

HISTORICAL PROCESS OF BAIL AND EDUCATIONAL MEASURES IN IRANIAN CRIMINAL LAW

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Abstract. Long time passed to recognize this idea that the punishment does not provide protection and some measures are thought to prevent dangerous situations and these measures are called bail and educational measures. Also, in Iran, bail and educational measures was not known for country lawyers and criminologists and even before the adoption of bail and educational measures act, instances of which existed in previous legislation. But the lack of a comprehensive criminal policy causes that legislation after the victory of Islamic Revolution, according to the necessity of changing the principles of legislation and using Islamic Sharia resources to develop new rules and regulations, legal entity of bail and educational measures stay in confusion. This paper aims to analyze developments and features of these measures.

Key words: bail and educational, measures, criminology, punishment.

Introduction. Bail measures are one of fruits of practical theoretical criminology as by increasing crimes and failures to cope with them, the idea arose that punishment alone is not enough to keep the community safe and some other measures should be found to protect social order and to prevent committing crimes. This, especially after the birth of realization school in the late nineteenth century and diffusing scientific ideas like Enrico Ferri, author of "criminal sociology" and Raffaele Garofalo, owner of book "criminology" and Cesare Lombroso, author of "criminal human", was highly under consideration.

So this legal-criminological entity of French legal system has been entered into Iranian legislative -judicial system and the bill of Iranian bail measures adopted based on those systems in 1960 and it takes a long time that our country legislator in parallel with punishments in the field of law foresees some measures and people complied with these measures that they not only lack penal description, but also, more than anything, individual interest is considered more than anything else.

Bail measures can be divided based on type of limitation and topic of applying these measures, that the method of classifying bail measures act adopted in 1960 is in this same way. In this way, bail and educational measures are divided into bail measures of depriving freedom, limiting freedom, restricting or depriving rights, and financial measures and verdict diffusion. Also, some people consider bail measures applier reference as division criterion by which bail measures can be divided into judicial and administrative that reviewing these divisions is not in the scope of article studies what developments are experienced by bail and educational measures from the this article. This beginning till now. This article focuses on four topics, in first section, history of predicting these measures is presented, in the second section, evolution process of these measures in Iran is examined, in third section, characteristics of these measures are described, and in fourth section, similarities and differences of these measures with penalties are expressed.

Concepts. In order to correctly review and analyze a topic, at first, it is necessary to define that topic in order to determine what exactly the main topic is and what its characteristics is, for this reason, it must be said that the bail and educational measures of this legal entity that first was entered through French legal system, as will be outlined later, into our country legal and judicial system is the French term translation of "Les mesures de surete".

Some believe that "bail measures include a range of social defense means that is used based on rule of law and by the judge as a result of the crime, according to state of temperament and talent and character and records of an offender and dangerous person in order to recover him/her and make him/her compatible with the community and not to repeat the offense. (Kay Nia: 1652)

But the law defines bail and educational measures as follows: "bail measures include measures that a court adopts to prevent a repeated offense (misdemeanor and crime) against dangerous offenders"³ and, under this article after definition of dangerous criminals it is mentioned that "issuing a sentence for bail measure through court is allowed when someone committed a crime."

1. History of the emergence of bail and educational measures. Some believe that bail measures are created by, Swiss lawyer, Karl Astus (Mohammadnezhad: 2003: 36). But what is clear is that these bail measures are predicted for the first time in 1902 in law of Norway. Then, dual system of bail-penalties measures is adopted and implemented in 1908, 1930, 1927, 1933, in Britain, Belgium, Sweden, Spain and Germany, respectively. Belgium, also, adopted an act in 1930, known as the "Law of Social Defense" in order to maintain abnormal offenders under court order for an indefinite period in order to treat and correct them.

³ Security measures act (adopted in 2017), Article 1.

However, accepting bail measures in modern criminal law was due to the fact that during the nineteenth century classical philosophy in fighting against crime in general, and repeated crime in particular faced failure, and experience has shown that some of criminals according to habit and mental illness cannot understand reality of punishment and they do not feel intimidating effect of punishment and therefore they are not conscious of it and they continue their criminal activity and effort.

Also, according to realization school, moral responsibility that is the main basis for punishment was negated and criminal was considered as a patient that must be treated and cured, they believed that bail measures are successor for punishment, but neoclassic accepts bail measures in exceptional cases.

