

PRINCIPLES AND CRITERIA OF CRIMINALIZATION IN ISLAMIC LAW

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Abstract

Crime is the recognition of a certain verb or current departure, or in the sense of criminal law, the criminalization conduct of such behavior is always based on some basis and the legislator is considering these principles to introduce various behaviors in the field of criminal law and signs leave or doing something requiring the Eagle and punishment. Undoubtedly, crime prevention is one of the effects of domestic politics and in close interaction with the political system governing society. In fact, ideology governing the political system has a great influence on the identification of crime prevention strategies. Criminalization is punishable by a valid jurisprudential ruling, which is based on Article 167 of the Constitution and has been emphasized in Article 214 of the Criminal Procedure Code. The Islamic Republic of Iran's Constitution sets out in detail in Chapter III the rights and freedoms of the nation that is a good indication of the decisive position of the Islamic Republic of Iran against any arbitrariness of the legislator about the criminalization. Criminalization also by the wisdom clause, as one of the conditions for the legitimation of crime, and the imposition of punishment, is possible only through the law (Article 36 of the Constitution). This research seeks to answer two main questions: What are the political models affecting crime prevention models? What are the political, economic, security and human rights developments in contemporary political systems, what does a crime prevention model bring? Government-based crime prevention models fit the Totalitarian and Ottoman communities which are based on force and tyranny. In contrast, social models of crime prevention are compatible with liberal democratic societies. Which are based on the liberal democracy model and result in the dominant crime prevention model in the present age is based on the social model.

Keywords: crime, punishment, criminalization, Islamic law, criminology

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INTRODUCTION

Crime is the recognition of a certain verb or current departure, or in the sense of criminal law, the criminalization conduct of such behavior is always based on some basis and the legislator is considering these principles to introduce various behaviors in the field of criminal law and signs leave or doing something requiring the Eagle and punishment. In addition to crime, there are other acts in each community that less or more, it suggests an inconsistency and opposition to social regulations. Sociologists and especially American scholars believe that if the legislators did not set a punishment for such deviations but since committing these acts leads to criminal acts, therefore, it is better to examine the phenomenon of crime in a wider range and includes all deviations and inconsistencies. The legislator always criminalizes a behavior by considering the grounds and reasons but these basics and reasons are usually not stipulated by the legislator and from the text of the rules, there can be no explicit reference to the criminal basis of the various behaviors. Stability of the necessity of criminal or non-criminal behavior is always the main subject of lawyers' efforts in the field of criminal law. In other words, criminal law specialists are constantly investigating the issue that what behaviors should be considered a crime in a legal system and what behaviors are outside the scope of criminal law. General criteria of criminalization: Understanding the general objectives of criminalization in any legal system is the most important guide for researchers to discover the criminal foundations of any conduct in that legal system and the terms of the general criminal code are the frameworks that legislators consider themselves committed to contemplating behaviors. The most important general objectives of criminalization are to prevent non-normative behaviors: response to abnormal behaviors. Modify abnormal behaviors. The precondition for criminalizing a behavior is to observe the principle of injury and blame. Existence of special guarantees in criminal law such as deprivation of life, restriction of liberty, physical punishment ... clarifies the imperative of criminality and based on principles. Basic principles of criminalization that mostly expresses the basic principles of criminalization such as the principle of legitimacy, the necessity principle, the observance of privacy, the proportionality of crime and punishment, and the full consideration of the available facilities of the criminal justice system, in all cases requiring a criminal offense must be respected. The Holy Qur'an has also drawn up ordinances for the administration of the individual and society and the preservation of human values, and has declared offensive behaviors to the basic material. Criminality in the Qur'an is in order to protect human values and the basic material of society and it can be appraised that it is consistent with rationality and compliance with human rights. Observance of moderation and rational principles in crime is always a matter for the legislature. The penal code of the Quran as the first source of Islamic Sharia, is based on human nature and is based on human principles. Criminalization is consistent with wisdom and logic and is aligned with rational principles of human beings.

