

Review Article

Free Public Services in the Criminal Law of Iran and Afghanistan

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Abstract

Free Public Services is a punishment that requires participation in activities beneficial to the community, mandated by a court. The offender commits to this in order to compensate for damages or to support both primary and secondary victims, in accordance with the nature of the crime(s) committed. The emergence of this punishment in the criminal laws of Iran and Afghanistan is rooted in the decarceration movement, which began in response to the negative effects of imprisonment. Influenced by international developments, lawmakers in Iran and Afghanistan introduced the punishment of free public services for the first time through the 2013 Penal Code of Iran and the 2016 Penal Code of Afghanistan. This punishment is one of the alternative penalties to imprisonment in the criminal laws of both countries, with its substitutive nature being particularly emphasized. This new punishment applies to offenses and crimes under specific conditions and is not applicable to all offenders. One of the most important conditions for granting this punishment is the victim's forgiveness and the offender's consent. The requirement of the offender's consent in the execution of the punishment is an exceptional case that has been accepted for the first time in the criminal laws of both countries, indicating that the execution of free public services without the element of consent is impossible. This article examines the concepts, historical development, objectives, types, and conditions of free public services from a comparative perspective.

Keywords

Free Public Service, Criminal Law, Consent of the Convicted, Forgiveness of the Victim/Complain

1. Introduction

Crime is a phenomenon present in all human societies, and addressing it has long been a serious concern for social reformers. In ancient times, punitive measures were implemented in the form of severe physical punishments, humiliating penalties, and inhumane, violent sanctions. Consequently, various legal schools, recognizing the criminogenic environment of prisons, the economic costs of incarceration, health and psychological issues, and other numerous shortcomings

and disadvantages, sought to reform and transform the criminal justice system. They suggested alternative programs to imprisonment instead of relying solely on incarceration.

One of the solutions proposed by criminologists in recent decades, alongside other alternative punishments, is free public services or community service. This approach, from a penal and social policy perspective, does not carry the corrupting or stigmatizing effects associated with prison. It does not pro-

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vide special advantages for habitual offenders, nor does it expose them to sexual or physical assaults by other inmates.

The punishment of free public services is one of the useful alternatives for both society and offenders, recognized and implemented in most countries around the world. This penalty not only reduces prison populations but also enhances economic, social, cultural, and educational growth. Free public services are one of the sentencing options where the offender is ordered to perform a free or semi-free task for the community. Public services should be seen as a prominent example of participatory criminal policy; on one hand, this work is done for the community, not necessarily for the judicial system, and on the other hand, community service is an alternative that requires collaboration between the community, employers, and governmental institutions, such as municipalities, with the judicial system.

Community service is a completely new phenomenon in the criminal laws of Afghanistan; in 2017, free public services or community service were established as a new alternative punishment to imprisonment in Articles 148 to 168 of Chapter Four, Section Two of the Penal Code. In the Iranian legal system, there was no specific regulation regarding public services before the enactment of the Islamic Penal Code in 2013; however, in practice, it was observable in court rulings and practices. In cases such as youth theft, offenders were sent to work in nursing homes to witness the consequences of human life and reform themselves. Now, community service is specified in the Islamic Penal Code enacted on February 1, 2013, in Chapter Nine, Articles 64 and 84.

This research will examine the concept, historical development, objectives, types, and conditions of community service in the criminal laws of Iran and Afghanistan from a comparative perspective.

2. The Concept of Free Public Service

The punishment of free public services is one of the sentencing options, where the offender is ordered to perform a free or semi-free task for the community [1]. Public services should be seen as a prominent example of participatory criminal policy; on one hand, this work is done for the community, not necessarily for the judicial system, and on the other hand, community service is an alternative that requires collaboration between the community, employers, and governmental institutions, such as municipalities, with the judicial system. It must be carried out in government offices, municipalities, or public associations.

In legal terminology, community service has multiple applications. In the context of the public or community, public services refer to a ruling where the court, considering the offender's consent, obliges them to perform unpaid work for a specified number of hours, instead of being sent to prison, for the community or one of the charitable organizations representing the entire community [17].

In other words, community service is a penalty under which

the court mandates the convicted individual to perform specified work hours over a determined period, under the supervision and control of a probation officer, without receiving payment, for the benefit of the community [3].