Dispute between lawyers was related to this fact that for a reaction against crime either punishment or bail and educational measures should be just resorted, but intermediate level between these two theories was that the penalties and bail measures simultaneously should be used in criminal law to fight delinquency; Law International Union has also accepted this theory and many global criminal law accepted bail measures and penalties together as two means of fighting criminal. Ferry from positivists school leaders in Congress of the International Society of Criminal Law in Brussels in 1924, advocated the theory of mediocrity. (Baheri 496)

Necessity of bail measures today is accepted by all, but there are still differences in its relation to the penalty.

2. Evolution path of bail and educational measures in Iran. Before enacting bail act in 1960, Iran had a unique system of criminal and in general penal law enacted in 1925 that is considered as the first written Iranian criminal law; no name of bail measures is seen. In subsequent amendments, this law and miscellaneous laws that have entered legislative and judicial system of Iran till 1960, officially, did not predict a position for this legal entity.

But during this, in different cases of criminal laws, instances of bail and educational measures were approved. Among them, in 1921, Prime Minister (Seyed Zia'eddin Tabatabaee) issued and edited an act about drug addiction. In this Act, the use of opium for civil and military servants is prohibited and, in case of using, they will be dismissed from government service. This activity was considered a sort of bail and educational measures.

In 1925, bail measures and instances of it were introduced beside punishment under the Penal Code. This law is derived from the Napoleonic Code 1810 and the principles of Islamic jurisprudence; it expressly referred to some bail measures. For example, in articles 5, 6, 15, 19, 34, 35, 40, and 275 of this law, restitution, detention, and destroying objects that are cause of crime or are made because of it or applied are referred, and paragraph 6 of article 8, and paragraph 2 and 3 of article 9 "deprivation of social rights" is considered as a punishment for criminal offenses and mandatory stay at a certain place or places or ban of residence in certain place or places" as well as "deprivation of some civil rights" are reckoned from punishment for misdemeanor offenses. (Rohamie: 2013: 98)

Also in the case of juvenile delinquency based on each case, delivering them to their parents, sending to the correctional center, sending insane defendants to mental hospital are referenced. (Dehshiri: 2005: 5)

Although bail and educational measures are not mentioned explicitly, but, considering the position of offender in terms of rational and age and adopting appropriate decisions about them are among types of bail and educational measures and it is considered as an important step in the development of bail and educational measures in Iran.

Also in **1922**, detention of counterfeit weights in article 4 of weights and measures act was also considered some kind of bail measure as well as laws such as the law of preventing sexual diseases and infectious ones enacted 1941.

In 1943, a specific regulation was adopted and edited for detention of minors in temporary prison in Tehran in nine articles. Because at that time, people growth age was 18 years old, thus the detention center of minors (under 18 years) was separated from adults and literacy and preaching were considered for them.

Also, in the same year, the law of intensifying penalties for bad-history and evil persons was passed according to which the allowance of deportation or detention of such persons was empowered to the Interior Ministry and in fact dealing with dangerous criminals was seen as an office aspect, and also a legal bill of protecting social security allowed to a commission consists of the governor, president of the city court, prosecutor, police and gendarmerie chiefs to deport those who caused the disruption of agriculture and the like.

But developing the constitution in **1896** and its complement in next year is considered as an important development in the history and law of Iran because bail and educational measures were implicitly mentioned in amendment to the constitution but name of bail measures was not mentioned.

Other bail measures that took place in **1955** were the ban on poppy cultivation and using it and destroying counterfeit goods (note 2, paragraph "m" of article 18 Administrative and Medical Affairs act 1955) that these are examples that how legislators paid attention to measures that are considered bail in nature.

In **1959**, law of juvenile offenders court formation was enacted in order to train and correct juvenile offenders, in this law that has 33 articles, the special court of juvenile offenders had been anticipated, and in articles 17 and 18, some educational measures were predicted based on the nature and age of children and type of crime that they have committed, including submission to the parents by getting a commitment to discipline and training and care in moral wellness, rebuking and admonishing by the judge, sending to a corrective and educative institution. Although the above law explicitly referred to bail and educational measures on children offenders, however, because only a part of criminals are noted and it does not have a universal aspect, it does not lead to withdrawal of the Iranian penal system from penal unit, but unfortunately, these courts were not formed until 1966. The first juvenile court was established in Tehran in 1966 and then from 1977 onwards, two other branches were formed.