ATTENTION TO HUMAN DIGNITY

The human being is the caliph of God and bowed by angels and this high authority has been enthralled with the wealth of his dignity. Satan always tries to divert humanity from the path of dignity and to deprive him of humanity (Al-Isra, 62). Amir Mo'mnan, Ali (AS) has a keen word about the importance of human dignity: "A person who cherishes himself (deserves to pay homage to himself) despises whim".

The Holy Quran has repeatedly commended the high status of humanity and praised his position. In reference to the essential value of existence and dignity of man, he says: "And we have certainly honored the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what we have created, with [definite] preference." (Al-Isra, 70).

This verse means that all human beings have intrinsic value and dignity and this high authority comes to features that are specific to man and other creatures do not have much to do with them. A gift that is attributed to human nature and made him superior to earthly and heavenly beings. Alongside this inherent dignity and inherent dignity is the acquired dignity that is accompanied by an arbitrary act of man. As acquisition of human virtue and respect for piety in personal and social affairs is closely related to the will of man (Al- Hujurat, 49). Man is God's trustee and the world of creation is in his conquests (Al- Ahzab, 72) (Akhond Khorasani, 2010).

The necessity of human dignity is to pay attention to its intrinsic values. On the one hand, there is a need for value and dignity, to preserve the personality and rights of all human beings. Rights that nobody can arbitrarily deprive or restrict. Such as the right to life, including material and spiritual life. In the Holy Qur'an, man is so valuable that the life of an individual is equal to the life of all human beings, and his death is equal to the death of all human beings (Al- Ma'idah, 5). In the criminal system of Islam, reverence to human dignity, is criminalized with the crime of fornication and defamation. Author of "Of the Holy Quran" in reference to the wisdom of the crime of fornication, writes:

"Crimes like murder may occur in public, but fornication is not. Because the human's modesty prevents fornication from being committed publicly in public. That Islam is harder in relation to the manner of testifying to adultery is to support the family center. Therefore, Islam has tightened the punishment of fornication, as well as its certification. Both of them are for one purpose, and they are the support of the family institution and the preservation of the chastity and purity of people in social life." (Ibn Manzoor, 2011).

ADVOCACY OF MORAL VALUES

The immorality leads to the collapse of the cohesion and structure of society. Along with legal morality,

human perfectionism and attention to ethical values are also considered as a limiting principle of freedom and criminalizing changes the perception of some unethical behaviors. This theory is closer to the religious teachings and the view of the Holy Qur'an. It seems that criminal offenses such as adultery and sodomy have been committed to protecting moral values. Of course, in such crimes, the negative consequences and their destructive effects on family and health are also considered. Because satisfying the instinct of sexuality outside the family system is causing the coldness of the family center and its collapse. The Holy Quran has pointed to the ugliness and immorality of adultery and sodomy and has introduced such practices contrary to human virtues and contrary to the good manners. An overview of the following verses makes this clear:

"And do not approach unlawful sexual intercourse. Indeed, it is ever an immorality and is evil as a way" (Al-Isra, 32).

" And [We had sent] Lot when he said to his people, "Do you commit such immorality as no one has preceded you with from among the worlds?" (Al-A'raf, 80).

Author of "Of the Holy Quran" also says: "Adultery is a behavioral and moral deviation from the equatorial line that god has made marriage in sexual relations between men and women in order to establish a balance in the social system" (Davarpanah, 1995).

DENIAL OF LOSS

No disturbances to others was seen in all legal systems, which was accepted by all scholars and lawyers with little difference. This principle is expressed in Islamic law under the title "no harm rule". The rule is everywhere in Islamic law. It is safe to say that in Islam, no behavior has been criminalized unless the behavior, the potential or the actual production, is detrimental. This loss can have an individual or social aspect as well as a material or spiritual aspect. No harm rule both dispose and removes harm. In other words, it has both a removal function (constructive) and a defective function (deterrent) (Ragheb Esfahani, 1998).

