

CRIME IN THE EYES OF ISLAMIC JURISPRUDENCE AND CRIMINOLOGY

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Abstract: Crime is a modern legal term and its nature is different and distinct from religious or judicial sins. Throughout the lexicon and dictionary of the legal terminology and criminology, in terms of the meaning, there is no lexis or word more complicated than of the term crime or misdemeanor. In the law literature and world the comprehensive term of "crime" is used and punishment is foreseen for its executive enforcement. When a verdict wants to acquire its sovereignty or religious (canonical) nature, that decree or verdict must go along its stages from the initial to the end. These steps involve fabrication (creation) and announcement and verification and implementation (execution). When a verdict implies as a governmental rule, as well as the religious rules, the four above steps are

passed, and till these stages are completed, the attributing of verdict to its source will be permissible. In the religious or judicial term, crime is the act (conduct) or the abandonment (omission) of the act (promise or omission of promise) that Islam considered obligatory or forbidden to commit or abandon it which a mundane or heavenly punishment has been imposed. In other words, crime is an opposition or objection to the orders and desecration of a book and a tradition, or committing act that leads to the corruption of an individual or society. In jurisprudence, without implying the term "crime", definitions of acts which are deserve by ta'zir (flogging, discretionary punishment) and punishment. It is mentioned that committing deadly sins and insisting on minor sin is deserved to

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discretionary punishment awarded by judge; in other texts, it is stated: The committing of prohibited acts and the leaving obligatory measures, which is not specified in the canon law, requires discretionary punishment awarded by judge. Accordingly, in jurisprudence the crimes are related to physical or corporal integrity which are often referred to as "crimes (felonies)" and involve retaliation or Blood money (diya), or they are crimes which their punishment are determined by canon law of Islam, and referred to as "Islamic prescribed punishment (provisions, ambit)", otherwise they will be titled "discretionary punishment awarded by judge".

Keywords: crime, sin, criminology, Islamic jurisprudence.

Introduction

Crime and offense is a very complicated and sophisticated social phenomenon that in different society occurs variously. The definition of crime and offense or delinquent conduct is determined by the legal laws and social norms of each society. Although, in most societies, crime is defined as punishable act and measure by law but applying

merely the legal concept for its explanation is not sufficient. Delinquency as a number of variables of the committing acts against the legal decisions that can have distinct nature is a common feature of all human societies. Regardless of the nature dispute, these acts are almost always defined and predicted by law. For centuries, acts such as murder, robbery, strife, destruction, fraud, rape, looting, brutality, have been accepted as delinquent behavior and almost all societies have a specified definition for them. Difference and distinction is about the degree and type of punishment that is determined and specified by the laws and regulations of that society. The law experts have defined crime in such a way that each of these definitions is often inspired by theoretical tendencies in a particular school. Francesco Carrara, who has been concentrating deeply on the objective attribute of crime, defined it as "a violation of the governmental laws caused by an external act of a person who does not prescribe by a duty, and is to be punished."

In another definition of French lawyer "Rex" states that a crime is a misleading manifestation of the

individual's will against the right is to be punished.

In general, this definition of punishment is more emphatic by criminal law. "Crime or offense is committing a conduct that is prohibited by law or abandonment of an action which is obligatory by law."

Article 2 of the Islamic Penal Code approved in 1990 states that: "committing any act or abandonment of any acts which the penalty specified in the law defined as crime."

Based on this definition about delinquency, it seems that all communities aren't in a harmony, since community judgment about socio-cultural values and not the attributes of that act recognizes action as crime. by this fact, the legal definition of delinquency and delinquent behavior may vary as a result of changing the beliefs and values of a society.

Crime (offense) in Islamic jurisprudence standpoint

The term "crime" and its derivatives (offenders, prisoners,...) have mentioned in the Quran more than 60 times, and is basically on the same lexical concept as unpleasant actions;

However, the Holy Qur'an has used it in a wide range of instances, including arrogant, oppressors and deniers of resurrection. As a result, in the Qur'an the term "crime" is utilized as general concept and consists of criminal behavior and deviant beliefs and ethics. In holy the Quran, the term of "crime" does not include any sin or misleading conduct, but crimes may be subject to one of these titles in terms of severity, weakness, and intentions of the offender (Feiz A, 1989).