But the most important developments of bail and educational measures were the enactment of "bail measures act" in **1960**. This law, which was passed in 1960, had 21 articles and it stated different types of bail and educational measures.

This is considered the first clear and comprehensive legal action about bail and educational measures in Iran's law. And by passing laws about bail measures, actually this entity was entered into legislative and judicial system of Iran. By enacting bail measures act, dual system of criminal includes two types of instruments to fight crime and enforcement are established in Iran.

Then in **1968**, the first correction and rehabilitation center was established and its regulation was adopted from September of that year by forty articles.

In **1973**, due to changes in society, the Penal Code was amended and supplemented and it enacted by two hundred and ninety articles, in this law, bail measures were considered in association with punishment title clearly and completely more than in the past. This situation was continued until the realization of the Islamic Revolution of Iran in 1979.

The first step in parallel with developments caused by the revolution was developing constitution based on Islamic principles and the needs of today society. In constitution, bail and educational measures are included. For example, in thirty-third principle of constitution, exile, forced to stay in a certain place or ban of residence in a place, except in cases of legal prohibition, are prohibited (implicit reference to bail and educational measures), as well as article 56 of the constitution that knows one of the tasks of the judiciary to take appropriate action to prevent crime and reforming criminals.

After the reform of the Penal Code in 1973, bail measures entered into the law and a law was adopted as follows "any act or omission of act which is, by law, bail and educational measures and punishable is considered a crime, and nothing can be considered a crime unless according to the law, bail measures or punishment is determined for which."

The dual system of penalties and bail measures that were entered current system of Iran by enacting the law of bail measures since 1960 was confirmed in this law, too and this article was enacted in article 2 of Islamic Penal Code (enacted 1982, Judicial Affairs Committee of Islamic parliament) which replaces former General Penal Code.

In **1974** that general articles of Penal Code were reviewed and amended, bail measures were expressly named in articles 1 and 2 of this law and crime in this case was defined as: "any act or omission of act which by law is punishable or requires bail and educational measures is considered a crime, and nothing can be considered a crime unless punishment, or bail and educational measures are determined for it by law." In addition, mentioned law omitted exile punishment from the list of punishments, on one hand, and it enacted many other bail measures mentioned in bail measures law in terms of supplementary and complementary punishments, on the other hand.

Enacting law related to Islamic Penal Code in 1982, again the dual system of criminal and existence of bail and educational measures in its article 2 was emphasized that was adjusted like article 2 of the Penal Code Amendment 52.

But in **1991**, in rewriting Islamic punishment law articles and enacting new law, at once, bail measures was removed from article 2. Of course in some articles like articles 1 and 11 and titles of section 2 and chapter 1, it was mentioned. It should be noted that in article 2, Islamic punishment law (Act, 1991) that was replaced by law about Islamic punishment, nothing was mentioned about bail measures. Although article 1 of this law stipulates: "Islamic Penal statute is about to determine the types of criminal offenses and penalties and bail and educational measures that are applied to criminal", but in article 2, just penalty is mentioned and this question is raised that whether without crime some measures can be imposed? Or essentially punishment includes bail and educational measures? Thus, legislator wanted to ignore dual system of penalties and bail measures ignored and to create a single system.

In **2013**, the legislator, by removing bail measures from article 2 of Islamic penal code, tried to move toward criminal unit system, as due to bail measures in articles 1, 12, 13, 88, legislator wants to keep this legal entity in terms of supplementary penalties. Because actually many instances of bail measures have been adopted in additional penalties that in viewpoint of some people, due to mentioning bail measures in mentioned articles in Islamic penal code, this entity is still existed in law.

