

## Sharing Islamic punishment criteria (based on jurisprudence)

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### Abstract

The recognition of sharing Islamic punishment criteria is based on understanding the basic and Islamic law criterion, which is basis of mischief disposal Islamic law. Attracting human interest criteria and mentioned criterion is the basis of canonization of all decrees including the Islamic punishment so that it can be human's benevolence-oriented. Mercy and attracting interest to men, and disposal of mischief, refining and purification of the offender and excommunication from crime, consideration of proportionality between the losses and punishment based on punishment proportionality with damage to the victim due to the severity of the injury and social benefits as well as the importance of committed crime by considering the proportionality with crime and personality characteristics of offender and the victim's fault are criteria that in canonization of punishment have been considered of legislator.

**Keywords:** Islam, punishment, criterion, sharing punishment.

### Introduction

The purpose of the criteria for sharing punishment in humanitarian statutory law is the identification of criteria for determining the punishment (Rahmdel, 2013, 24) However, on Islamic laws that has principles of non-human aim of sharing punishment is recognition of principles and criteria that based on it legislator has attempted to impose punishment and recognition of these criteria requires recognition of legislator objectives and intentions from the punishment.

Hence jurists in this regard as the criteria of religious commandments have examined the issue and against Islamic scholars' beliefs real evils and material of human has been the criterion of forgery of provisions. (Tosi 1979, 556). So, the origin of laws in Islam is God's will and in fact the origin of impose materials criminal sentences that legislator was aware of it on the basis of behaviors that are inconsistent with the materials has known deserving all specific criminal.

In Islamic law, "Religion, soul, wealth, respect, intellect and security" as a constituent element of society is important. (Nak Majlec Bitá, 10) So the most important philosophy of punishment is the defense of the fundamental materials of society and crime prevention.

Sharing punishment criteria, the following Islamic sources should be included:

- Dignity-oriented of human
- Mercy and attracting individual and public interest and disposal of evil
- Purification and sanctification and excommunication from crime
- Proportionality between losses and punishment

### Dignity-oriented Approach

"Dignity" literally means the value, respect, prestige, magnanimity, esteem, and honor. (Dehkoda, 1991, 160-70) Dignity is demonstrative of two completely disparate features from each other in human being. Some of these features are obtainable and privative that in term, it is called "inherent dignity". In other words, inherent dignity of human is of the honor type that all human beings benefit from it due to having the ability of contemplation, meditation, freedom, will and

authority and divine prestige, innately and equally (Rahimi Nejjad 2011, 126-113, and also Nak Yadollahpour 2012, 74-82). That man qua man, has sanctity and dignity and in terms of social and citizenship rights, there is no difference between Muslims and non-Muslims and all have equal rights (Nobahar 2003. 632-613)

It is obtained from accuracy and reflection of this verse, that: Race, language, gender and greatness and lowness has no correlation with human dignity and does not know human dignity in limited value dignity and all humans have dignity. But the most dignitary of them with God, is the most virtuous of them (Montazeri 37) any statement that is in contrast with the principle of human dignity exits from principle sub-set, Hence, Islamic punishment is not for humiliations and insults to man and their goal is punishment and guidance and correction of humans and punishment is in line with support of the dignity and the penalty is not against of dignity because humiliation is of deliberate titles and until someone does not intend to affront and abasement cannot be said that his intention has been humiliating. (See Imam Khomeini International Conference 2007, interview with the Ayatollah Amid Zanjani and Mohammad Hadi Marefat, pp 176-174V253-248)

Generally, from the Quran's verses and tradition of infallibles and their speech and behavior can be inferred the acceptance and the ruling of the principle of human dignity (to see verses and made interpretations and traditions, look to the Translation of interpreting Al-mizan 13, 1417. 215 and Al-Tafsir Al-Kabir, c. 21 and 22, 1411, 11 and 13 and Hagighat pour, 2013, 30-9V Sadegh pour, No. 53, p. 67 51 and Salimi Zare and Ghazizadeh, 2007, 95-68 and Nahjolbalaghe 23 and 27 and Majlec, Bahar Al-Anvar, 1403, 586 Al-Mottaqi Al-Hindi, 1399 AH 16) The most important result of human dignity is the rejection of violence

Therefore, in the evaluation of physical punishment in terms of Islam can be referred that retribution is guarantor of human's living and based on mercy and for the prevention of legislated crime and umbilical of violence and not only is incompatible with the human dignity but also is quite consistent (Ahmadi 234-200) Therefore, to show the compatibility of Islamic punishments with the human dignity, must be noted to some points. First, penalty is punishment of the action that the offender has been committed.