According to Jean Pinaud, community service consists of unpaid work that takes up part of one's leisure time and is an institution that is legally independent [14]. Public services can also be defined as a ruling issued by the court, which grants the offender the opportunity to compensate for the harm caused by their crime by performing work for the benefit of the community, without the imposition of a prison sentence [10]. In Paragraph (1) of Article 162 of the Afghan Penal Code, community service is defined as follows: "Community service is work that the offender is sentenced to perform for the benefit of the community, with or without receiving partial payment" [17].

3. Historical Evolution of Free Public Services

The first person to propose the use of the labor capacity of offenders as a substitute for traditional punishments was Cesare Beccaria in his treatise on crimes and punishments. Although Beccaria suggested the use of community service in the second half of the 18th century, society at that time was not in a position to expect immediate implementation of such proposals. Therefore, it is noted that more than a century later, in 1882, the French senator Michoud reiterated the importance of incorporating community service into criminal law [18]. Finally, after years of waiting, in 1950, a juvenile judge in Bern, the capital of Switzerland, along with a judge in Brussels, issued rulings for the employment of community service, disregarding the methods and punishments mentioned in specific juvenile laws [17]. This idea is still endorsed today by writers and organizations such as the International Society of Criminology and the International Penal and Prison Foundation within the framework of their annual meetings [13].

In Islamic history, the Prophet Muhammad (PBUH) announced that he would free war captives if ten Muslims were taught to read and write. Thus, a free service replaced imprisonment even for serious offenses such as participating in wars against Muslims [2, 9]. Working for the benefit of society as an alternative to other penalties dates back to the Roman Empire. Recent research indicates that in many African countries, community service was commonly used as a response to crimes before these countries adopted imprisonment following European models. In Europe, this practice became more prominent after the Renaissance [4]. Community service gained attention in America and Europe in the years following World War II [2].

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the Penal Code. In the Iranian legal system, there was no specific regulation regarding public services before the enactment of the Islamic Penal Code in 2013; however, in practice, it was observable in court rulings. In certain cases, such as youth theft, offenders were sent to work in nursing homes to witness the consequences of human life and reform themselves. Now, community service is specified in the Islamic Penal Code enacted on February 1, 2013, in Chapter Nine, Articles 64 and 84.

4. Objectives of Free Public Services

The objectives of this punishment can be discussed in two areas; first, we examine the objectives of free public service punishment in terms of the general objectives of punishment, and then we address the objectives that are specific to this punishment.

4.1. Free Public Services in the Light of the General Objectives of Punishment

4.1.1. Retribution

Retribution is one of the oldest justification bases of punishment, which borrows its legitimacy from the word “revenge”. In ancient times, retribution was an effort to organize the punitive revenges in which the punishment continued until the satisfaction of the victims was achieved. With the formation of governments and the transfer of the right to impose punishment to them, retribution replaced private revenge, and after that, social revenge narrowed the scope of private revenge. In addition, social revenge or retribution was a factor for controlling naked resentment, setting boundaries and limitations for the amount of punishment [7].

At present, in every society, regardless of its characteristics, this aspect of punishment, although symbolic, is observed. This is because the requirement of justice is that whoever has harmed the security and peace of society must face the consequences of their actions. This goal or rule has its roots in human civilization since ancient times. What forms the basis of retribution is the pain and suffering inflicted on the offender, proportionate to the crime, so that the offender can understand the pain they have inflicted on society through their crime.

Now, with a superficial look at the institution of free public services, it may seem that this institution cannot be a real punishment according to this principle, as it has less retribution compared to other punishments. However, this is not the case; a close look at this punishment reveals that although the execution of this sentence does not have the problems and difficulties of imprisonment, it does not mean that it lacks the characteristic of retribution. Two main factors are considered in measuring the retribution of the punishment of public service: first, the type of service, and second, the duration of the service. In other words, the more difficult the work for the offender and the longer the duration of the service, the more

prominent the aspect of retribution becomes [6]. In addition, the indirect effects of this punishment increase the severity of its retribution. In many cases, in the implementation of the punishment of public service, the offender faces time constraints and consequently limitations in performing the work, and to some extent bears economic pressure. Ultimately, the aforementioned punishment has placed the goal of retribution at the forefront of its work with a kind of flexibility and gentleness.