It is not without benefit to mention that in law bill of establishing the juvenile court 2003, it is mentioned in article 36 that "the provisions of recidivism in children and adolescents are not respected", for explanation we must refer to article 137 that repeating crime is only when someone is sentenced to punishment of imprisonment for 1 to 6 degree. Actually, in principle recidivism is applicable for those who were convicted "penalty" by court order and secondly punishment should be characterized by deterrent description. If we accept that basically bail and educational measures are not penalty, so how in this law something is mentioned about the non-implementation of the provisions of recidivism in article 138 about children, in other words if we do not consider these measures as punishment basically there will not require that such an article be enacted. In other words, the legislator has considered these actions as penalty but he does know them as sentence. (Mirzaee: 2009, 126)

New Islamic Penal Code predict main nature of bail and educational measures only for irresponsible people like children and young and also insane ones, and for responsible people, mostly bail and educational measures instances are enacted in framework of additional or even main penalties. However, bail and educational measures for responsible real persons and legal entities are still predicted in sporadic criminal law.

Sometimes bail measures under the independent judgment is applied as a punishment for those who committed crimes and sometimes they are considered as complementary punishment and in addition to main penalties and in some cases they are as aspects of alternative punishment (criminal equivalent).

A: bail measures as the main punishment

Some bail measures are as the original sentence and in clause 1, article 15 of General Penal Code enacted 1925 amended in 1973 it was explicitly referred; for example, exile or forced to stay in a certain place or a permanent or temporary suspension of government and public services beside main punishment is as a complement of order and sometimes it is directly ordered as the actual sentence as a punishment.

Some deterrent penalties referred to in article 17 of former Islamic Penal Code, such as closure of business, license and deprivation of civil rights and stay on certain place or places and prevention from inhabitation in certain place or places are among bail measures that sometimes are sentenced as main punishment (deterrent punishment). In this case, in terms of discount sentences and determining punishment and multiple and recidivism included terms and regulations governing penalties not terms governing bail and educational measures. Therefore, in this case it is assumed that the perpetrator of crime has criminal responsibility so he can be sentencing of the "punishment", now this punishment is possibly an essentially bail measure, or bail measure can be used along the main punishment as punishment order complement.

B. Bail measures as supplementary punishment

Although supplementary penalties are in category of penalties in terms of categorizing penalties and bail and educational measures, but in terms of the philosophy of legislation, this type of punishment with bail measures have a common purpose and philosophy, and bail measures in general meaning include supplementary and consequential penalties, it is subject of articles 23 and 25 and clause 5 of article 19 of the Islamic Penal Code.

For example, one who is guardian of minors and whose task is to protect the interests and property of those minor children, if contrary to his duty, commit a breach of trust that was given to him, according to the law, he will convict to reject the loan and imprisonment, in this case, common sense does not accept that as soon as the order was conducted he will be able to restore his past status and for example he has the right to take care of the minors, because under effect of betraying in trust, the community's trust is denied to him and the community does not know him/her as trustee no longer, and the exclusion of such a person from returning to the previous state, namely, the right to guardianship of minors, is the same as the supplementary and/or consequential punishment that is actually some kind of bail measures in its general mean. The main difference of complementary and consequential punishment is not in their nature, but it is how to determine these criminals. In some cases, the legislator will judge himself/herself and he/she considers committing a bunch of criminal acts as a legal act for having a dangerous state and, as a result, forbidding some social rights or forcing some of bail measures, but in other cases, the legislator has allowed to the judge to decide, in accordance with his or her own discretion, due to the physical, psychological and family status of the offender, how a criminal act is committed and type of offense committed, in order to take a bail decision. In this case, in his decision, he/she should make some specification in his/her order about this, thus they type of bail measures are called as additional punishment.

In law of bail measures adopted in 1960, some of bail measures projected have complementary punishment aspects, including top of article 7 and bail measures subject of articles 9 and 11.

In this case, the assumption is that the offender has no criminal liability or, for another reason, his/her punishment was cancelled and an appropriate bail measure is applied in case of him/her. (Rohamie: 2013, 113)

C - Bail and educational measures as a substitute for punishment

In some cases, the enforcement of bail measures does not consist of aspects of main punishment, not supplementary punishment, but it has "successor punishment" or "equivalent criminal" aspect. It is subject of articles 88 and 150 of the Islamic Penal Code. In cases where because of existence of criminal liability resolver factors such as: the young age, insanity or prosecution immunity due to international treaties about policy agencies, no punishment, whether main, complementary or supplementary, can be referred for committing a criminal act, it is possible that legislator allow the court to apply one of bail measures. In the law of bail measure, it is referred to "maintenance of children in the juvenile institution" and "maintenance or treatment of impaired offenders and insane in mental hospitals". Also, article 10 of the law is also applicable to this case. According to social defense act in Belgium, about criminals who are mentally ill or repeat offense, bail measures replaced punishment.⁴

3. Features of bail and educational measures

According to the definition that legislator presented from bail and educational measures, following characteristics can be outlined for these actions:

First: bail measures are considered as preventive and deterrent and look to the future.

