Territory of the crimes in criminal policy of Islam

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Abstract

The aim of this paper is to investigate the facts that, the scope of crimes in Islam as it may appear is not extensive, on the other hand, supposing its territory being extended, this extension is natural. Because in any society the norms and moral values are extended more and human is considered from different dimensions of human existence, including the personal, social, and physical to the meta-physical, the violation from this huge number of norms will be considered more, and as a result the crime would seem more.

Keywords: Territory of crimes, Crime, Punishment, Criminology

Introduction

Punishment is one of the oldest methods of human being in controlling the society, and there is no community which does not punish the abusers of its rules. Any legal system based on its principles, criminalizes certain behaviors. Islam and other religions also have their own methods in this area. Retribution, bloods money, limited punishments and punishments below limit are the punishments which are imposed for crimes in Islam. Retribution, bloods money and limited punishments are not so large in comparison with punishments below limit. The punishments below limit contain ninety percent of punishments in Islam and are largely attacked, which will be discussed here.

The theorists of other schools, particularly liberal schools, are being biased or influenced by the accepted rules governing the legal system of their own, tried to criticize the Islamic criminology and regulate it to their own schools and thought interests. Therefore the authors first rise the philosophy of right in the divine and non-divine schools and then by discussing the necessity of criminology from the perspective of the legal systems and the Islamic methods for the prevention of crime try to give answer to their questions.

One of the major Islamic penal policy that has been raised most problems, is the extent of territory in punishments below limit which is stated with two basic expressions "punishments below limit are in authority of the ruler" and "punishments below limit are applicable in all ill-gotten affairs. But the question that the people who criticize the Islamic penal policy should respond to is that why in facing the conflicts between the rules governing the legal system of Islam and liberal systems, this is the Islamic legal system that should be carved and adjusted, while bases of the liberal systems thoughts are on the materiality, but comprehensive institutions of power supplied by the Islamic legal system is based on the physical and metaphysical aspects of man and the universe, and the origin of the rights are God.

Generalities

Lexical definition of the crime

The origin of the crime, has the meaning of picking and plucking the fruit from the tree. The metaphor is used to committing a sin and ugliness (Isfahani, 2010).

Definition of crime from the perspective of law
In Article 2 of Islamic Penal Code adopted 1370 and also the in Article 2 of Islamic Penal Code bill passed in 1390 about the crime we have "doing or leaving any task for which punishment is prescribed is a crime" (Ardabili, 2009). Considering the human and social physical and metaphysical aspects of him and also the necessity of his being to create a social order, we can give the following definition: Positive or negative actions against the social order in which according to the law there is a punishment of that, is a crime (Nurbaha, 2009).

**Definition of crime from the perspective of Islam**

A greater emphasis is required to the crime in criminal law, because from the one hand, the principles 22, 32, 33, 36, 166, 169 of constitution referred to the necessity of law and the verdict has been approved, in principle 167, legislator stated it is duty of the judge if the subject is not found in law to judge by the use of reliable sources of jurisprudence and vote on the issue by the use of the mentioned reliable sources of jurisprudence. This dual approach of is due to the jurisprudence approaches which some believe that doing or leaving any ill-gotten task and committing any sin, including unlawful act and that no penalties are stipulated and defined in law, they deserve punishment (Hosseini, 2010). Others like Imam Khomeini state that anybody who leaves or commits any forbidden act which is a big sin, with his knowledge and the judge is aware of the illegality of the crime, is punishable below the limit but for small sin there must be the common agreement of the Jurisprudences (Khomeini, 2010). Non-negligible issue is that the jurisprudence issues of Islamic Republic of Iran have been trying to be set as the laws and rules that cause conflicts between the rules of jurisprudence and laws which are codified. The most obvious conflicting rule is "punishment below the limit is true to all the sins". It should be noted that the first major conflict is from the reconciling Islam with the legal principles governing the Roman and Germania legal systems, which is the main source of it and it has been tried to implement in the Islamic legal system, secondly, discrepancies among criminal law of Islam and the West "Secular legal criteria". In terms of objectives, the scope, type, and warranty requirements and rules governing its implementation and comparison of these two systems, conflicts have been raised. (Kadkhodaee, 2009). To clarify the discrepancies between Islamic legal systems with the secular and liberal regimes must consider the systems in relation to philosophy, theology and human dignity.