4.1.2. Deterrence

Deterrence is one of the utilitarian goals of criminal punishment. In this goal, punishment is a means used to prevent potential criminals from committing crimes (general deterrence) and to prevent the offender from repeating the crime (specific deterrence). This goal is temporally oriented towards the future. Based on this aspect, the punishment must be such that it is beneficial for society. This is a philosophical view that has been introduced as the main basis of punishment under the influence of the ideas of the English philosopher Jeremy Bentham. According to Bentham, every individual, even unconsciously, is calculating the benefit and harm resulting from their actions. If an individual knows that the suffering of the punishment is greater than the benefit he will gain from the crime, he will never commit that act [7, 8]. Therefore, the goal of deterrence causes the human being to become a calculating individual who weighs the profit and loss of his crime. Free public services can also bring this goal to society. Since the implementation of this punishment within the community, which entails the non-separation of the criminal from his place of residence, is less deterrent than imprisonment. But what increases the intensity of the deterrence of this punishment is the determination of severe enforcement guarantees, which is the implementation of imprisonment. When the offender voluntarily accepts the punishment of public services, he calculates the profit and loss of the implementation of this punishment and the implementation of the imprisonment sentence, and then makes a decision. When the offender without a prior record finds himself on the verge of enforcing the imprisonment sentence, he tries to some extent to assess his actions and tries to reform his behavior and avoid repeating the crime. In other words, the possibility of revoking this punishment and enforcing the imprisonment sentence is itself a deterrent factor [9].

4.1.3. Rehabilitation

One of the most valuable goals of punishment is the rehabilitation and reform of the offender. The main emphasis of the reform and rehabilitation approach is “changing the intention, motivation or even the character of the offender towards lawful behavior” [5]. In other words, the purpose of rehabilitation is for the offender to regain their place in society after serving their punishment. In general, the rehabilitation approach is an offender-oriented approach that emphasizes the reform and behavioral changes of the offender. Therefore, the reform of the offender requires a change in the moral attitude

of the offender, which the mere imposition of punishment cannot provide [5, 1].

The rehabilitation approach emphasizes human rights values and focuses on changing the course and effects of punishments. According to this principle, an appropriate and proportionate punishment is one that, instead of imposing on the body of the person, targets their soul, and punishment is a means to polish the soul of the offender so that they realize their mistake and seek to compensate for it. The experience of different countries in the world, such as Britain, in using the penalty of free public service is based on this principle. Public services, which have become known as rehabilitative public services, have the main goal of rehabilitating the offender [4, 6].

The main effect of this punishment on the human soul is through work in places appropriate to the committed crime. In some cases, traffic offenders are sent to work in emergency services and hospitals to familiarize themselves with the consequences of their crimes and increase their sense of responsibility and empathy. In addition, the acceptance and performance of public service work preserves the social status of the offender and prevents stigmatization and labeling, all of which will have a positive effect on the offender's morale. Because in many cases, accidental offenders become professional criminals after committing the first crime and experiencing the negative effects of prison, the destructive effects of which on the psyche of each person are undeniable. In addition, offenders who successfully perform public service are transformed from a consumptive element to a constructive and active element.

Accordingly, examining public services in light of the general objectives of punishment leads us to the conclusion that the public service institution can also be an effective real punishment, and the provision of the objectives of retribution, deterrence, and rehabilitation through the imposition of public service punishment is possible. In other words, the aforementioned objectives are considered the general objectives of this punishment. Of course, this punishment cannot be a security measure, because a security measure is a therapeutic approach to neutralizing the dangerous state of the offender and considers him as a patient. Whereas public service is a reformatory approach that seeks to change the behavior of the offender and considers him a calculating human being who has made a rational choice by volunteering to carry out this punishment, and the society must also be a helper in this path to return him to the main path of society.

4.2. Free Public Services in Light of Specific Objectives

In addition to the general objectives discussed earlier, community service sentences pursue specific objectives, the most important of which are: avoiding short-term imprisonment, reducing the risk of recidivism, implementing restorative justice, and ultimately strengthening social cohesion. Now, we will provide a brief explanation of each one.