Second: as stipulated in this law, bail measures are applied only about dangerous criminals and the law paid attention to dangerous offenders instead of dangerous individuals but no definition was offered for "dangerous state".

According to article 1 of above law, dangerous offenders are whose records, moral and mental features, and the quality of committing the crime of them will put them at risk of committing a crime in the future.

Professor Garofalo was the first person that has done some studies in 1878 on concepts of dangerous states.

And then his studies focused on rehabilitation for social adjustment, and his intention in this stage was to determine the harm and danger posed by the perpetrator that in psychology point of view is referred to as "criminal capacity".

In the law of intensifying punishment of people with bad history and evil (approved in 1943), without naming the "dangerous state", in fact, a kind of bail measure was foreseen in the form of deportation through the Ministry of the

⁴ Law of Social Defense, Belgium, April 9, 1930.

Interior, not the judiciary, until in the law of bail measures (enacted in 1960) explicitly "dangerous criminals" are called, as it was described.

Third: the aforementioned activities are applicable if the person has committed a crime before and the likelihood of recidivism existed except in the case of someone who does not commit a crime before, however, the possibility of committing crime and repeating offenses are existed, according to the appearance of law, these measures cannot be applied to his/her actions.

Fourth: bail measures are applied both about officials and irresponsible individuals. In other words, criminal liability obstacles do not preclude the application of bail measures.

Fifth: crimes committed for dangerous criminals are whether intentional or unintentional, and the law has applied in this respect.

Sixth: these measures are not judicial in accordance with rulings and a history of committing crime is not a condition in this type of actions. Sometimes bail measures are considered as an "administrative measure" rather than "judicial measures" and even implementing some kinds of bail measures in the past were entrusted to the executive authorities, which for example the law of severe penalties for persons with bad record and evil enacted in 1943 can be referred to that during which, the Ministry of Interior was allowed to arrest or exile bad history and evil persons like stabber, thief, hooker and the like that have a record of committing this kind of crimes for two months to two years.

4. Similarities and differences of bail and educational measures with penalty

The necessity of understanding the principles and basics of bail measures and explaining its legal nature and adapting them to external cases requires that in this section at first this legal entity is defined and its points of similarities and differences with punishment are expressed and related terms are explained, then it will be analyzed. There some common aspects between bail and educational measures and penalties that mainly there are four famous principles: "legality, personality, individuality and equality", in addition, both legal entities possess the legal aspect. (Rohami: 2013, 33)

Of course, regarding to the principle of personality in cases such as the closure of an institution, it is clear that the effects of the enforcement of bail measure is not confined to those owners or managers of the institution who are engaged in the procurement of poisonous food or smuggled goods, but it includes other partners and/or employees who may not have any knowledge of the matter, as well as the issuance of sentences, family members, friends, or even personal associates will harm at least in terms of dignified and honored because of releasing his/her sentence in press. The principle of equality also in bail and educational measures, it cannot be said for two people that are sentenced for committing the same crime, the same bail measures will be taken, as for example, keeping children that are raised in prosperous family and under the tutelage of grandfather and grandmother, being in correctional center will be very hard and uncomfortable for them, rather than children who lost their parents and have no safe and comfortable shelter and home as well as other bail measures such as the publication of the judgment, exile, deprivation of job and a ban on residence in a certain place for different people, in terms of money facilities and social status will impact differently. But distinctions aspects of penalties and bail and educational measures include:

1- Penalties are primarily relating to the past, but bail and educational measures look to the future.

It is true that bail measures as "preventative measures" to maintain social order and public interest by administrative and executive authorities are expected but it should be noted that in legal bill of bail measures adopted in 1960 are not allowed, on the contrary, in article 1 of this law it is stipulated that: "the issuance of bail measure sentence by court is allowed when someone commits a crime."

