



## Supervision on Criminals through Electronic systems and its criminological challenges

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### ABSTRACT

Using electronic systems to find an alternative for punishment of imprisonment as a subsequent reply to a criminal phenomenon on one hand should be known as to eradicate and decrease harmful social, economic, moral and psychological effects of extensive use of punishment of imprisonment and on the other hand should be analyzed and interpreted as to provide a background of realization of purposes and philosophy of punishment of delinquents, i.e. correction and rehabilitation of criminals and as a result decrease and control of delinquency. In this research, electronic supervision is studied as a middle punishments or alternatives of imprisonment from its different aspects especially with regard to French Criminal Law. In Iran, electronic supervision for the first time was predicted in Iranian Islamic Penal Code (approved in 1392.2.1). Therefore, this study aims to investigate advantages and disadvantages of electronic supervision, implementation ability, correction and rehabilitation of systems of electronic supervision in Iranian Legal System.

### Keyword:

Electronic tools and equipments, electronic supervision, supervisonal strategies, probation

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## INTRODUCTION

Keep in mind that increasing population of prisoners decreases capacity of prisons and authorities cannot work as much as possible for social rehabilitation and re-compatibility of prisoners. Opponents of punishment of imprisonment believe that prison in fact has converted to a crime-producer and criminal-raiser environment (Mark Encel, Mohammad Goudarzi, 1382). It is in prison that random criminals may proceed to learn techniques to commit crime instead of correction and education so that culprits and experienced convicts and unprecedented convicts have compulsory coexistence and finally plan delinquent activity in future (Iraj Golduzian, 1380).

If other issues such as substance abuse, AIDS (which for the first time was observed in Zabol Prison), and hepatitis are added to prison, a sorrowful picture will be drawn and as a result most of criminologists believe that institution of prison has faced with crisis and its legitimacy has been questioned.

Therefore in applying the idiom of electronic supervision and maintenance, one should take into account its application and purpose of its utilization and the question that whether it is used to prevent from committing crime or discovering crime and/or an alternative for imprisonment. It is clear that kind of tool can be different according to purpose of utilization. In this article, electronic supervision is studied as a middle punishment or alternative for prison especially with regard to French Criminal Law. Main purpose of electronic supervision is decrease of density of prison population and it is considered an alternative and sometimes a supplementary for prison punishment as an implementation guarantee. Decrease of expenditures, keeping criminals in society, and maintaining their social relationship and their presence in family which prevents from many problems are considered as other purposes of these programs.

Therefore, the main issue is expressed as whether this system has the ability to implement, correct and rehabilitate in Iranian legal system?

Status of electronic supervision in Iranian Criminal Law

Using electronic technology as a tool serving for system of criminal law is a new and interesting phenomenon which has attracted much attention.

Iranian Judicial Branch has initialized many attempts for de-imprisonment over past years. In Iran, researches indicate that people believe that it can be used social punishments except for prison for criminals (Khakpour, 1388, 7).

One of the recent affords which is done in this regard is prediction of electronic control as one of alternative approaches instead of punishment of imprisonment which has been entered Iranian criminal system following laws of Western countries especially France<sup>1</sup> and in Article 62 of Islamic Penal Code it is predicted which due to this Article "in discretionary crime from degree 5 to 8, court can locate the convict to imprisonment in a certain spatial limit under supervision of electronic systems if there is determined conditions in probation.

According to prediction of this approach in Iranian Criminal Law as an implementation guarantee related to imprisonment, one can say it has a social correctional and rehabilitation status.

<sup>2</sup>Correction of criminals is a continuous and purposeful process which gets analyzable in all of criminal process. Today, this thought that correction and cure of criminals is summarized in implementation step of punishment of imprisonment and finishes is not interesting for decision-makers of criminal politics so that in correctional system of developed countries, period of freedom and the step out of environment of prison plays an important role in this regard. Attention to Iranian main correctional policies alongside correction and cure policies is based on criminological findings. It is the solution for many problems which at present faces with Iranian correctional system<sup>3</sup>. In general, it can be said that it will play an important role based on philosophy of correction, cure and social re-compatibility in Iranian Criminal Law.

## Status of electronic supervision in Islamic Criminal Law Prohibition of search in Islam

Prosecution and punishment of criminals is one of necessities governed on each society. Nevertheless, maintenance of munificence of men, its legitimate aspects in prosecution and punishment of criminals is important and Islam has emphasized it.