4.2.1. Avoidance of Short-Term Imprisonment

One of the most important specific objectives of the punishment of free public service is the avoidance of short-term imprisonment. As the passage of time and the experiences resulting from the implementation of the imprisonment sentence have shown, not only has it been unsuccessful in achieving the main goals of reform and rehabilitation, but it also has many detrimental effects, which are exacerbated in the case of short-term imprisonment sentences. This is while the majority of those sentenced to short-term imprisonment are not in a dangerous state and their exclusion from society is not necessary, as by entering the prison environment, even for a short time, they become prey to the phenomenon of "accepting the prison culture" which has harmful effects on the individual's psyche and often leads to the institutionalization of criminality in the imprisoned individual. Therefore, the negative consequences of short-term imprisonment in the areas of health (transmission of contagious diseases), criminology (recidivism and addiction), moral (in terms of the inflation of the criminal population), and social (job and family separation) have been of concern to criminologists and penal scholars [1, 6]. In this way, the specific punishment of public service, with the aim of preventing the transformation of accidental offenders into professional criminals by avoiding short-term imprisonment, entered the field of criminal justice. Also, by replacing the punishment of free public service with short-term imprisonment, the most important goal of the criminal justice system, which is the reduction of the prison population, is realized. Finally, by turning to this punishment and avoiding imprisonment, the contact of first-time and inexperienced convicts with dangerous and professional criminals is reduced to some extent [16].

4.2.2. Implementation of Restorative Justice

The implementation of restorative justice is also one of the specific objectives of the sentence of free public service. In other words, by implementing this punishment, the social reintegration of the offender and the resolution of the tension caused by the crime in the community are facilitated [17]. Additionally, the offender can pay back their debt to society through performing public service and work towards the restoration of the disrupted relationships. This is because reconciling the offender with the victim and the authorities of the criminal justice system is one of the common goals of restorative justice and free public service [2]. Furthermore, the sentence of public service is one of the tools for the development of restorative justice, which, instead of criminal response and moral condemnation of the offender, seeks to reconstruct and compensate the damages inflicted on the stakeholders of the criminal justice system [6]. Service to the community, even if it is considered as a punishment, is a value and an opportunity that strengthens the offender's sense of responsibility and accountability. This is the same goal that justice based on compensation (restorative) also emphasizes [8]. Ultimately, the sentence of free public service is a restorative process that comes to the aid of restorative justice and strives to realize its

objectives.

4.2.3. Reducing the Risk of Recidivism

The ideal of the sentence of free public service is to provide conditions in which offenders not only suffice with leading a lawful life after serving their sentence, but are also able to do so. Undoubtedly, learning life skills for a lawful life reduces the risk of recidivism [5]. Given the reported statistics, the rate of recidivism has increased today, and the statistics confirm a 70% recidivism rate. In this regard, public service is one of the effective measures that seeks to reduce the rate of recidivism. Based on the research conducted on the evaluation of the effectiveness of public service, the rate of recidivism among offenders sentenced to it is lower compared to those sentenced to imprisonment. Also, more than 40% of individuals successfully completed their duties and work. Such punishments make offenders more responsible and accountable for the crimes they have committed, in a way that public support is aroused. In addition, a high percentage of convicts sentenced to public service work, compared to imprisonment, have expressed remorse for the committed crime after the execution of the sentence, or many of these individuals have planned for the period after their conviction [16]. Therefore, this punishment, given the conditions of its application in the community context and its superiority over other punishments such as imprisonment and fines, has been effective in reducing the risk of recidivism and is one of its practical objectives.

4.2.4. Strengthening Social Solidarity

Community service punishment aims to create and strengthen social solidarity by bringing law-breaking citizens closer to law-abiding citizens [17]. The implementation of this punishment within society increases social solidarity among citizens, and instead of the convict being ostracized and their term of imprisonment becoming the most bitter period, they establish deeper relationships with their peers through activity in the community and making amends for their mistake, which leads to their re-socialization. Moreover, in a society where people have greater social solidarity with each other, the rate of crime and delinquency will be lower, and the reason for this is the supervision of the individual's behavior by the members of society [5]. Additionally, the implementation of community service punishment and the strengthening of social solidarity pave the way for a kind of social trust. This trust, which is derived from the enforcement of the law, is the best means for achieving justice and balanced, appropriate decisions [2].

Supervision of individuals in the workplace and family environment, as well as the contact of members of society with the convicted, on the one hand, makes the convicted person more responsible towards their obligations, and on the other hand, the observation of the performance of the convicted person reflects positive mental impressions about them in the public mind, which is a sign of the creation of trust in the of-

fender by the members of society and the strengthening of solidarity between them. As a result, the realization of this goal distinguishes the punishment of community service from other punishments, as it not only pursues the punishment of the offender, but also emphasizes the reform of the offender within the community and their reconstruction alongside their fellow human beings.