Therefore, measures referred to are considered as "measure after committing the crime" that only related to the prevention of "recidivism" not "occurrence of first crime."

Of course, it appears that this case is not a good distinctive item between punishments and bail and educational measures because in the goals of punishment prevention and correction are also seen.

2- The level of penalties are largely determined based on the heaviness of crime, but the level of bail and educational measures depends on the "degree of danger", and the problem of "uncertainty period" stemmed in bail measures from the main source. While in principle, the penalties should be "given".

But does exile that is listed as a punishment about war has a period? On the other hand, bail and educational measures are not always without period. As an example it says about exile that "every convict to exile should be at least three years in place of exile and if the sentence has been imposed for more than three years, at least he/she should be stay in place of exile in duration of the punishment". Therefore, this case cannot be decisively considered as discriminator aspect of bail and educational measures and punishment.

3. In punishments, the problem of creating intimidation and fear and humiliation criminal is noteworthy, but these cases are not important in bail and educational measures and its cure and corrective aspect is concerned. But this can easily be ruled out, because a cash penalty is considered one of the most prominent punishments which have no vain aspect, so the unlawfulness description about all punishments will not be true, and it cannot be concerned as a distinguished aspect between punishment and bail and educational measures.

4. Punishments are, in principle, made certain in stages, and then to the end of punishment, determined decree is not changeable, but in bail and educational measures, based on offender status, it is possible to reconsider, discontinue or change the measure in which order is based.

5- The rules related to repetition and multiplicity of crimes are only applicable in punishments and in bail and educational measures, these rules are not applied, of course, sometimes repetition and multiplicity of crime is an

indicative of "dangerous" offender and it will be effective in certain specific enforcement of bail measures actions, but, also in these cases the main criterion is "dangerous state".

6. Factors such as general amnesty, private plaintiff remission, punishment suspension and parole and discount are effective in punishments and under especial criteria lead to fall, discount and/or suspension of it, but in bail measures, as the criterion is "dangerous status" and "community defense" and "training convict", basically, this type of legal establishments will not affect on it.

7- The application of any type of punishment requires a judicial order, and without which, according to the laws of the countries governed by different legal systems, the punishment will not be applied, but the enforcement of bail measures that have preventative aspect of committing crime sometimes comes to non-judicial authorities such as administrators and physicians, as they do not form totally non-noticeable aspects and forms of treatment and cure.

8. Bail and educational measures include responsible and irresponsible people, but punishment is merely punishing the responsible people. But this can be flawed about some irresponsible individuals because in some cases are seen in former Islamic Penal Code that it also punished children as article 113 express that "If a minor make anal intercourse to other immature, he will be convicted to 74 lashes unless one of them was reluctant" or in article 147, it is said "whenever discriminated immature insult someone else, he/she will be disciplined according to the judge", however, legislator did not express his intention by discipline, but in Lame description, it is presented that "Vela Yazado fi Taadib Sabee Ali Ashrah Asvat va Kaza almmalook sava kana altadib legahzafa am gheira" to discipline children, no more than ten lashes will be used for him, whether discipline is used for insult or other thing. Due to the above, the definition of punishment was existed about minors, and in other words, the child was placed in the circle of punishments, but with the passage of the current Islamic Penal Code in 2013 in article 217, to enforce the limit the existence of criminal liability is considered, however, keeping in a juvenile institution i.e. a closed place can be seen anything but punishment. On the other side, maintenance of insane committed a crimes in mental hospital has no meaning other than imprisonment as article 52 refers to the word "freedom" for insane that is possible by prosecutor order. In fact, when an insane is hold in psychiatric hospital and his/her freedom, in accordance with law, is due to prosecutor order, it does not mean but the maintenance of the insane committed a crime in mental hospital is his/her imprisonment. Especially when his/her stay in hospital is calculated as his/her sentence.

As it is seen in the above –mentioned cases, no significant difference is seen between penalties and bail measures, yet two following cases can show the difference:

First, according to the article one of bail and educational measures act, we need to have a dangerous state, while, in punishment, there is no need to the existence of a dangerous state, and to the extent that a person commits a crime, it will be enough to punish him/her.

Second: measures set out in bail and educational measures act are limitative and only includes cases that are referred to in this law.