Offender by committing major sins and crimes, has destroyed his human dignity, therefore punishing him, is not against human dignity.

Sinners are a group of criminals that have fallen from his humanity and dignity stage and are inferior of the animals but also their position have been lower than plant and mineral.

In addition, in religious limits it should be noted that Islamic compassion in all cases that its authority is in hand of the fully qualified judge must be strongly considered and to criminals and offenders has been considered as those that are in need of more and more accurate training and caring (Montazeri, Islam the religion of Nature, 2006, 685 and 690.)

It also has been observed in chastising so that the type of punishment and how to implement it also shall not lead to affronts to human dignity and with the moral values that has been accepted in a society should not be in conflict and human disrespect and desecration titles also are of variable titles that culture and tradition of people in different times and places effectson truth and non-truth of that. Nevertheless legislator to prevent abuses and mistakes and misconduct of judges and its implementation, has not made ruler responsible for determining punishments, but also accurately for offender's criminal actions has considered different penalties that in Articles 498 to 729 of the IPC, has been approved by the legislature and its limits and determining methods also as Articles 18 to 36 of the IPC 2013 has been clarified.

#### ***Criterion of mercy and individual and public interests and disposal of mischief***

The punishment basis in Islam is the same basis that religious law is based on it and with the detailed understanding of religion and research on the mission and sending the Messengers goal can

be recognized the base. So, the basis of religious law that punishment is a part of it is mercy of God on his servants (Ghorban Nia 261-260)

Therefore, in Islamic perspective, the punishment of offenders in a human look process to criminal and a matter of grace and mercy on him is considered this mercy behooves that the interests and materials reach to society's people and corruptions and losses be disposed of them and to continue the life of society and its people. Because mercy requires that anything that provides the best interests of human beings be considered essential and whatever causes of its loss and attracting mischief be forbidden, hence acts of punishment is mercy in the sense that cause the disposal of mischief and committing crime and learning it and chaos in society (Imam Khomeini, 134, 135 and 242)

***Criterion of refining and purification of the offender and excommunication of the crime***

In viewpoint of Islamic penal philosophy among the criteria that the legislator on the basis of it attempted to create punishment is purification and excommunication of criminal. In terms of concept-ology excommunication is from word of blasphemy that means curtain and covering and in terms is an action that by it the ugliness of sin is covered (Mehvari 2000, 110 and Tabatabai, vol. 6, p. 110) and someone who is punished for committing crimes in this world, in the other world will not be punished for committing this act and in Islam's perspective, human actions has a direct impact on his soul.

I asked Imam Baqir (as) about whom punishment runs on him in the world that is he again will punish in afterlife? Imam said Allah is more merciful than that (which again punishes him in the afterlife) then the implementation of punishment in the world would rescue of the punishment of the Hereafter and purifies the criminals many narrations and texts on this subject have been entered which all implies the cleansing and Purification of offender (Vasael Al-shieh 28, p. 14 H 7 and 6) In many of crimes, what he leads to the main cause of the loss of otherworldly effects and consequences of crime, is real repentance and Implementation of real punishment or exposure to it, is not necessary.

Hence the acceptance of excommunication theory with respect to the verse of 33 Maedeh that despite worldly punishment proves another world punishment, has faced with challenges .