Considering the above points regarding the specific objectives of free community service in both legal systems, the most important objectives of this punishment can be generally stated as follows:

- 1) Prevention of the corruptions of prisons and prevention of contact between short-term prisoners and professional and dangerous offenders.
- 2) Reform and education of offenders, especially the youth, considering the formation of their personality, to adapt to normal social life.
- 3) Preventing the socio-psychological effects of prison on the prisoner and reforming and treating, especially the social reintegration of the convicted person through public service work.
- 4) Increasing government revenue and creating employment and reducing or eliminating unemployment.
- 5) Establishing public trust in the performance of the criminal justice system.
- 6) Preventing the criminal labeling and its negative consequences.

5. Types of Community Service Penalties

In its modern model, community service penalties are divided into two types based on their implementation and application: mandatory and rehabilitative. This classification is specific to the United Kingdom, as this country has undergone several phases in the execution of community service penalties. However, Iran has adopted a more imitative approach to implementing community service penalties in their current form. As a result, understanding the types of community service penalties may be challenging for Iranian readers, as Iran has less historical experience in this area, and community service penalties have not undergone significant changes. Similarly, in the legal system of Afghanistan, community service penalties were legislated for the first time in the Afghan Penal Code ratified in 2017 [21] and in Annex No. 2 of the Criminal Procedure Law ratified in 2018 [22]. Therefore, to better understand these concepts, it is logical to discuss community service penalties with consideration of modern countries.

Community service penalties vary based on their implementation methods, which include:

5.1. Mandatory Community Service Penalties

Considering the acceptance of imprisonment as a penalty in various legal systems in the 19th century and the transition to

incarceration-based penal systems, it not only failed to reduce existing societal problems but also led to numerous issues arising from the negative consequences of incarceration. Among these negative outcomes is the increase in the prison population, which has prompted a shift toward alternatives to imprisonment. The primary alternative to incarceration in Anglo-American systems is probation, while in continental European systems, it is suspended imprisonment. Additionally, mandatory community service has also been accepted as a substitute penalty [11].

Some view mandatory community service as a form of open-air imprisonment. However, this does not mean that the execution of this penalty requires the hard physical labor that was common in the past. This penalty is a modern sanction that serves as a substitute for imprisonment and reduces its associated negative impacts. A distinguishing characteristic of this type of community service is its mandatory nature, which arises from its implementation method. In any accepted penal system, this penalty is executed in such a way that for sentences of less than six months of imprisonment, courts automatically send the defendant to a community service officer for assessing individual capabilities and determining the offender's adaptability, without requiring the individual's consent. This procedure is an integral part of the judicial process for sentences under six months. If the community service officer confirms the individual's capabilities, this penalty becomes obligatory, and the only way for the convicted person to be exempted from performing these services is if the relevant authority rejects the court's recommendation. Therefore, mandatory community service functions solely as a substitute for imprisonment, pursuing no other goal than reducing prison populations [18].

5.2. Rehabilitative Community Service Penalties

Rehabilitative community service is a type of community service penalty that has emerged in response to the issue of prison overcrowding and serves as an alternative to incarceration. The idea for this penalty was first proposed in the United Kingdom by the Advisory Council in 1970. The goal of the Council's proposal was to compensate for the social harm caused by crime to the community. This proposal was accepted by the UK legislature in 1972. Rehabilitative community service has been welcomed not only in England but also in many other countries. This penalty is applied only for minor offenses where the legislator does not deem imprisonment necessary. The implementation of this penalty occurs through charitable and voluntary organizations that operate for the benefit of needy individuals. The convicted individual can join these organizations voluntarily to seek to compensate for the harm caused by their crime. In cases where the convicted person is deemed unsuitable for this service, the probation center responsible for overseeing and monitoring this penalty will not confirm their eligibility to perform

these services [18].