**Theoretical Framework**

*Philosophy of Right*

**A) Philosophy in the non-divine societies**

The philosophy and origin of the right has caused conflicts between different schools and it has been widely thought that each school has led the man to a direction. One group accept the natural rights, and claimed that the human nature is the origin of right. For example, the right to live is the natural right of man, when the man on earth has the right to use the food for life, this is human nature that gives him that right to do so, and the source of right is nature in here. The question which might be asked here is that whether exists any nature apart from human nature that it independent and can create man?

The claim is not reasonable and there is no reason to prove it. Of course it can be provided that human nature is the reasoned of right to live, which means that the if it is to enable humans to live on earth he should be able to maintain its life. Another group thinks that the origin of the right is collective agreement (Social contract). This group says that if society accepts the right so it is determined and if not it is not acceptable. Based on this idea, there will be no stable legal system, and society will not have its own legal system at each historical period. And never a coherent system of law will be borned. (Mesbah-Yazdi, 2004).

**B) Islamic Philosophy of Right and the religious system**

In the religious cultures, especially Islam, right has a broad concept than the right in law and ethics, and includes also the right God to man. Imam Sajjad (AS) says All the living stages of you is surrounded by Gods rights...God is the basis of all rights and other rights, are branches of this right. To prove the claim that God is the basis for all rights needs a rational argument, from the rational view, the right following the authority. This means that the owner or the owners have the rights to their properties or they are allowed by the owner. It is proven in science that God is the owner and creator of the universe; so because God is the owner and the is right on the owners hands, then the true right is the right of God and this God who has all the rights gives credit to the rights (Mesbah-Yazdi, 2004).
**Divine wisdom**

If only the divine right would be the real right to govern the world; that is capable of detailed understanding of that right? No existence but God can recognize the right and then explain it in the first stage. The Jurisprudential rules on the one hand the shows divine wisdom and divine right, and on the other hand is monitoring real corruption. So relying on the principles of divine wisdom reveals that we must accept these rules in all layers of the social rules.

**Human dignity**

The issue of human dignity in human history has a long history and various theories has formed about it, all the truths and values of human-centered school of humanism is human so that the man is the measure of truth in the universe and all scientific and practical actions rotates on its axis. One of its effects in criminal law is that according to it, the preservation of human dignity is essential at any cost. Execution and a heavy punishment would be eliminates, and the criminal needs to be treated as a patient. Others believe that, this theory is because of human selfishness that he wants to dominate and control the universe. He also has committed crimes in history such that it has been done by no creature which is a witness to this claim (Mesbah-Yazdi, 2004).

But Quran has a dual approach in dealing with this subject, there are verses in the Quran, which on the one hand represent the superiority of human beings over other creatures and on the other hand, represent the humans as animals or lower than this. The emphasis in these verses shows that the Quran has two perspectives to human dignity: One of them is inherent dignity, that God created man so that, in terms of capabilities and other specialties, is more enriched than the other creatures. This is not the acquired dignity of human being and is not a valuable criterion for the dignity of human beings to be proud of it. Of course it shows the dignity of the God. And other is the acquired human dignity. This is not intended that all humans are superior to other creatures or are lower than them. This is the man in the light of faith and good works of his choice can achieve the dignity or loses his dignity by unacceptable actions (Rajabi, 2005).

**The relation of Ethics and Law**

Ethics is the theoretical supporter of rights. The Islamic community is considering physical and spiritual values. In liberal society, the spiritual dimension of human beings is not important. Thus the criminology of the society is limited to the physical issues, and consequently the Islamic society has more criminology issues in comparison to that.