Commentators know this part of the verse as evidence of the invalidity of the theory implantation of punishment for crime's atoning and punishment in the hereafter. (See: Tusi Altabyan 1963 507 Tabarsi Majma al- Bayan 1406 AH 292 and Al-Mizan C. 5 334 and Nemune interpretation of 2002, p. 362 and Rahnama interpretation of 1995, p. 360)

and this sentence that worldly punishments does not cause the loss of eternal torment, have proposed in general, that it includes all limits except Allameh Tabatabaee that has some interpretation that perhaps their purpose is that worldly punishments causes the loss of eternal torment, but it has not been specified that effects on which one punishment. (Ahmadi 0.2011. 132)

***Criterion of proportionality between the losses and punishment***

Among results of Lord's justice is proportionality between the crime and punishment. Because punishments describe based on necessity and contrary to the principle is considered. Therefore, in its application must to suffice with necessary extent. In this perspective, amount of fault based on type of action and amount of the harmful effect that has at society on the need for proportionality is important.

So that will be exist difference between the intentional and unintentional crimes. Therefore in punishment imposing, punishment proportionality with the importance of committed crime and social benefits and the extent and severity of damage on the victim, and blame and his role in committed crime and the personality characteristics of the offender is necessary, that in the following each of them independently is investigated

### ***Criterion of severity of the damage***

Due to the damage inflicted on the victim both individuals and community the determining punishment will be different. However, because of lack of attention to the degree and the type of the fault and motivation of committer and personality characteristics of offender and his victim has a fundamental flaw and its result is nothing but injustice and disproportion (Rahimi Nejjad, 2008, 137)

As far as on the basis of general basic principle is that amount of punishment is less than penalty however, due to recent criteria (severity of damage) the main criterion of the punishment is swerved and of those is the determination of punishment to prevent corruption on the earth, affected by such a view Article of 286 of the IPC 2013 has been approved.

Therefore it has been tried that, cases that apparently are of prison crimes, but create massive corruption in the society, put as corruption on earth and explain its severity of punishment in this regard, although some jurists recognize in that in this case such punishment as penalty, not as a punishment is applied (Mohammadi Gilani, 1982, 286). In terms of criminal jurisprudence, Enact of liability to pay compensation has been with the purpose of indemnification of damages caused and prevention of the behaviors that lead to the damage and loss of others and has no criminal aspect and typically is compensation. Because punishment is for intentional crimes and sins and in cases where the act committed does not require deliberately no crime has been proven.

Recent verse refers to murder because the victim's family pardon of the killer and forgiveness of the crime and non-retaliation of him is the same dismantling of the penal aspects (Montazeri, 1999, 40-36.) However, what is certain determining blood money values often has been due to severity of damages.

### ***Criteria related to criminal status***

One of the criteria is that Legislator between different offenders in terms of legislation and sentencing has differentiate and in some cases the offender status in the type of action punishment and even crime being of action is effective.

The effects of this criterion as a rule can be said crimes that disrupt the system and breaks its territory, criminal jurisprudence does not pay attention to the character of the offender. Those crimes that in Islam no attention has been paid to committer character are crime causing retribution punishment. Although in some of these crimes offender conditions is effective.

The severity and weaknesses of punishment are the punishment for adultery in marriage and rape. But in punitive punishment to crime committer's character is attention to so that the judge is not bound to a certain punishment, but can reduce it by qualifying aspects of mitigation and convert it to a punishment which is more appropriate to accused.

### ***Atheism and religion***

Among the effective measures in some of determining punishment from area of legislator, criteria is the atheism and Islam of the criminal, So that in some cases atheist being of committer undermines the criminal description such as the consumption of alcohol, and in some cases the offender being infidels exacerbates punishment such as the unbeliever being of adultery crime committer when victim is Muslim leads to proof of the death penalty while the punishment for Muslim committer of such act is imprisonment. And also apostasy punishment with consideration of previous situation criminal which primarily was Muslim or atheist is different.

### ***Parental relationship of offender with the victim***

Existence of parental relationship of offender with the victim in the some crimes, and only about father is relevant. On this basis retaliation punishment in the crimes against physical integrity has become compensation and prison punishment and in indecent assault is punishable by cowhide and in general, relative relationship exacerbates and increases punishment from imprisonment to

execution. At the same time for accusing and robbery the cowhide punishment decreases and if necessary, causes imprisonment.