The mentioned penalty for mandatory public service is characterized by greater flexibility and leniency. The duration of rehabilitative public service is shorter than that of mandatory public service, and the individual is required to complete it within a year during their free time. Additionally, completing this service is also possible for offenders on weekends and holidays [16]. It seems that in the criminal law of both Iran and Afghanistan, the penalty of community service is somewhat rehabilitative in nature. The types of community service in both legal systems of Iran and Afghanistan are the same. According to Article 23 of Appendix No. 2 of the Criminal Procedure Law in Afghanistan [22], and Article 2 of the Executive Bylaw of Article 79 in Iran [20], similar public service tasks have been established that can replace imprisonment, such as:

- 1) Educational Activities: Literacy training, scientific, cultural, religious, artistic, sports, vocational and professional training, and teaching lifestyle and its essential skills.
- 2) Health and Medical Activities: Diagnostic and therapeutic measures, rehabilitation, midwifery, nursing and caregiving, elder and disabled care, child care, counseling and psychotherapy, environmental health, and addiction treatment.
- 3) Technical and Vocational Activities: Service in workshops, factories, industries related to accepting entities, and their technical sectors.
- 4) Service Activities: Security and custodial services in receiving institutions, cleaning of public spaces, maintenance and protection of green spaces and urban parks, gardening in the mentioned locations, repair and cleaning of public and government vehicles, and sports facilities.
- 5) Labor Activities: Labor in construction, road building, mining, dam construction, and other civil projects belonging to receiving institutions.
- 6) Agricultural Activities: Animal husbandry, forestry including tree planting, gardening, harvesting, poultry farming, and work in receiving institutions and related agricultural enterprises.

6. Conditions for Community Service

One of the other topics within the framework of community service is the conditions for implementing these services. If community service is applied without considering the conditions, it could have a negative impact on offenders. Therefore, we will discuss the conditions of community service separately in both legal systems.

6.1. Iran

The penalty of community service in the criminal law of Iran, as an alternative to imprisonment, has certain conditions

that facilitate its replacement for the offender. These conditions include: the consent of the convicted person, the presence of mitigating factors, the absence of a criminal record in some cases, and the forgiveness of the private plaintiff. Each of these will be discussed in detail below.

6.1.1. Consent of the Convicted Person

The consent of the convicted person is a fundamental condition for the penalty of community service, as it cannot be implemented without their agreement. The consideration of consent in punishment is an exception; it does not affect any other types of penalties. The main reason for requiring consent is to avoid the imposition of punitive measures from ancient times. If this punishment is enforced without the convicted person's consent, it takes on the nature of forced labor, which is condemned not only in the legal systems of most countries but also emphasized at the international level. Thus, criminal law aims to take a new step toward humanizing penalties. According to Article 84 of the Islamic Penal Code of 2013, community service is conditional upon the consent of the convicted person [19]. This consent is absolute and includes agreement on the type and timing of the work. What can be inferred from this article is that the court cannot order community service without the convicted person's consent, even if the person later expresses willingness. This is because the issuance of a community service sentence results from an agreement between the judge and the convicted person; without such an agreement, there can be no outcome. However, even if the convicted person has initially given their consent, they can later withdraw it. This situation is addressed in Note 3 of Article 84 of the Islamic Penal Code of 2013. Accordingly, according to the last part of Note 3, "In the absence of consent, the main penalty as ordered will be enacted." Thus, the convicted person has the option to revoke their consent; however, this withdrawal has consequences, including the enforcement of a prison sentence.

In Note 1 of Article 19 of the Draft of Social Penalties Alternative to Imprisonment, the consent of the convicted person is necessary for both the execution of community service and the type of service [6]. In the Islamic Penal Code, consent regarding the type of service is essential, and only in the absence of agreement on the type of service can the convicted person express their discontent. However, according to the Executive Bylaw of Article 79, consent is also required for changing conditions. According to Article 7 of the Bylaw, "If there is no capacity in the jurisdiction of the issuing court but there is capacity in other jurisdictions, the issuing court may, with the consent of the convicted person and by granting a delegation, send the convicted person to another jurisdiction" [20]. Given this article, if conditions change—whether at the time of issuance or afterward—the convicted person must express their consent, as changes in conditions may create difficulties for them [16].

6.1.2. Absence of a Criminal Record

The absence of a criminal record is not explicitly mentioned

as a condition for the implementation of community service penalties in Articles 64 and 84 of the Islamic Penal Code of 2013 and their notes [19]. However, Article 66 considers the absence of a criminal record as a condition for granting community service in certain cases [7]. The reason that the absence of a criminal record has not been generally emphasized is the focus on the mental element of the committed crime and the existence of criminal intent, which in some way evokes the dangerous state of the offender. As the legislator has considered the intentional and unintentional nature of community service penalties, they have also taken into account the previous criminal record. According to Article 66 of the Islamic Penal Code of 2013, the absence of a criminal record is only a condition in intentional crimes, provided that five years have passed since the execution of the penalty. Therefore, in unintentional crimes, the previous criminal record does not have an impact [12].

