

Basics of Public Punishment in Iran's Jurisprudence and Law

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Abstract

This article is a descriptive- analytical study. This question has been raised that what are the basics of public punishment in Iran's jurisprudence and law? By examining the history of punishment and its evolutionary process throughout history, we conclude that the basics of punishment in Iran's criminal law have jurisprudence basics and are derived from the dynamic law. With regard to the Islam' approach about punishment, we can conclude that this religion compared to other criminal schools has made greater insight and put a wider scope before the man. Considering all capacities and existential aspects of human beings, ordering to internal refinement, and stabilizing its mechanism based on the deepest beliefs about the world are among domains of this approach. Adherents of the school of jurisprudence believe that the sketch of human needs has been sent by God and prophets to mankind. So they should legislate with regard to these religious rules; they also enact special rules and regulations about human life either in society or individually based on the Holy Quran which is the most important source of rule deduction. Pondering on the verses of Quran, we find out that from Muslim's perspective, law cannot be prove without paying attention to the divine rules and according to the teachings of the Quran this is inferred that its norms are based on a specific system of a coherent school which associate both to freedom of individual and nobility of community. Indeed it believe that human is the maker of community and community is a location for development of man and the government has no right to sacrifice these two important elements for each other. So we can say that the verses of Holy Quran are one of the fundamental principles of criminal punishment in jurisprudence.

Keywords: Iran's Jurisprudence, public punishment

Introduction

Undoubtedly, punishment is one of the main elements to ensure respect to legal provisions. Without punishment, legal provisions turn to a series of literary regulations or regulations that observe social customs. Hence its opposition or violation would be easy, because in case of violation of rules, people have no fear of punishment; even those punishments that cause suffering, or deprive them of freedom, or bring them moral or material loss. Penalty legislation and thereby protection of individuals and community and its stability are among the responsibilities of authorities and customary rules as we always witness this fact throughout the history.

Therefore in Islamic Sharia (religious law), punishment is imagined in the form of penalty for violation of legislator's order and its goal is to improve people's situation, deter them from committing sins and motivate them to obey God. So the main goal of Islamic Sharia (religious law) by enacting punishment is to prohibit all members of society from committing crime.

In fact, Islamic punishments prevent from crime, but if the crime carried out then it is necessary to chastise and arraign the offender for his illicit and unlawful act. So in this way it stops others from doing criminal behaviors. For this reason, some Juris consult stated that Islamic punishments can prohibit persons who are attempting to commit crime and applying punishment after crime will deter the reoccurrence of the crime.

Purpose of punishment

The limit of punishment in Islam depends on the social need and its interest. So if the interest of community deemed that aggravation of punishment is appropriate, punishment became severe. Conversely, if the interest of community deemed that remission is appropriate, then commutation is given. Therefore, punishment should not exceed from or be less than the required need of community. Hereupon, the offender whose act is dangerous for the society should either be killed or his mischief and danger kept away from society, thereby order and arrangement remain in the society and justice prevail among people. But about those criminal acts that contain little treat and are not indicative of deep-rooted nature of crime, commutation should be given. However, this concession should be appropriate with the improvement of offender's mood and removal of detriment from the victim, so that the spirit of solidarity, candor, and benevolence turn back to the offender. Actually, the aim of punishing the offender is not seeking revenge or disgraces him; rather the main objective is to reform the offender and his disorder which is caused by his action. So there are variety of punishment in Islam which depends on the committed crime they are different. As a result, punishments are compatible with the Provisions of Islamic Sharia in order to establish a society free from crime and deviance as well as to reform human conscience and guide it to straight path.

With regard to the need of society to punishment, Islamic Sharia collects the interest of society and individuals. Therefore the protection of society requires adequate punishment to chastise offender for his crime in a way that prohibit him from recommitting that crime and also deter others from committing crime. Consequently, if the occurred offence does not related to the authorities, then offender's personal circumstances, ethics, and his lifestyle at the time of punishment should be considered.