Most criminal laws have banned an antisocial behavior because of the harm done to others. Like as murder, assault, robbery and intentional fire. A criminal sanction in such cases is harmful to itself. This type of crime is considered to be a serious harm and direct damage, and its purpose is to protecting individual and social values and interests against these injuries in which they cannot be prevented by other methods

The Qur'an has criminalized crimes in relation to severe losses and direct damage. But in mild losses as well as self-harm, imposed some sanctions or ordered civil liability and compensation. This book has been dedicated to protecting human life and has criminalized massacre and murder. In addition to human life, honor and property are also very important. Also, personal comfort and social security are emphasized by the Holy

Qur'an and responded to these values by criminal law (Salimi, 2005).

PRESERVE ESSENTIAL EXPEDIENCY

Religious judgments are subject to real damage and corruptions and any sentence imposed without basis. Imam Sadiq (as) said: "No laws have been passed without reason".

Allameh Helli in the field, wrote: "All religious ordinances are subordinate to the material and the expediency is also changed by changing the time and difference of the contributors. Therefore, a particular ruling may be expedient for a particular person and ordered to do so, but for some time there is something wrong with it and it is forbidden". Akhon Khorasani in reference to the obedience of the commandments of God to the expediency and the corruptions, says: "The strong view is that the judgments are subject to real expediency" (Feyz, 1991).

Mottahari also in this respect said: "Islamic law, while heavenly, is earthly, and based on the prevailing wisdom and misery of human life. Islam itself states that we have laid down any law, based on the preferences that are related to your body or to your soul". Of course, the preferences are not always in harmony with each other. Sometimes individual interests conflict and sometimes deal with public interest. This contradiction occurs in any legal system, which is chosen on the basis of the much and less important rule, In this way, it is possible to balance and harmonize between individual rights and freedoms on the one hand, and public order and the interests of society on the other. Human life in its material and spiritual aspect, except in the shadow of preservation of this expediency, is not possible and all Islamic laws have been drafted to support these preferences. Various types of rape and violence against these expediency create different kinds of crime (Mottahari, 2006).

Islam condemns the violation of human prudential interests and has organized crime in this regard. These human values and the basic interests of the individual and society are:

1. Protecting the health and the lives of people.
2. Immunity of honor and dignity of individuals.
3. Defending generations and honor.
4. Mental health.
5. Public property protection.
6. Defending private property.
7. Providing people comfort.
8. Maintaining community security.
9. Respect for religious beliefs.

10. Defending the ideals and value system of society (Ibid).

ESTABLISHING A SOCIAL ORDER

The importance and necessity of social order is not at stake. The Holy Qur'an emphasizes the maintenance of the social system order and order the necessity to eliminate chaos from human societies.

“So they defeated them by permission of Allah, and David killed Goliath, and Allah gave him the kingship and prophethood and taught him from that which He willed. And if it were not for Allah checking [some] people by means of others, the earth would have been corrupted, but Allah is full of bounty to the worlds” (Al- Baqarah, 251).

Since crime is considered a violation of the social system order, it conflicts with cultural norms and values of society and harms public sentiment. Therefore, the criminalization and execution of punishment, regulates the relations between individuals and establishes the order and security in society. Because if there is no order and security in society and the rights of individuals are not exposed to violence, the evolution of collective life will be stagnant and the social life of the people will be disrupted (Modarresi, 1998).