By jurisprudence, without applying the term "crime", a definition of acts that is punishable by discretionary punishment awarded by judge is mentioned. For example, it is mentioned that committing deadly sins and insisting on minor sin is deserved to discretionary punishment awarded by judge; in other texts, it is stated: The committing of prohibited acts and the leaving obligatory measures, which is not specified in the canon law, requires discretionary punishment awarded by judge. (Khomeini R, 1994). Accordingly, in jurisprudence the crimes are related to physical integrity which are often referred to as "crimes (felonies)" and involve retaliation or Blood money or they are crimes which their

punishment are determined by canon law of Islam, and referred to as "Islamic prescribed punishment (provisions, ambit)", otherwise they will be titled "discretionary punishment awarded by judge".

Abdul Qader Oodeh states that jurists often intercepted crime as "felony". The term crime among jurists is a particular term and consists of crimes against the physical or corporal integrity of individuals. But other jurists construe offenses which required retaliation as "felony." Accordingly, in the jurisprudence term, the term felony is synonym of crime and does not include specific crimes, and also the crime is a prohibited act that has a criminal sanction. Delinquency that has been called "guilty (sin)", in religious teachings, is the subject of Islamic discretionary punishment limits, and has a wide concept.

Crime division in terms of severity and weakness of punishment

Lexically, the limitation is defined as follows: according to Ragheb limits means what is at the centre of two things which avoid them from mixing and blending together (Isfahani R,

Beita). Therefore, borders of countries are called limits and also the divine rules refer to divine provisions and limitations since transgressing or infringement of them is not allowed. In Taj al-Uros (the crown of bride), the limit means a curtain and a barrier between two things so that one of them is not mixed. In the Holy Quran, the term "limit" didn't mention a lot, but in fourteen cases, this term have been used in different verses. It is noteworthy that in the Holy Quran it isn't used as punishment and its numerous uses indicate that in the Quran's culture, the meaning of limits is a collection of divine provisions. Some deduction is based on this assumption that the term "limits" in the tradition and sayings of the Imams (PBUH) has been used in two meanings, one which has its special and particular meaning and the other in the absolute sense of the punishment which utilized for offender, whether it is determined by Islamic canon law or not.

Some jurists, out of negligence, have sometimes used limits as crime. For example, Helli in the Islamic canon law stated: "Whatever deserved specified punishment is called the limit. In the jurisprudence, the executor of limite called Haddad.

Retaliation

The physical or corporal revenge of someone who has intentionally and by hostility committed a criminal offense is called retaliation. Obviously, a punishment that is enforced as retaliation must be exactly equal to the crime committed by the criminal. In the Holy Quran, there are two types of verses which refer to the retaliation principle. The first category is the verses that in general refer to the principle of reciprocity, one of its examples mentioned reciprocity in criminal affairs. These verses are:

“The recompense for evil will be equivalent to the deed. He who pardons (the evil done to him) and reforms himself, will receive his reward from God. God certainly does not love the unjust. Those who successfully defend themselves after being wronged will not be questioned.”

This verse implies that firstly goodness and forgiveness of other’s sin may bring back great reward and secondly, it is imperative that retaliation and taking revenge be exactly equal to committed crime, and not transgresses it.

“If you want retaliation, let it be equal to that which you faced. But if you

exercise patience it will be better for you. “

“If any one transgresses against you, you also may retaliate against them to an equal extent.”

What is concluded from all these verses and the opinions of jurists and commentators is that evil acts can be compensated with what is precisely alike and the person faced with evil and badness is permitted to behave as he has been treated, and in this case he/she has no responsibility. One of the vivid and obvious examples of misdeed and mistreatment against others is the murdering and assault and battery, and according to these verses it can be said that the retribution of these crimes is permissible and possible by victim (injured party) or avengers of blood.