The Basics of Criminal Punishment from Jurisprudence Perspective

Verses of Holy Quran

The most important source of criminal law in Islamic Sharia is Quran. This sacred book includes moral, theological, and historical affairs, practical tasks (worship), and rules of civil and criminal law. This book descended on Prophet through revelation and forms the basis of Islamic teachings.

Holy Quran consist of 114 suras which are descended gradually according to the needs and requirements of human beings. Holy Quran descended and communicated with Muslims from the beginning of Appointment till the death of Prophet and the third caliph (Othman) had formulated it into its current form.

Quran's legal rules and provisions are not gathered in one place, rather they are within the chapters and form about one- sixth of the verses of Quran.

In Holy Quran, the Almighty God says about the purpose of creation: definitely in the creation of heavens and earth and the alternation of night and day are clear signs for men of understanding, those who while standing, sitting, or lying remember Him and think about the creation of heavens and earth and say "our Lord, These were not created in vain, thou glory, keep us from the punishment of Fire." In this verse, after order to rosary and thinking as a means of getting the purpose of creation, with the phrase "keep us from the torment of hell," it warns that the achievement of misalignment with the aforementioned principles and doing vain and vicious behaviors such as crime are retribution, then the remove of punishment leads to futility of creation.

To believers and those who know that Quran is a holy book, rules, laws, rights and conditions of the relationship of people with each other and the relationship of people with the community and government all have a specific mandate and philosophy because to them God is all-knowing and wise and the prerequisite of knowledge and wisdom is the observance of premier affairs either in the origin of creation or in determining the rights and laws. One of legal basics of the Quran which has an important place is natural rights of man. Natural rights of man in Islam are much more widespread than that of western schools. Since from Islam and Quran perspective the creation of world is purposeful and there is a general rule on the honors of creation and since the overall goal of creation is human perfection and to achieve this supreme goal, man need to meet his natural and physical desires, so he can benefit from what is in nature toward this goal and if he had not this natural right, then the way to perfection will be closed. Therefore, the existence of natural desires in man is indicative of the inflexibility of natural rights for him. Some of these natural rights are the following:

The right of life: of natural rights that are highly regarded by philosophers of law is right to life and to some philosophers the preservation of nature is a natural right of man. In Holy Quran life is regarded as a grace and no one can be deprived of this right and nobody can harm physically or non-physically to human soul and body. "Do not kill your children for the fear of poverty! We give you and your children subsistence, surely killing them is a great sin".

"Don't kill somebody whom God forbidden his blood only to the right".

"Do not commit suicide that God is Merciful to you".

The right of ownership: The right of ownership is one of natural rights. This right which is caused by needs and characteristics of man is considered by God and many verses of Quran emphasize on this right. In the verses of Holy Quran the true owner of all beings is God and world and all beings are under His will and power, they are created by His wish and will fade away by his will.

What is in the heavens and the earth is for God and to everything God is mighty.

With regard to the needs that created in human beings, God as the owner of Being and human, give the ownership right to him.

If Quran seriously prohibits killing others and suicide and allocates the man's right of life to God and don't allow anyone to threat this life without right, it also supports social unity that constitute the life of community.

Justice is one of innate traits of God. God has pursued justice in all His assignments and laws that have been enacted. He order to man in such a way and requires them to act divine laws and regulations that are consistent with human nature and human weaknesses.

God don't impose duty on somebody except to the extent of his ability.

The verses of Holy Quran are descended from the beginning of Appointment till the death of prophet according to the needs and requirements of individuals and Muslims have been notified them. Jurisprudence and legal verses of the Holy Quran have been developed and described separately as the verses of rules. The most famous of these verses in Imami School are books written by Fadhil Miqdad "Treasure of theosophy in Quran Jurisprudence" and Jazayeri's "verses of rules".

Narratives (Sunnah)

The second source of criminal law in Islamic Sharia is Sunnah which literally means the applied methods and styles. In Shi'ism, words, deeds, and innocent statements (of prophet and 12 Imams) in religious matters are called Sunnah. However in four public schools (Hanafi, Hanbal, Malik, and Shafi'i) Sunnah is the method of the prophet of Islam which is achieved by sayings, actions and statements of Hanbal and is in the place of the legislation of a verdict. This means that whatever any of aforementioned legal authorities says or behaves or whatever others do in their presence and they don't prohibit or deny it (such as Quran) are precepts of religion.