6.1.3. Existence of Mitigating Factors

According to Article 64, the existence of mitigating factors is a condition for granting community service penalties [3]. This condition also implies that the existence of mitigating factors will only lead to a sentence of community service if the convicted person does not benefit from a reduced penalty. Mitigating factors cannot serve as a basis for utilizing both the reduction of penalties and the alternative to imprisonment. The reason for this is stated in Article 37 of the Islamic Penal Code of 2013 [19]. According to this article, the reduction of a penalty and its conversion cannot occur simultaneously, and alternative penalties are considered a form of penalty conversion [6].

6.1.4. Forgiveness of the Plaintiff

Community service is a restorative measure aimed at compensating the victim and gaining their satisfaction, which are key objectives of this penalty. Thus, obtaining the victim's consent and their declaration of forgiveness facilitates the restoration of relations between the victim and the offender. For this reason, the forgiveness of the plaintiff is included among the conditions for community service penalties [14]. Additionally, community service penalties can only be applied in cases classified as non-compoundable offenses; this is because the plaintiff's declaration of forgiveness in compoundable offenses leads to the cessation of prosecution and the closure of the case. Notes to Article 100 of the Islamic Penal Code of 2013 aim to define compoundable and non-compoundable offenses. According to Note 1 of this article, "Compoundable offenses are those for which the initiation, continuation of prosecution, and execution of the penalty depend on the complaint of the plaintiff and their lack of forgiveness" [19]. Furthermore, according to Note 2 of the same article, "Non-compoundable offenses are those for which the plaintiff's complaint and forgiveness have no effect on the initiation, prosecution, continuation, or execution of the penalty" [9].

6.2. Afghanistan

Regarding the conditions for implementing community service in the criminal law of Afghanistan, similar to other legal systems around the world, particularly that of the Islamic Republic of Iran, there are specific limitations. The Afghan Penal Code, approved in April 2017, outlines certain conditions in Article 162 [3]. In fact, failing to consider these conditions can lead to serious problems. In this section, we will discuss the conditions for community service in detail.

6.2.1. Adherence to the Principle of Individualization of Punishment

The first condition for community service is the principle of individualization of penalties. Paragraph (2) of Article 162 of the Afghan Penal Code emphasizes the importance of this principle in determining and implementing community service, which the court must consider when issuing a sentence [21]. One of the factors that contributes to the effectiveness of this new measure in the judicial system is taking into account the circumstances of the convicted person at the time of sentencing for community service. Factors such as the offender's age, gender, physical and psychological abilities, skills, and even the nature of the committed crime must be considered [22]. The type of work assigned by the judicial authority to the offender should first be appropriate for their age and gender, and second, the offender must possess the necessary capabilities to perform the assigned work, ensuring that the treatment is suitable for their condition and needs [9]. It is clear that the judicial authorities pay attention to this important matter during the trial process and determine one of the various types of community service specified in Article 23 of Appendix No. 2 of the Criminal Procedure Law regarding the implementation of alternatives to imprisonment, which is appropriate to the offender's situation [11].

6.2.2. Obtaining the Consent of the Victim

The second condition for community service in the legal system of Afghanistan is obtaining the consent of the victim, which is mandatory according to Paragraph (3) of Article 162 of the Afghan Penal Code, enacted in 2017 [21]. Another principle governing community service is the consent and agreement of the convicted person, as outlined in Paragraph (3) of Article 162 of the Penal Code and Paragraph (2) of Article 7 of Appendix No. 2 of the Criminal Procedure Law, approved in March 2018 [10]. The convicted person must consent to the type of work and the nature of the sentence. The sentence of community service may impose physical and psychological limitations on the convicted person; therefore, they must be fully aware and agreeable to its execution. Otherwise, the potential for their rehabilitation and reform may be compromised [7]. Additionally, the consent of the convicted person regarding the nature of the work distinguishes it from forced labor. Legal scholars offer two reasons for the requirement of con-

sent: first, if the offender has no motivation to accept and engage in community service, it will only create problems in the work process and their future; second, without the condition of consent, the community service order could be seen as a violation of Paragraph 2 of Article 4 of the European Convention on Human Rights, Article 44 of the Constitution, and Article 3 of the Afghan Labor Law, which prohibit forced labor [11].