Sheikh Toosi, in the following of this verse (the recompense for evil will be equivalent to the deed), stated: It is possible that the purpose of this verse is the retaliation decree which is mentioned in Sura Maide, verse 48, so that victim (injured party) can recompense for evil which will be equivalent to the deed. Therefore, it can be said that these types of verses imply to a general principle, one of its examples being retaliation but along this

principle an important fact has been taken into account. In all of these verses, after accepting and adopting the principle of a reciprocity and revenge, emphasis is on the preference of forbearance and forgiveness on revenge. In all these verses, in spite of the acceptance and confirmation the principle of reciprocity, emphasis has been placed on the not to utilize this principle in social relations and to replace it with other ethical principles, such as patience and forgiveness. This is true if patience and forgiveness do not lead to abuse or misuse of offender, as in this case taking revenge and punishment is not only preferred but also essential. On the other hand, as some commentators have pointed out, retaliation is permissible if the act performed by offender is not an act that only has a bad reputation; For example, in a crime such as adultery or sodomy, which are morally offensive or disgusting, there is no possibility of retaliation and in these cases, only the same penalty and punishment will be executed which is stated in the Islamic canon law. The second category of verse independently mentioned the issue of retaliation. These verses are as follows:

“People of understanding the law of the death penalty as retaliation grant you life so that perhaps you will have fear of God.”

This verse expressed the retaliation philosophy and the main principle of retaliation is also inferred.

“Believers, in case of murder, the death penalty are the sanctioned retaliation: a free man for a free man, a slave for a slave, and a female for a female. However, if the convicted person receives pardon from the aggrieved party, the prescribed rules of compensation must be followed accordingly. This is a merciful alteration from your Lord. Whoever transgresses against it will face a painful punishment.”

This verse not only the clarified the principle of retaliation, but also mentioned some of its features. Perhaps the philosophy of expressing retaliation in Islam or in other phrase "the role of retaliation in obtaining the goals of Islamic penal law" can be summarized as follows: a) creation of criminal justice b) the maintenance of social order and security.

A. Retaliation and Criminal Justice

One of the main goals of the Islamic canon law and other divine religions is to provide justice and impartiality and equity in this world and accordingly it's the foundation of all religious laws and regulations about the social relationships of human beings. The rules and regulations of the penal code are explained on this basis as part of Islamic code. Justice can be measured in two ways: the first is that all people are equal before the law and there is no discrimination whenever criminal laws are enforced. Second, there must be proportionality, harmony and alignment between crime and punishment and every criminal was punished as exactly as he/she deserves. From Islam point of view, the principle of reciprocity has been admitted as a primary principle in dealing with criminals, and preserving full equality between the offense and the punishment in the crimes such as deliberate murder, amputation of limbs and as a right. And this proportionality between crime and punishment is the simplest and most fundamental concept used in criminal justice.

B) Retaliation and Obtaining social order and security

Since retaliation and philosophy behind it is based on the

particular viewpoints of Islam about the value and vital significance of human beings, accordingly, prior to explaining the position of retaliation in preserving social order and security, we state the view of Islam about the significance of human life. In Islam point of view, the life of all living beings and creatures, in particular human, is derived from the existence of almighty God. Accordingly, Islam does not permit the slightest violation and infringement. Human life has been protected by Islam from its earliest stages, i.e the laying of the semen in the womb and any violation to it in different stages of embryonic development is considered a crime. The value of human life from Islam point of view and in the divine worldview is so high that the Holy Quran can't consider the deliberate murder committed by a believer." A believer cannot slay another believer except by mistake for which the retaliation is to set free a believing slave and pay the appointed blood money to the relatives of the deceased unless the relatives wave aside the payment."

Blood Money

Blood money is financial compensation that an offender or

kinsman must pay for his or her unlawful crimes. Similarly, in the case of deliberate crimes, if the victims of crime or his/her blood avengers, instead of retaliation, would agree with financial compensation. The amount of these indemnities is often determined in the canon law of Islam, but at the same time, victims or relatives may compromise with unequal considerations. Blood money is a commandment Islam, which also existed during the period of ignorance, and its legitimacy is according to consensus of the Islam jurists, a noble book and a definite tradition. Regarding blood money various disputed can be raised, but what is at concentrated on this discussion is an adaptive and comparative survey of the nature of the blood money from the jurisprudence point of view (Shia and Sunni) and Islamic law. There are three points regarding the nature of the blood money: 1) the criminal nature; 2) the nature of the compensation; 3) the dual nature.