The criminal system tries to declare a list of crimes and punishment of them, draw the limits of the rights of individuals and society to determine the importance of the values of the ruling community. The existence of penal provisions in the form of criminalization result in: First, determine the mass range thereby ensuring the rights and liberty of individuals treated better, secondly, the type and amount of punishment will be set and the path to violence and bullying will be closed, thirdly, the manner in which the punishment is carried out by the legislator is precisely stated, so that the grounds of tyranny and acts of taste are eliminated. Therefore, the establishment of social order and the avoidance of chaos is one of the objectives of the criminal law. This point is clearly understandable in defining the terms of retaliation. Because the determination of the retribution and the quality of its execution by lawgiver establishes discipline in dealing with the crime of intentional murder. This prevents further retaliation and hemorrhage and makes it more difficult to deal with the perpetrators of murder (Validi, 1995).

ENFORCEMENT OF CRIMINAL JUSTICE

Justice is the principle that has been and is being considered in legal systems. Since the offender, having committed crimes, violated norms and disturbed the moral order of society, therefore, justice requires that the offender, his behavior be punished and punished. The Holy Qur'an has proclaimed the establishment of justice for

the purposes of the prophets. On the other hand, it emphasizes the necessity of criminal laws and penalties for criminals as a guarantee of the implementation of justice.

" We have already sent Our messengers with clear evidences and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice. And We sent down iron, wherein is great military might and benefits for the people, and so that Allah may make evident those who support Him and His messengers unseen. Indeed, Allah is Powerful and Exalted in Might." (Al-Hadid, 25). Iron is a symbol of astringency and punishment, and defense tools are often made from this rigid and winning material (Majlesi, 1984).

The proclamation of punishment is in order to realize the goals and aspirations of divine prophets and to administer justice to perpetrators of the rights of individuals and society will be able to achieve their punishment and provide a platform for the development of justice. One of the most important aspects of punishing and disciplining Islam is the implementation of justice. This function of punishment has long been a concern for law schools that is followed by the title of "Sacking and Action". It is clear from the jurisprudence of Qisas sentences that lawgiver more than anything, it has paid attention to the implementation of justice and invited the people to moderate the revenge that the pre-Islamic tribal community had.

By enforcing punishment that understands individuals, equality before the law and respect for citizenship rights and while they feel secure in society, they trust and support the legal system and its sovereignty. Compensation through the payment of a diya and the observance of the equalization of retribution is mainly due to the objective of the observer's sentence. Because those who commit delinquency use the penalty of justice and regain their peace of mind (Baheri, 2010).

CRIME PREVENTION

One of the other ways of criminalizing and defaming crime is prevention of crime. The massacre of some behaviors causes community members to avoid committing them. This avoidance, both due to the respect of individuals for criminal law, and the prediction of punishment and fear of execution, have a deterrent role. Therefore, only criminality, although not at the stage of the commission of a crime and the execution of punishment, in preventing crime, it is not effective, and one of the goals of criminalization in some cases falls into the prevention category.

In the criminalization of murder and decree of retaliation, the effect of intimidation and deterrence has been considered. It is deduced from "And there is for you in legal retribution [saving of] life, O you [people] of understanding, that you may become righteous. " (Al-Baqarah, 179) that whenever a punishment is taken

seriously in society, people are afraid of this heavy punishment, they are less likely to kill others and rarely commit murder (Khalilallah, 2010).

In ordering the limits, it has also the role of prevention and deterrence. Because such punishments are tricky and heavy, On the other hand, it is not permissible to delay and close the reservation. It seems that the lawgiver purpose of criminalizing and determining punishments, is preventing crime and repeating it with fear. One of the factors contributing to crime prevention is people's belief in the ruling system and its legitimacy. The level of respect for the community in general affects the rules of the law in their compliance with the legal regulations. If people perceive their political system as legitimate and lawful, they will pay more heed to the rules laid down by him. Because the fundamental factor that forces people to follow the law is not fear of punishment, but their sense of responsibility and socialization. On the one hand, the criminalization and execution of punishment is as consistent as possible with the cultural values governing society and the attitude of the people and their morals, it will have the same effect in preventing crime (Salimi, 2005).