Conclusion. Bail and educational measures is a product of scientists ideas and opinions that deal with criminal phenomenon, not based on mere subjective theories, but by objective and experimental approach, and they tried to touch crime like natural phenomena closely and they want to make it under formula and scientific and empirical rules, for this reason, bail and educational measures, in fact, is a "preventative measure before the crime" and these measures rather than a "penalty", "punishment" or "reward" for past actions, are a "solution", "measure" and "recourse" for the future. Today, legislator by removing bail measures from article 2 of current Islamic Penal Code tried to move towards a criminal unit system, while considering bail measures mentioned in articles 1, 12, 13, 88, legislator wants to keep this legal entity in the form of supplementary punishments. Because, in practice, many instances of bail measures are enacted in terms of supplementary punishments that in some believe that for the reason mentioned in bail measures in articles mentioned in Islamic Penal Code, this entity has still legal existence. Important point is mixing and blending additional penalties with bail measures and even main and consequential penalties, hence many cases predicted in bail measures act 1960, such as expulsion of aliens or seizure of crime means as bail, is addition penalty in new law. The new law even mentions some guarantees that do not even have a criminal and bail background, such as the obligation to study, which a number of citizens are required to study, although the requirement to study as a punishment is a negative attitude to the value of education. But are bail measures as punishment? It seems that the mere mention of the "measures" for bail and education does not reduce punishment description of the abovementioned cases, in other words, the cases referred to in bail and educational measures each are penalty and punishment, for example, keeping criminals in exile, a ban on residence in a certain place, closing the institution are among them.

Anyway, a continuity of four main, supplemental, additional, consequential punishments, and bail measures in the new Islamic Penal Code causes more confusion and it seems that the legislator, in this regard, should make clear the place of these actions in Islamic Penal Code.

Suggestions. The present paper proposes the necessity of a fundamental review of criminal laws, rewriting provisions related to bail and educational measures and individualizing of these actions. In this review, the efficiency and effectiveness of traditional punishments should be assessed by scientific methods based on experience and statistics, and effective methods for crime prevention and rehabilitation and neutralizing the criminals should be enacted and be available for competent officials as simple and unambiguous and without complexity regulations, and instances of bail and educational measures that are named original, supplementary and complementary penalties exclude from arsenal of penalties, and under title of bail and educational measures apply beside judicial order and without effects and

consequences of criminal conviction for criminals, and in general, criminal police movement orientation should be toward in detaining, rehabilitating, reforming and educating.

This will not be obtained exception by cooperation of education, culture, health, training and services organizations and without the use of volunteer citizens' services, especially professors and teachers and students.

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METADISCOURSE AWARENESS AND READING COMPREHENSION IN ESP CONTEXT

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Abstract. Current theories of reading state that reading is neither passive and bottom-up nor top-down processes, but rather an active process including both lower and higher level processes working interactively. With metadiscourse awareness and strategies for using it, readers can understand the author's intentions better (Crismore, 1990). Thus, the present study investigated the effect of explicit metadiscourse (MD) markers instruction on EFL learners' immediate and delayed reading comprehension improvement by using metadiscoursal taxonomies proposed by Hyland (2005) in ESP classes (Accounting). For this end, 60 homogenous female participants out of the pool of 84 in two intact classes (30 in each class) were selected through Reading and Writing sections of Preliminary English Test (PET) and then the classes were randomly assigned into two groups, namely, experimental and control ones. The participants were of the same English proficiency level (i.e., at intermediate level). A meaningful guarantee for the homogeneity of the participants was obtained through a series of independent samples t-tests. Each group was instructed for 7 sessions, once a week. They received the same instruction in all the language skills and components except for the reading comprehension. The only difference between two groups was in teaching and learning MD markers. The experimental group received explicit instruction of MD markers for 7 sessions. However, the control group received no specific instructions in MD markers. The results of an independent-samples t-test revealed that the experimental groups receiving explicit MD markers instruction performed much better than the control group.

Key words: Metadiscourse markers, Reading comprehension, EFL learners.

Introduction. According to current theories, reading is not a passive skill, but rather an active process which includes both lower and higher level processes. In other words, reading comprehension occurs due to the interaction between the reader and the text using those processes (Grabe, 2009). According to Anderson (1991), today the major focus is usually on speaking and writing skills because they are easy for assessing achievement. Yet, as Jenkinson