This is investigated from two aspects of first and second sentences. In Islamic principles, disquisition and search in personal life of people is introduced as one of the greatest sins and Quran explicitly has prohibited it: «يَا أَيُّهَا الَّذِينَ آمَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ أَثْمٌ وَلَا تَجَسَّسُوا»<sup>4</sup>. Imam Khomeini, in his eight-article command calling governmental organs and especially legitimate system, about rights of people and regulations, has expressed this important issue and says that no one has that right to enter somebody's house, shop or workplace without his/her satisfaction<sup>5</sup>. Investigating juridical bases and utilizing electronic equipments according to opposition and contrasts which appear in using these tools with range of persons' privacy, researching in Islamic Law resources indicate that duration of supporting privacy in Islamic legal system is more than other legal systems. Legacy of houses is emphasized by Islam whereas in West first appearances of serious supports come back to 17<sup>th</sup> and 18<sup>th</sup> centuries. It is cited from Holy Prophet that 'Don't backbite Muslims and do not search their hidden defects because one who search in hidden affairs of his brothers-in-faith, God reveals his mysteries and disgraces'.

Imam Ali says: «تَتَّبِعِ الْعُيُوبَ مِنْ أَقْبَحِ الْعُيُوبِ وَشَرِّ السِّيَابِ» 'searching in people's defects is one of the most horrible and the worst sins'<sup>6</sup>.

According to juridical bases, if electronic supervision causes discovering personal mysteries of persons, it is not able to implement and it is not undoubtedly allowed. But according to the word 'satisfaction' of the intended person in Article, fortunately it can be said that lawmaker has observed these regulations well in Islamic Penal Code.

## Concept of electronic supervision

Electronic supervision as an implementation guarantee alternative for punishment of imprisonment means 'control and supervision on persons through electronic tools and equipments in environment out of prison' (Hosein Aghayi Jannatmakan). This approach of supervision has vast utilizations in controlling human resources in factories, offices and social controls such as traffic control or

maintenance of places and utilities. In two recent decades, electronic supervision also has found utilizations in fighting with delinquency and control of delinquents (Mohammad Nasl, 1384) so that electronic supervision is considered as prominent criminal invention of end of the 1980s because in addition to using technology to correct, educate and decrease expenditures of prison, from its initial implementation time at the end of 1980s, electronic supervision has converted to a great industry and through which every day thousands of criminals are supervised (Ashuri Mohammad, 1384).

In Penal Code or Criminal Procedure Act of Iran and France, a definition is not presented for 'electronic supervision' and only in Article 132-26-1 of French Penal Code and Article 723-7 of French Criminal Procedure Act, achievement conditions to these strategies and approaches to their implementation have mentioned (Legal Notes)<sup>7</sup>. In recent rule of Islamic Penal Code (Article 62) and recent rule of Iranian Criminal Prosecute Act in 1392 (Articles 555 to 559) also 'freedom under supervision of electronic systems' has been supervised.

### **History of electronic supervision**

Using electronic supervision for the first time was posed in 1984 (Mohammad Ashuri, 1384). Of course, electronic supervision and implementation guarantee of bringing convict under electronic supervision entered in French law by rule of 9<sup>th</sup> of December 1997 and to date its utilization range has evolved over and over (Hassan Toghrangar, 1387). It seems that this probing method is inspired from animation of Spiderman (Reza Ehsanpour, 1387) in which Judge Jack Love from New Mexico commanded to install an electronic gadget on a criminal's ankle to supervise his traffic. Electronic supervision by itself is not considered as an independent implementation guarantee, but is known as a secondary implementation guarantee and related to house arrest or experimental probation and to ensure convict's compliance from conditions determined for him. So, electronic supervision substantially is used to observe regulations of imprisonment in house because in this regard supervision on convict is possible remotely.

In the U.S., electronic supervision was initialized to supervise on users of probation and then spread to other case. Nevertheless, one should not think that electronic supervision is the best way and tool to avoid from disadvantages of prison but it should be given to authorities of judicature as implementation guarantee of an effective alternative. This way is known as intervening implementation guarantee which does not deprive freedom. Therefore, those who greatly benefited from electronic supervision programs at first were those who were convicted to traffic offenses but from 1989 convicts of crime against properties and criminals of substance included the main beneficiaries of these programs.