**Maturity and sense:** One of the effective measures to impose punishment is maturity and sense condition in the offender. In a way that in some cases in the absence of it leads to punishment fall or mitigation or change in punishment for example, the lack of maturity condition in the offender, in cowhide crimes prevents cowhide proof and in intentional physical crimes prevents retaliation.

**Gender of offender:** In some cases, offender situation in terms of gender in type of punishment in terms of quantity or quality is effective such as the pimping crimes which if the perpetrator is a woman punishment is just whip and in case of being male in addition to whipping exile is also imposed.

**The offender's needlessness of the revenue from crime:** In some cases, needlessness of offender from profit and revenue of the crime on the amount of imposed punishment has been effective. Such as the increasing the punishment prescribed for adulterer if are married or has a permanent virgin wife or is from causes of the lack of proof of stoning and the reduction of the stoning punishment to imprisonment in a way that punishment prescribed for a married woman who has committed adultery with an immature person is different, some jurisprudents have considered reason for this, incomplete pleasure caused by this action (Ref. Javaher al-Kalam C. 41, p. 323-320)

**Criteria related to the victim:** The main pillars of the criminal justice process is victim and amount of damage inflicted to him and also situation and characteristic of victim are among the criteria considered in imposing punishment (Rahmdel 2011, 25) Some examples of recent criteria include: **1. religion of victim:** For example, proof of retaliation in the intentional crimes is the existence of Islam condition in the victim in a way that if offender is Muslim and the victim is not Muslim retaliation is converted into blood money and chastising. **2. Sense:** Sane being or not being of the victim in the amount or the type of the punishment is effective for example, in cases where victim is not sane retaliation and rape is not proved and committer despite having public duty conditions in deliberately crimes to compensation and chastising and in rape is sentenced to imprisonment.

**Proportionality criteria based on social benefits:** According to these criteria the punishment is only justifiable when it has individual and collective corrective and preventive deterrent effect. There are many verses in the Holy Quran that after presenting the punishment has referred to counted goals. Therefore, the purpose of retaliation punishment is, preservation of human life and deterrence and returning to society because offender because of the awareness that in case of killing another will be retaliated, refuses to commit it and on the other hand, in the case of murder purely offender is retaliated and this prevents revenge and consequently preserves life Verse 229 of Surah Baqarah Also testifies to this approach (see Tabarsi, Majma al- Bayan 1995, 491)

Almighty Allah the aim of the worldly punishment in this verse notes return of offender in a way that frighten people to repent and avoid the sin of idolatry, blasphemy, adultery (Tabatabai, vol. 16, 264) Based on the proportionality of social benefits the following cases shall be worthy of contemplation and reflection. A) justice-orientation B) the effectiveness of punishment in discipline and correction and rehabilitation of offender C) the amount of punishments deterrence and its impact on crime prevention D) personal and social interests and maintaining social order.

### **Justice-oriented**

In Islam theory, justice literally, means proportionality between crime and punishment, in the extent which is possible in this world and any suspicion of oppression and injustice in criminal regulation does not exist, Because the drafters of the penal code of Islam, is God that does no one



injustice and is righteous in Islamic view of justice solutions is retaliation and victim can answer violation of their rights as occurred and in responsiveness equality and justice must be observed, many verses imply on this issue (Shura 40, 15, Baqarah 178 and 194 and An-Nahl 126 Ghafir 40) this justice is tangible as well in retaliation and in other retributions because of moral dilemma or another causes which there is no possibility of retaliation, punishment legislation is in order to justice however, because of its immateriality the perception of justice Is not possible (Ahmadi, 2011, 128).

According to commentators (Tabatabai, C. 19, 171), the meaning of the balance is religion and religion being sent was to uphold justice obviously, part of the religion is criminal law and the result is that the criminal laws of religion pursue the goal of justice. (Ebrahimpur Lyalestany, 196)

**Amount of deterrence of punishment and its impact on crime prevention:** In addition to programs that destroys criminal motives and corrects people of within, an outer deterrent factor has been also placed this external factors is the same punishment that has been applied by legislator.