It is noteworthy that in Imami any news which its chain of narrators does not refer to innocents is not valid. But in four public schools, to the extent that the news lead to one of Companions or followers is sufficient. About the authority of prophetic Sunnah, Quran says that: "take and follow what the prophet gives you and order you to do that, and avoid what the prophet prevents you; fear God, verily God is severe in punishment".

In Islamic penal system while the offender is punishable and the achievement of criminal justice is considered to the extent possible, punishments are performed in order to fulfill valuable personal and social goals and specific objectives are followed by legislation and impose of any punishment. That is why in Islamic tradition it is stated that the fulfillment of one of divine punishments on earth is better and more useful than forty days and nights of rain.

With reference to the study of Islamic texts and deeds of the Prophet and the Infallible Imams it is observed that in Islam some of punishments are performed publically that we describe some of them here: Death penalty: the traditions of the philosophy of punishment can be used for death penalty. For example we refer to one of the narratives in the interpretation of the verse "there is life for you in retribution". Imam Sajad (peace be upon him) says that: O Ummah of Muhammad there is life for you in retribution, because when somebody aims to kill someone else, if he knows that he would be retaliate, then he pass up killing and this leads to life both for one who is going to be killed and the one who is going to commit murder and also cause life for other people; this is because when he knows that retribution is obligatory he doesn't dare to kill.

Theft penalty: Prophet Muhammad in some cases cut off the hands of thieves. One day one of aristocratic women robbed something and convinced to punishment. A group of people made intermediacy. The Messenger of God said: if she was of a weak class then you intercede so? He added that past repentance were defeated and destroyed because law was implemented only for miseries. Therefore when the bondwoman of one of his wives stole (something) the Prophet ordered to cut off her hands.

Penalty for apostasy: it is quoted that Imam Ali (peace be upon him) said: 'If a woman becomes an apostate she wouldn't be killed but would be in jail. However about a Nazarene woman who converted to

Islam and married to a Nazarene man and then turned to her previous creed and refused to accept Islam again, Imam Ali said: “ I confine her to give birth, and then will kill her”.

Penalty for Sodomy: there is no explanation in Quran for sodomy punishment. Punishment for sodomy is based on the words and deeds of Prophet and the Imams. For example Ibn Abbas narrated that Prophet said: ‘if you find a person who did the act of people of Lot, kill both the subject and object’.

The owner of Javaher claims consensus on the murder of subject and object of sodomy.

The second martyr expresses that the quality of the sexual murder is one of the five following ways:

1. Kill him with sword.
2. Burn him.
3. Stoning him.
4. Broke down the wall onto him.
5. Throw him over the cliff.

The first martyr says that it is permitted to combine two of these punishments so that one of them is burning.

The owner of Javaher and Imam Khomeini also expressed the same quality for murder.

Punishment for drinking alcohol: Consumption of alcohol and intoxicants existed in all circumstances. However Islam has not forbidden it from the beginning and its strict verdict was announced after several stages. With regard to the popularity of alcohol in Saudi society and its respect from the beginning of Islam, it leads to Arab resistance or escape and lack of people’s welcome to Islam.

Some Arab states that no ruling was unfortunate for us than wine. Imam Sadeq (peace be upon him) said: “God didn’t send any messenger unless He already knew that whenever He wants to complete His religion, He forbids the consumption of alcohol”.

Comments of jurists

Islamic theologians disagree about the necessity or lack of necessity of public enforcement and presence of people during punishment. As some of them believe that people should be present at the time of punishment while others don’t think so. We will try to explain different views regarding the necessity or lack of necessity of public enforcement of punishments.