The monotheistic worldview and belief in the presence of God and his monitoring of human actions and behavior, plays the greatest role of deterrence. The term “who have believed” in Qur’anic verses, especially in expressing sentences, can observe this point. Since the rulings and laws of the Quran are understood by the Islamic community and the followers of the Quran are addressed, so the ground for accepting these better orders is provided (Qara’i, 2013).

CONCLUSION

In the area of individual rights and freedoms, criminal law has been an exception and so there is a need for criminalization in this area, since the principle is allowance of our actions and behaviors, except as a criminal lawyer formerly prohibited and punished acts and behavior. That is why the main legislator of the Islamic Republic of Iran in principle 71, obligated Islamic Consultative Assembly to legislate about “Definite Limits in Islamic Law”. Pursuant to Article 71 of the Constitution, the authority of the Islamic Consultative Assembly is not subject to criminal procedure or arbitrary offense but is subject to the constraints set forth in the Constitution. Also, according to the fourth principle of the constitution, one of the constraints of the Islamic Consultative Assembly on criminalization is religious constraints. Considering the above principle and also Article 71 of the Constitution, The Guardian Council should consider the importance of investigating criminal laws that The Islamic Consultative Assembly is about the principles laid down in the Constitution and the Shari’a acts to criminalization and if it diagnosis that the latter does not meet, they don’t admit it.

Criminalization within the limits prescribed in the Constitution ensure citizens that their freedom,

property, dignity and security are not violated by law unless according to the constitution, they are entitled to it. In fact, the most important function of disciplined criminalization, is to balance the rights and freedoms and public interest and the role of the Guardian Council in this regard is very high and determinative.

In the criminal code of Islam criminalization is based on some of the documented principles of Qur'anic verses. Attention to the dignity and dignity of the people, the protection of the ethical and human values accepted by society, the prevention of the introduction of any kind of harm (material, physical, honor, etc.) to human beings, the preservation and protection of the interests of individuals and society, Ensuring community security and public comfort, enforcing criminal justice and preventing crime, are among these principles.

PRINCÍPIOS E CRITÉRIOS DE CRIMINALIZAÇÃO NA LEI ISLÂMICA

Resumo

Crime é o reconhecimento de um certo verbo ou partida atual, ou no sentido do direito penal, a conduta de criminalização de tal comportamento é sempre baseada em alguma base e o legislador está considerando estes princípios para introduzir vários comportamentos no campo do direito penal e os sinais saem ou fazem algo que exige a águia e a punição. Sem dúvida, a prevenção do crime é um dos efeitos da política interna e em estreita interação com o sistema político que rege a sociedade. De fato, a ideologia que governa o sistema político tem grande influência na identificação de estratégias de prevenção ao crime. A criminalização é punida por uma decisão jurisprudencial válida, baseada no artigo 167 da Constituição, e enfatizada no artigo 214 do Código de Processo Penal. A Constituição da República Islâmica do Irã estabelece em detalhes no Capítulo III os direitos e liberdades da nação que é uma boa indicação da posição decisiva da República Islâmica do Irã contra qualquer arbitrariedade do legislador sobre a criminalização. Criminalização também pela cláusula da sabedoria, como uma das condições para a legitimação do crime, e a imposição de punição, só é possível através da lei (Artigo 36 da Constituição). Esta pesquisa procura responder a duas questões principais: Quais são os modelos políticos que afetam os modelos de prevenção ao crime? Quais são os desenvolvimentos políticos, econômicos, de segurança e de direitos humanos nos sistemas políticos contemporâneos, o que um modelo de prevenção ao crime traz? Modelos de prevenção ao crime baseados no governo se encaixam nas comunidades totalitária e otomana baseadas na força e na tirania. Em contraste, os modelos sociais de prevenção ao crime são compatíveis com as sociedades democráticas liberais. Que são baseados no modelo de democracia liberal e resultam no modelo de

prevenção do crime dominante na idade atual é baseado no modelo social.

Palavras-chave: crime, castigo, criminalização, lei islâmica, criminologia.

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