6.2.3. Proportionality of the Crime and Work

Another condition for community service in the legal system of Afghanistan is the consideration of the proportionality between the severity of the crime and the community service assigned. Paragraph (5) of Article 162 of the Afghan Penal Code, enacted in 2017, states that the court shall determine the amount of community service in accordance with the degree of severity of the committed crime and the personality of the offender [15]. One of the conditions for community service is the determination of the duration of the work. The court must specify the amount of time the convicted person will spend performing community service. This duration should be proportional to the offender's situation, the severity and nature of the committed crime, and the legal punishment associated with it [14].

Another important aspect of community service is the number of hours worked, which the Afghan legislator has defined in Article 163 of the Penal Code, enacted in 2017 [21]. According to Article 163, the total amount of community service is measured in hours, with a minimum of 4 hours and a maximum of 8 hours in a 24-hour period [13]. Article 163 of the Penal Code and Paragraph (1) of Article 28 of Appendix No. 2 of the Criminal Procedure Law, approved in March 2018, establish criteria for determining the duration of community service in hours, specifying a minimum of 4 hours and a maximum of 8 hours per day [15]. According to Paragraph (2) of Article 28 of the Law on Alternatives to Imprisonment, the court has the authority to determine or modify both the type of community service and the amount of working hours based on the age, physical ability, and rehabilitation of the convicted person [12]. For example, if a person is both a teacher and a carpenter, and the court has sentenced them to carpentry work, if they show improvement over time and find carpentry difficult, the court can change their sentence from carpentry to teaching and also reduce the duration of the teaching service, such as converting two years into one year [12]. One specific consideration in adhering to Paragraph (2) of Article 162 of the Penal Code is that, in cases of sentencing to community service, the economic and social status of the individual should be taken into account, and assigning a person to community service should not harm their ability to manage their daily life [21]. In addition to the principles and conditions mentioned above, Article 29 of the Law on Alternatives to Imprisonment outlines additional conditions and procedures for community service in Articles 24 to 31 of Appendix No. 2 of the Criminal Procedure Law, approved in March 2018 [17].

7. Conclusion

The introduction of community service as a penalty began with theoretical discussions such as decriminalization and the economic reform of the criminal justice system. Emphasis on the benefits of this punishment has increasingly drawn the attention of legal scholars internationally. Reported results from the positive experiences of other countries encouraged lawmakers in both countries to allocate a place for this new penalty in their criminal laws. Thus, this punishment was introduced for the first time in the Iranian Penal Code of 2013 and the Afghan Penal Code of 2017.

The implementation of community service programs has specific conditions. The first step is to adhere to the conditions outlined in the criminal laws of both countries, which include the forgiveness of the plaintiff, the consent of the convicted person, the presence of mitigating factors, and the absence of a criminal record in some cases. Additionally, what is essential for the proper execution of this penalty is the establishment of a cultural foundation among the staff of these institutions and the community at large.

Measures taken regarding the implementation of community service are outlined in the Executive Regulations of Article 79 of the Islamic Penal Code of 2013, dated September 3, 2014, in Iran, as well as in Appendix No. 2 of the Criminal Procedure Law concerning alternatives to imprisonment in Afghanistan. These measures cover various sectors, including education, health, technical and vocational training, services, labor, agriculture, and more.

The types of community service penalties are a new and emerging topic in this article, which has been organized with the help of translations and the use of foreign sources. Accordingly, community service penalties can be divided into two types: mandatory community service and rehabilitative community service. These types are distinct in terms of their nature, components, and objectives.

To address the question of which type of community service is applicable in both countries, it can be argued that this penalty, based on the Islamic Penal Code of 2013 in Iran and the Penal Code of 2017 in Afghanistan, which considers the consent of the convicted person as a fundamental condition for granting this penalty, is a form of rehabilitative community service. This is because it represents an agreement between the judge and the offender, and there is the possibility of modifying or canceling this penalty during the enforcement phase if improvement in the offender is observed.

The community service penalty in the criminal law of Iran and Afghanistan is one of the emerging and innovative penalties, and with its implementation in society and the acquisition of experiences in this area, existing gaps will be reduced.

Abbreviations

PhD Doctor of Philosophy
PBUH Peace Be Upon Him

Author Contributions

Abdul Matin Monib is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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