Some great scholars believe in the necessity of implementing the punishments publicly. They refer to this verse” Adulterer and the adulteress, scourge each of them with a hundred stripes, and do not show them clemency in the religion of God, if ye believe in God and the Last Day, and a group of Muslims witness their punishment” In this verse stipulated that a group of believers should witness the torment and suffering of adulterer and the adulteress, so that they are punished by public execution and after punishment be pure and undefiled and others also avoid from committing crimes and take lessons and thereby the dignity of community be preserved. Indeed, it is the guilty person who undermined his dignity by committing crime and made obligatory the execution of punishment.

Public punishment is only for adultery and there is no legal documentation that recommends public punishment for all crimes. The available reasons are specifically for adultery and in the above verse, punishment is about Fornication. In other cases public punishment is expressed only for inhibition, fight corruption, public interest, and administration of justice.

A group of contemporary scholars also believe in the necessity of the presence of people at the time of punishment. Syed Mohammad Reza Mousavi Gulpaygani writes in his book that the verb “Testifies” (Surah Noor verse 2) rise in the action and indicate necessity. Therefore inevitably we are forced to say

that the presence of a group of people at the time of punishment is compulsory not desirable and it deserves that in terms of time, its respect be announced for people in several steps. After announcing the prohibition order about drinking alcohol in fourth year and since the extend of punishment was not determined in Quran, sometimes the prophet lashed the drinker 80 times and sometimes ordered everyone to strike him with shoe, textile and the like, so punishment was not exactly determined. As Imam Sadeq (peace be upon him) said: prophet beat drinker with shoes. In another narrative quoted that the prophet lashed the drinker 80 or 40 times and this situation continued until the middle of the caliphate of Umar. In some narratives quoted that the prophet ordered everyone beats drinker (whisker) with what is in his/her hands.

Mirza Jawad Tabrizi, one of contemporary scholars, about public punishment, says: ‘generally the presence of people at the time of punishment, whether whipping or stoning, is mandatory.’”

In contrast, some jurists believe there is no need for the presence of people at the time of punishment. They believe that although regulations should be in accordance with sharia and all Islamic rulings are binding, it shouldn't be ignored that corruptions, interests, recognition of subject, and time and place circumstances are definitely involved in determining the final form of Jurisprudence and religious provisions. With regard to different interests of the individuals, society, Islam, and Muslims, if there is no interaction between these interests, all of them are respected and taken into consideration. However, if these interests interact with each other,

Then based on their assessment, some preferred over others. Ayatollah Yazdi, Bojnordi and Gulpaygani are among those who opposed public punishment and believe it causes harm to Islam. To illustrate their view about the interaction of interest and public punishment with other interests and the superiority of other interests, they believe that the execution of public punishment must be stopped and in this respect they cite numerous sayings and Sunnah of prophet and his family.

About the execution of public punishment, Ayatollah Makarem Shirazi says: “whenever it was proved that enforcement of sanction in public has negative effects from religious and social perspective, then they shouldn't be done in public.

Basics of criminal punishment from law perspective in Iran

Constitution

One of the main sources of criminal law in our country is constitution because:

First, the general principles of criminal law and the guideline of penal policy are appointed in constitution. Second, Guardian Council has a major role in the announcement of incompatibility of Parliament approvals with Islamic principles and constitution so the approvals of the House are basically invalid without Guardian Council (91, 93, and 96 principles). Therefore, no law can violate the rights, privileges, and obligations that the constitution has recognized for individuals.

One of important parts of constitution in every country is the part of people's main rights and freedoms. This part is the most important element of any law, because it is in this part that the rogue horse of power is limited with the help of constitution and the relationship of people with government is specified. So People's rights are one of axioms of political systems which are emphasized in the constitution of political systems and different countries around the world are trying to make it the frontispiece and brightest chapter of their constitution. That is why the constitution of the Islamic Republic of Iran also allocated several principles to the rights and freedoms of the individual, social, judicial and security of people, for