**The necessity of the criminology**

**Considerations about the criminology theories**

Norms was important in social life of early man and relations, disagreements and the interests of society have required the rules to regulate human social life and resolve conflicts and disputes emerged. Norm has different meanings that all are common in acceptability of a requirement or preference (due to the dominance of the legislative or social existence). Norm in the meaning of “should be treated” is the legal normative that community or representatives chosen by the community are required to pass rules in the society (Hosseini, 2011). However, the man preferred social life, due to interest in human social life and benefits that the community has. But there are always some who abuse others works and benefits. (Raee, 2000).

Criminology in the West is an unimportant and undesirable issue, because personal freedom dignity is more important than any other dignity, and human dignity must be preserved at any cost. In a liberal society that is only based on material values and the spiritual values are not acceptable, or have no effective presence in society, the most important value is the maximum individual freedom (Hosseini, 2011). But in the Islamic legal system, individual freedoms are valid when it does not attack the aim of the creation of human and spiritual goals of the religious community (Hosseini, 2011).

**The necessity of the criminology in Islam**

The Islamic perspective - Unlike the liberal view- physical and spiritual dimensions of human are considered simultaneously. In order to prevent moral corruption of the human being the sanctions and religious imperatives are imposed. These sanctions are important to help the community to maintain the moral values and are depended on the faith of the society in God and the second life (Hosseini, 2011). But that criminology cannot help to prevent the crime in the community by itself, so the motivation of the criminal and the causes of crime.
and ways to combat and prevent the formation of it must be investigated. The Islamic penal system based on the importance of prevention offered ways to prevent crime which is briefly referred to in what follows.

**The stages of preventing the crime in Islam**

**Different ways of Quran to prevent crime**

When prevention program is complete, comprehensive and realistic this is designed for all stages of committing crime. And perform prevention duties in all of them. Criminal will follow the steps below for the crime:

First: Based on the will and interest to get material benefits and dispose losses, decides to do the crime.

Second, when trying to implement this decision also tries to be far from the losses caused by criminal action (Such as getting arrested, humiliation and punishment.

Thirdly takes the easy goals and targets which are without the effective protection as bait to get to what he wants.

Quran with it’s a comprehensive policy, combats with all of these steps and has risen a challenge against to them. By corrective prevention, personal and social education based on the spiritual teachings and religious commitments, eliminating poverty and creative economy, solving social and cultural problems, wants to influence who is making the decision.

To correct and educate people and pushing them to the ethics and good deeds and preventing crime and sin of mankind is the goal of Quran, where the primary mission of Quran is to lead and reform human society. And the most important teachings of the Quran for the prevention of crime and social disorders are ethical and reform educations.

Undoubtedly one of the most effective factors of occurring the crime is suitable conditions for the crimes. So the corrective procedures if is not effective, the holy Quran gives tips to prevent crime and to deflect the situation by reducing opportunity and increasing the risk of arresting and reducing the instruments, to at least reduce the crime.

If the mentioned methods are not preventive, the Quran suggests the prevention of crime by punishment. In order to do so, one must take advantage of fearful aspects of the punishment to prevent crime (Abdalvahab, 2010).

**Territory of Crime in Islamic (punishments below the limit)**

Diversity of crimes and different ways of committing criminal offenses needs different ways to impose and enforce penalties and punishments. Various and appropriate penalties is considered as the strength of a legal system. The Islamic penal policy and the philosophy of right and its origins is God. So he is the only competent authority for legislation.

**Lexical definition of punishment below the limit:**

Punishment below the limit is in the meaning of prohibiting, which may be less that the limit punishment. It is ordered to prevent the criminal and make him not to do the sin again. As was mentioned, various theories on punishment below the limit caused conflicts in this area. It has been tried to partly explaining the scope of offenses in the Islamic legal system with two Jurisprudence rules.

