economic, political, and social conditions of Iran as well as constraints in this field. It is necessary to identify principles and regulations ruling on punishment commutation and intensification in criminal procedure in order to benefit from these institutes and achieve the goals of punishments. According to the presented explanations, aggravating and mitigation circumstances are highly important issues and a fault in this scope would lead to serious and irrecoverable problems for criminal person, his/her family, and society (Azimzadeh, 2013: 112).

Some recommendations are provided in this research, we hope that legislature and lawyers consider these recommendations:

1) Legislature has stated in Article 37 of Islamic Penal Code approved in 2013 that if there is one, or more, mitigating factor(s), the court may mitigate or replace the *Ta'zir* punishment. It is recommended to use “shall” instead of “may”, because it seems that judges have authority to mitigate the punishment or not do it and this is not fair for an offender without any criminal record. If the term “may” is replaced with “shall”, mitigation will be mandatory in this Article.

2) Legislature has tried to organize commutation method, determine level and amount of commutation in Article 37 and this appreciable; however, according to clause 1 of this Article other punishments such as fine are not substituent of imprisonment. This Clause of Article 37 would lead to increased criminal population in prisons; hence, it seems that possibility of changing imprisonment to fine payment is a precious action to reduce population density of prisoners.

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