freedom is of major axis and goals and objectives of Iran's Islamic Revolution. This goal manifested in the slogan of 'Independence, Freedom, Islamic Republic', was appeared in constitution after Revolution. In fact, it can be said that the great revolution of Iranian can be analyzed according to freedom, the negation of any cruelty, oppression and submissiveness (Article 2, paragraph 6), independence and establishment of Islamic Republic. In the introduction to the constitution it is said that from Islam viewpoint, the manner of governance is not derived from class position and individual or group dominance, rather it is the rise of the political objective of a nation with the same creed and thought that organize itself so that in the Intellectual and ideological evolution, opens its way toward the ultimate goal, movement toward God. It is time when we say the constitution ensure the negation of any intellectual and social tyranny and economic monopoly and tries to break the authoritarian system and put the fate of people on themselves. The constitution also refers to those rights that citizens have a fundamental need in community for their survival such as Judicial Security of citizen and civil (social) rights and liberties.

Islamic Penal Code

Iran's Islamic Penal Code is the most important criminal codes in Islamic Republic of Iran which was enacted by the Parliament's legal affairs committee in 8 August of the year 1991 and was confirmed by Expediency Discernment Council in 7 December of the year 1991. The latest version of this law was enacted by Parliament in 2009 and the Guardian Council approved it in 2013. This law has 497 Act which along with Islamic Penal Code would be 729 Act. It abolishes all previous unconstitutional laws such as Iran's public Penal Code in 1925. This law has been tentatively running since 1991.

Shia jurists works and above all "Canon of Islam", "Jewels of Speech", and "Editing Means" are sources of editing Islamic criminal law. Islamic Penal Code is divided into 5 books and like religious works each book has several sections in which each section has several chapters.

Book I: generally has 216 Article which contains general topics of criminal law.

Book II: it has about 201 Article which expresses the conditions of those crimes that are subjected to Islamic punishment.

Book III: retribution in 90 Article which addresses intentional crimes deserving death or amputation.

Book IV: atonements in 203 Article which addresses crimes requiring atonement.

Book V: dissuasive punishments in 231 Article that include legal sanctions and dissuasive punishments.

This part of law was enacted by Parliament in 2 June of 1996.

Islamic Penal Code was enacted by Parliament's legal affairs committee in 8 August of the year 1991 and its pilot implementation began for 5 years. Because of the difference between the Guardian Council and parliament over Article 5, it was referred to Expediency Discernment Council. Expediency Discernment Council declared its agreement with Parliament's view in 7 December of the year 1991 and approved it. Criminal Penal Code (punishment) of part II of this law which in the current set is named Book V (dissuasive punishments) was enacted in 231 Article by Parliament in 2 June of 1996.

The pilot implementation of this law was renewed on 12 March 1996 for 10 years. Once again in 2010 the representatives extended the pilot implementation of this law till the end of 2011. Iran's new Islamic penal code was enacted in 2009 by parliament and approved by Guardian Council on 28 December of 2013.

Code of Criminal Procedure

Criminal procedure is a set of rules which must be observed by judicial authorities in Jurisdictions at different stages of criminal proceedings in order how to deal with punishment. As it is clear from the definition, the Law of Criminal Procedure is a law which merely explains the quality of criminal trial in judicial authorities, how discovering crime, identifying defendant, arresting defendant, defendant's trial and Plaintiff's rights in different stages of research in law enforcement agencies and prosecutors and criminal courts. It also explains the quality of trial and teaches us the manner of Issuance and execution of criminal warrants. Accordingly, it should be said that in criminal procedure there is no expression of punishment, rather the Breadwinner of punishment is Substantive Criminal Law, i.e. the Islamic Penal Code. Although it is possible that in rare cases the Criminal Procedure Code refers to a form of punishment such as Article 76 of Criminal Procedure Code in which the legislator speaks of how to deal with false claims that cause damage to defendant. As sometimes in the substantive criminal law, such as Article 231 of the Islamic Penal Code, something was mentioned about how plaintiff proof the case, but basically the subject of Procedure is procedural issues and the subject of Islamic criminal law is substantive issues. It is said that Criminal Procedure is a branch of public law which in one hand is the offender and on the other hand is government. Criminal laws in every country can be performed in the political and geographical boundaries of that country and have no role on abroad. This is why Criminal Procedure Code is a branch of civil rights.

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