*"Punishments below the limit are applicable in all ill-gotten affairs” rule*

**A - Famous Quote**

It is known among the specialists that punishment below the limit is for the cases that the absolute committing of ill-gotten affairs or leaving of depilatory is occurred Aboosalah Halabi states that: Punishments below the limit, is punishment that God is ordered to prevent people from doing sinful and obscene actions, or leaving the depilatory that the judge did not specify a particular penalty for it. (Halbi, 2000). Sani also defines it as the punishment or penalty for insulting which often has not a definite punishment in religion (Ameli, 2005). The Sunni scholar Abdulghader says: scholars agree that every sin which has no definite punishment limit, it must be Punishment below the limit. (Abdulghader, 2001).

**B - Detailed quote**

As it was seen the famous Jurisprudences are in agreement in the issue, but as was mentioned in the article some of the experts like Imam Khomeini state that anybody who leaves or commits any forbidden act which is a big sin, with his knowledge and the judge is aware of the illegality of the crime, is punishable below the limit but for small sin there must be the common agreement of the Jurisprudences (Khomeini, 2010).
Saheb Aljavaher also says that the committer of a big sin must be punished and if the criminal pursues his criminal action after mentioning the issue, he deserves the punishment (Najafi, 2006).

**The “punishments below the limit are in authority of the ruler” Rule**

The question which must be asked in here is that, whether the reference to determine the amount of punishments below limit in criminal court is judge? Or it can be done through the government enacted laws, that judge can choose between the minimum and maximum punishment? There are two approaches to the issue: One group believes that the type and amount of the penalty is the under the authority of judge and limiting the judge authority is against the religion in this case. They refer to the rule “punishments below limit are in authority of the ruler”, which based on this rule the type and amount of punishment depends on the judge’s discretion and any violation of this rule is not acceptable. It is important that this limitation leads to negative consequences, such as the appropriate punishment is sometimes neglected and sometimes it causes oppression to who is subjected to punishment (Yazdi, 2008).

Other group believes that it can be done through the government enacted laws, that judge can choose between the minimum and maximum punishment. This group argues that if courts give the judges authority to determine the type and amount of penalty in addition to Inactive judgments when faced with criminals, the tastes and their opinions will not be equal. Perhaps the ideas of the judges with each other are dramatically different. This issue can cause some incompatibilities in the courts and may rise some difficulties to the judgment systems. On the other hand it may destroy the acceptability and credit of the courts. Consequently expediency makes it vital to enacted laws, that judge can choose between the minimum and maximum punishment (Yazdi, 2008).

From this expression we can conclude that in Islamic society the undetermined punishments are in the authority of the Imam, and if the Imam is absent, the general the Islamic legal ruler according to Verses and quotes can determine the extent of the crimes. But now the legislature and the judiciary are doing the tasks, and determine the minimum and maximum amount of the punishments. Jurisprudences primarily interpreted “punishments below the limit” by lead towards the scourge, its origins can be noted in the three groups: Quotes that know it less than the limit punishment, Quotes that specify it by a certain number, Quotes that talk of it by words like “hitting”.

But there are indications that prevent to interpret it as "hitting": First specialists have emphasized that, it were expressed as to preventive of the crime and the clear example of it is the whip. Second, experts such as Allameh Helli interpret it as punishment, poisoning and reprimand. Jaziri included the exiled to Allameh cases. Third interpretation is that the it is the result of the action, so lash is a form of punishment and other examples are such as a reprimand and imprisonment, exile and …. . Forth are non-physical punishments: Imprisonment, contaminating of cloths and the body, financial punishment, oral prohibition and indicating the crime for which the people are guilty for (Shirazi, 2000).

**Conclusion**

Since the ideology of Islam is different from the ideology other systems, and the philosophy of the right is more considered in Islam, and noting that the origin of the right is God and he has the authority of all rights the scope of criminology in Islam is extensive. Because in any society the norms and moral values are extended more and human is considered from different dimensions of human existence, including the personal, social, and physical to the meta-physical, the violation from this huge number of norms will be considered more, and as a result the crime would seem more. Islam gives precise method of combating the crimes and wants to prevent the happening of the crime and also wants to treat the criminal. So the Islam tries to solve the problems in the society to decrease the crime.

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