Therefore, with proper implementation of the punishment legislator's goal is achieved and perhaps, for example, if the thief knows that with committing stealing encounters heavy punishment of hand amputation that for a life-long will show punishment shame will refuse to commit crime there are several traditions that Implies the punishment would cause edification of others (See Vasael al-shieh C. 28, p. 242-241)

**Individual and social interests and maintaining social order:** Healthy social life depends on security and public safety and respecting the rights and obligations ismutual and general safety depends on maintaining the principles and pillars of the community through attention to laws and regulations.

**The effect of punishment in discipline and correction of criminal:** When the crime occurred punishment should be such that disciplines the criminal and discipline never means revenge, but as some the public jurisprudents have said discipline in different people, finds different forms, some require more discipline and some requires weaker discipline therefore determination of punishment has been established on the judge that its aim, is prevention.

The severity of punishment implies on the legislator's attention on objective and subjective effects of punishment and general and particular deterrence. And specific conditions of implementation of punishment such as the presence of some specific and public performances of punishment or shaving head in exile implies on the non-retributive being and a tendency to reduction theory (Nobahar, objectives of crime in sexual offenses, 2000, 138)

**Criteria of the importance of committed crime:** Among the criteria of punishment imposing is that the degree and type of punishment should fit committed crime and his criminal intention. Compliance of this criteria in punishment retaliation legislation for first degree murder and compensation and imprisonment in involuntary manslaughter is evident as it in imprisonment both from the ruler and the law in legislation and from implementation and of judge is observed. However, in some cases the statute law of this principle has been violated Such as the punishment of Article 723 of the imprisonment which Of course such cases that is humanitarian law should not be attributed to the holy legislator.

By considering this criterion legislator in determining punishment and the judge in sentencing stage must be able to provide answers to the following questions 1- is there a reasonable relationship between the bad caused by crime and punishment? 2. How is the amount of punishments' coordination with the form of potential or actual damage?

## Results

In Islamic criminal law sharing punishment is not glosbe and lack of base and the purpose of sharing punishment criteria is knowledge of principles and criteria that on the basis of it the legislator has attempted to impose punishment and the recognition of these criteria requires understanding of objectives and intentions of legislator from punishment and according to Islamic scholars' beliefs real expediencies and corruptions of man has been criteria of forgery of all rules including punishment and because divine will is the source of law in Islam, all provisions of it based on rational principles and criteria of justice has found Legitimation. Although human knowledge because of being relative is not able to know and understand it because in fact is source of imposing material criminal sentences which legislator is aware of it and based on that has known behaviors incompatible with that materials deserving specific penal that by contemplation and reflect on the philosophy of Islamic law these criteria can be recognized and can be said that these criteria are: 1. human dignity-orientated 2. Mercy and attracting the interest of mankind and disposal of mischief 3. refining and purification of the offender and crime excommunication 4. Proportionality between the losses and punishment in imposing punishment that always has been punishment proportionality criteria with damage to victim including individuals and communities of legislator's concern. In addition, it is necessary that proportionality to be based on the following 1-severity of damage 2. Social benefits 3. The importance of committed crime 4. proportional to the crime and offender's personality characteristics 5. Proportional to fault of victim, however, these criteria more or less exist in all punishment in the extent that in some crimes a criteria is more sensible while the other criteria, however, in more subtle manner is considered. And in short can be said, sharing punishment criteria in Islamic limits is based on individual and public intimidation and deterrence and at the same time utilitarianism and disposal of corrupt and correction. retaliation punishment is also based on the criterion of public intimidation and maintaining non- killer life and also good of society and the preservation of public order and prevention of private revenge and rejection of violence and yet with forecasting institutional to name of compensation and strong emphasis on forgiveness and order on compromise can be inferred legislator's logic. In Islamic imprisonment also more than anything has noted in discipline and to reform offender.

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