Electronic supervision as an alternative to implement short-term imprisonment punishment is a way which entered in regulations of different countries such as Sweden, France, the U.S.A. and Canada alongside deprivation from social rights in frame of non-financial alternatives for imprisonment. For example, in Canada, in 1992 electronic supervision system was established in all of big cities of this country and in 1996 every day 6000 convicts were positioned under electronic control (Javid Salahi, 1386) which this was used as control and supervision tool on

convicts. In Sweden, in 1994, a rule was established by which convicts are positioned under electronic supervision. This supervision is due to an electronic loop or bracelet which is installed on convicts and or in his home. This devise sends frequencies if a convict goes out from the territory determined by the judge who implements punishments.

### **Kinds of electronic supervision**

Electronic supervision is a relatively new strategy to provide observation of regulation of house arrest. In order to control and supervise on traffic of delinquent, a wristlet is installed on his/her ankle which is connected to a computer in probing center (such as prison) and sends it signs. So, the delinquent who only has the right to go to work or company in some certain activities, is imprisoned in home and his traffic is completely controlled. Electronic supervision is considered as prominent criminal invention of the end of 1980s (2:73) because in addition to using technology to correct, educate and decrease of costs of prison, gradually has converted to a great industry and through which thousands of criminals are controlled every day; substantially the method to electronic supervision has two kinds: active supervision and inactive supervision meaning passive (Abolghasem Alavi, 1388).

#### **Passive electronic supervision**

In passive electronic supervision, some senders are attached to convict's body (one wristlet on convicts wrist or ankle) and also a telephone dial is attached on telephone. If a probation beneficiary leaves the determined place, the signal stops and the telephone dial automatically contacts with probation office. Because convict is responsible to answer telephone, when she does not answer to telephone it shows his exit from the place. In some areas, computer supervises the sound on the other side of telephone and accords and investigates it with the sound sample known as for convict. Some passive systems obligate convicts to attach their electronic tool to an attendant box which after that sends a signal to the computer which controls sounds and it is compared with the sound of referrer (mohammad Ashuri, 1385).

#### **Active electronic supervision**

Active electronic supervision assures continuous and often random telephone contacting with house of the convict under probation. This telephone communication may occur automatically by a machine and or personally by related officer (Mohammad Nasl, 1384). Active system controls convicts constantly through sending continuous signals to control office. If convicts do so while they are not allowed to leave home, signals will stop and failure of program is recorded. In some cases, control officer automatically gets aware from occurrence through an electronic devise.

Also, in a general classification, tools used for electronic supervision are classified as following:

- A) Electronic devises to intercept information of persons such as hearing phone conversations
- B) Electronic devises to record sound and image of persons
- C) Electronic devises to determine place of and spatial situation of a person

Among the mentioned kinds, first kind and second kind tools mostly are used with the purpose of prevention from committing crime and discovering crime and it seems that hearing conversations is the most prevalent approach in

using first kind and second kind tools; but in addition to first and second kind tools third kind tool is mostly interesting for lawmaker according to Article 62 of Islamic Penal Code. Therefore, it should be noticed that meaning of hearing conversations in addition to its traditional concept which is equivalent with eavesdropping or hidden listening to other's sayings, at present with development of communicational technologies has found a more expansive realm and includes many transmitting and even saved computer contents such as massages and or electronic letters. Therefore, in using the expression "hearing" one should take into account these extensions. It should be mentioned that this concept is more extensive than the expression of "hearing" in regulations. Article 48 of computer crime regulations in this regard expresses:

"It is hearing transmitting concepts of non-general communications in computer or telecommunication systems according to regulations about hearing telephone conversations."

Provision- It is access to saved non-general communications contents such as electronic post or message in the position of hearing and it involves observing related regulations.

Therefore, hearing necessarily does not mean eavesdrop but means deliberately getting informed of transmitting contents such as conversations, text messages in different computer, communicational, electromagnetic or optical systems and in one word electronic tool. Another point about the way to realize "hearing" is that this can be hearable directly and at the same time with producing data and or aforesaid information are recorded and archived and then be used, which in both cases material behavior of hearing is realized. Finally, third kind of these tools which technologically is numerated as the most recent. It is used for supervisions which are utilized as an alternative for imprisonment punishment or a prevention order at interrogating step.

Supervision in order to prevention from crime

Certainly one of the purposes is prevention from backgrounds of commitment of criminal actions and behavior at different levels of society. Therefore, one of the approaches which is imaginable in realization of this purpose is utilizing electronic tools to supervise and control citizens behavior at different arenas. Using this way causes the behaviors contradicting norms and disrupting general discipline of delinquents easily will be discoverable and therefore this function naturally will prohibit commitment of the abovementioned behaviors. Criminologists, in classifying kinds of prevention, set using electronic tools to prevent from crime as an important ordinal prevention. According to the fact that ordinal prevention from crime emphasizes this approach in order to decrease opportunities of crime and invests on it, also ordinal prevention from crime is supported by hypotheses of daily activity and lifestyle. Hypothesis of daily activity on spatial and time convergence is focused on three main principles required for committing crime, i.e. a potential delinquent, a purpose and lack of effective maintenance (Reza Parvizi, 1379) which this maintenance can be electronic system because in ordinal prevention using different techniques and approaches, risk of arresting or identification of criminal is increases and as a result conditions for relinquishment of criminal is provided.

Advantages and purposes of electronic supervision

This program aims to decrease population of prison, but alongside this main aim, decrease of costs for maintaining criminals and keeping their social relationship and presence in their families also can be known as other purposes as alternative for imprisonment punishment. Although public pressure to support society against delinquents is increasing but on the other hand control of general budget in relation to correction of criminals is also important. One of the tools which can render obtaining this importance meaning control budget is using alternatives for imprisonment punishments. In three cases which are posed as main utilizations of electronic supervision –meaning control of convicts in house imprisonment, control of convicts who are freed by experimental probation and control of criminals- (Mohammad Nasl, 1384), electronic control can decrease harmful effects of imprisonments especially the short-terms to as minimum as possible.

Looking at conditions for implement electronic supervision programs in Iran and comparing it with French criminal system, electronic supervision is applied about non-harsh criminals meaning those who have less danger. For this purpose, before convict of person to implement this program, officer of experimental probation makes decisions about appropriateness of the person for probation with electronic supervision. If criminal is assessed as dangerous due to nature of his/her crime, first he/she is imprisoned and then if he/she has no danger for society, he/she is liable for electronic supervision provision. So, keeping security of society is the most important one.

In French Criminal Law, decision to conviction of person to electronic supervision is not possible except for agreement of convict. Relying Article 132-26-1 of Islamic Penal Code and Article 723-7 of Criminal Procedure Act, "electronic supervision is implemented if conviction is sentenced for one or more years punishment depriving freedom which its general duration does not invade more than one year or when for convict, one or more punishments depriving freedom which its general duration does not invade more than one year remains when convict is accepted for interruption of conditioned freedom, experimentally is reposes under electronic supervision program".

When conditions for applying electronic supervision is provided, "judge of implementing punishments, determines its implementation approaches with impugnable position for four months maximally from the date the conviction is irrevocable. Judge of implementing punishments should avoid applying electronic supervision at the following cases: if conditions for applying punishment are not provided by electronic supervision; if convict is not satisfied from prohibitions or obligatories which are forced to him; if there is a reason for his misbehavior; if he rejects necessary change and correction in executive conditions; and if he demands this subject; if personality of convict or existing approaches justifies this issue, accordingly judge of implementing punishments can alternate strategy of semi-freedom or settlement out of prison instead of electronic supervision" (Tadayyon, 1385).

Supervision and control on implementing these strategies is in a way that allows presence and absence of convict from far distance is traced in a certain period in a place which is

determined by judge of implementing punishments (Kusha, 1381). In implementing this approach, intended person can be forced to carry the sender devise in all the time for implementing electronic supervision. Of course, lawmaker emphasizes that in implementing this approach, benevolence, entity and personal life of people should be observed.

In French criminal system, the convicted person to electronic supervision is nuzzled under control of judge of implementing punishments in his juridical area and employees of controlling prison are responsible for remote control of beneficiaries of this program; but police units always can discover unusual absence of convict and report it to the judge of implementing punishments.

In Iran, for the first time, electronic supervision was predicted in Islamic Penal Code (approved in 1392.2.1).

Due to Article 62 of this Code: "in discretionary crime from degree five to eight, if there are conditions required for probation, court can locate the convict in a certain limitation under supervision of electronic systems with his satisfaction. Then concept of 'to supervise' on convict in French criminal law implies concept of limitation in time and place (Najafi Abrand abadi0. Article 62 of Islamic Penal Code has bind courts to determine a limitation for electronic supervision. Cabinet decree due to proposal of ministry of Justice and relying Article V of Provision 17 of unit Article of budget rule of 1393 of Iran, Voice President imparted to implement electronic supervision code of qualified prisoners.

According to this code, prisoners of discretionary crime from degree 5 to 8 with comment of court; prisoners convicted to alternatives for imprisonment with comment of court; prisoners who go to holiday or are employed in open prisons, or industrial, agricultural or service institutions; prisoners who are inclusive of Article 227 of executive code of an organization who go to holiday and according to decision of prosecuting attorney or classifying council they have an assignment such as non-exit from some places during holiday and prisoners of discretionary crime from degree 5 to 7 with emphasis of classifying council and agreement of legal authority that spends all or some part of his/her conviction with considering conditions such as lack of experience of deliberate crime, employment in workplace and non-inclusive in crime of subject of Article 221 of executive code of organization are prisoners who are included in this code.

#### **Legal-technical challenges of electronic systems**

##### **Legal challenges**

One of concerns which has been posed from first about using electronic supervision system is neglecting privacy right of convicts and their families. Some argue that technology of electronic supervision makes a position which home of criminals is converted to prison. Some others say that extensively using electronic supervision and home arrest can cause a community in which relationship and activity of citizens exactly are supervised by governmental authorities (Hosein Aghayi Jannat Makan) which this is against freedom and privacy and civil rights of persons of society which have been emphasized in international conventions about human rights regarding these kinds of freedoms.

For example, in Article 17 of International Convention of Civil and Political Rights, intervening in personal life of

people through all kinds of maintenances are prohibited (shahram Ebrahimi, 1389). Then, it could be said that satisfaction can play an important role in applying and implementing electronic supervision (which in Article 62 of Islamic Penal Code for this reason is established by lawmaker; which this indicates accuracy of lawmaker for importance and delicacy of the subject) so that it does not disturb freedom and rights of convicts and even benefits and freedom of family of the person who has been under electronic supervision because this can have positive and negative outcomes for families of persons. Of course, one should notice that lawmaker in Article 62 has determined that 'court can enforce the convict to comply its determined orders in probation such as subject of Article 43 including learning a job. In mind of author, these cases can be considered as its legal challenges according to Iranian criminal regulations."

##### **Technical challenges and defects of electronic systems**

Certainly, each electronic system has a series of technical problems which always should be considered by related authorities which its realization is conditioned with correctly training of its caretakers. Technical problems include stop of signals and time signs of building constructions, and logout of signs in time of electricity cut-off. And it should be noticed that according to regulations, government is charged to provide its infrastructures at the same time with codifying implementing act.

##### **Conclusion**

Modern electronic technologies have a specific position in daily life. These technologies, on one hand can be as tools in hands of criminals and simplify committing crime and on the other hand the police and criminal justice system also can use these tools to discover crime and identify criminals and collecting evidence and documents against them. Using technologies not only has an especial position in prevention from committing crime but also is important in controlling and supervising prisoners as an alternative for imprisonment punishment. Although using these technologies especially electronic supervision in Iran yet has not become popular, it seems that according to being harmful and expensive of imprisonment punishment and increase of number of prisoners and according to new Islamic Penal Code and Criminal Prosecute Act, electronic supervision tools can only be used in control and punishment of delinquents. The most reasonable method to import these technologies is that before implementing programs, by required studying, required cultural, political and economic backgrounds will be prepared and by considering valuable experiences of other countries especially France in implementing these programs, the most appropriate methods and tools will be selected and used. Culture-building and making acquaintance of courts with position of alternative punishments can be effective in its success and certainly cultural actions in the way of achievement of punishments alternative for prison meaning making acquaintance of society with real state of prisons should be taken into account. Although using alternatives such as electronic supervision can be effective in decrease of volume of population of prison, never one should think that it is the only solution of problem of population of prison. Using alternative punishments can effectively decrease population of prison when other effective factors in decrease of population are taken into consideration alongside of using

this method. Only in this way the society can benefit from positive effects of such punishments.

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