Discretionary punishment: punishments which their quality and quantity are not specified by the holy legislator and lawgiver permits to punish offender by his/her will. Discretionary punishment means denying and

detering, as well as reproach and rebuke. In general, it is about all the infringements and deadly crimes committed by an individual, provided that it is not determined and specified by Islamic canon law (Khomeini R, 1994). Ibn Asir stated: “discretionary punishment basically has preventing and deterring function. Therefore, the punishment which is less than the limit is called discretionary punishment, because it prevents the offender from repeating the offense "(Ebn asir, al-N et al, 1991).

Ragheb Isfahani has considered discretionary punishment as "help and aid", and then added that it also includes the meaning of correction since lawgiver has the intention of aiding offender. Then he mentioned: "Helping is on two types, whether removing losses from an individual or preventing him from harming" (Isfahani R, Beita). Based on the jurisprudential interpretation of discretionary punishment, since in many traditions the term discretionary punishment exists, Islamic jurists have sought to define this term, which some of these definitions are as follows.

Discretionary punishment means make correction and its purpose is to avoid and prevent of prohibited

actions. This commandment is proved whenever obligatory actions disrupted or a disgraceful action is committed by an individual which Islamic canon law didn't specify certain punishment. It can be inferred and implied by the statements of jurists that the meaning of discretionary punishment is "lash and whip" which is less than the limit.

Crime from the point of view of criminology

Definition of crime

In criminology, the concept of delinquency has been discussed in terms of social defense (through punishment, banishing, reform, and treatment of delinquents). Therefore, the concept of delinquency in this field is related to the circumstances of the phenomenon of crime and mainly considered individual and social situations prior committing crime and also the agent or actual factors of committing a crime have been taken into account (Danesh, T, 1998). Criminology, based on scientific observations and experiments, wants to identify anti-social behaviors in order to gain better support by community.

In criminologists' standpoints, crime is defined as any actions or

abandonment of action which is opposed to public thoughts and consciences, whether or not they are protected by the legislature. In fact, by this sense crime means absolute deviation. Lausour states in the definition of crime: "Crime is any actions by an individual of a social class against a common value of that class (Kie nia M, 1983)."

Crime-related theories

Social Conflict theory

In this regard, firstly we discuss the biogenic approach to the phenomenon of murder which is based on genetic and biological standpoints, and then the psycho-genetic approach to murder are discussed which has psychological foundation.

A: biogenic approach to murder

At least two theories of a biogenic approach to murder have their advocates, one is the theory of ethology and the other is genetic theory. Ethologists have proposed ethical theory that they were mostly zoologists and specialized in the study of animal behavior. According to this group, humans differ from other animals in their killing instinct and are more savage than other animals as dangerous animals are

rarely killed by their biotype. At least 100 million people have been killed by other men in various wars since World War I in December 1914, which has also added the numbers of murders by civilian. In the review of the theory of ethical, it is inevitable that human being is the most violent and dangerous creature on the earth, and it is no doubt that ethical theory has not been able to explain why some people are ruthless and more violent than others, and it seems that these scholars have ignored the role and potency of human civilization in the deterrence and murdering (Jangali E, 2013).

B. Psychogenic approach about murdering

Regarding this approach, there are at least two theories about homicide: Psychoanalytic Theory and Psychology Theory. According to the theory of psychoanalysis, which is based on Sigmund Freud thought, the human psyche has three distinct components: "instinct", "ego" and "super ego" (Sarvestani R, 2010).

Violence in the view's of Biological Theories

The previous form of this viewpoint divided people into two categories: right or honest behavior and

deviant behavior. Individuals with deviant behavior are those who have high intrinsic energy and this issue, in turn, is due to their biological properties, which are often hereditary. Therefore, the advocates of this theory have desire to identify offender by his/her anatomical traits. Their gathering data tools are instruments for measuring human organs and a photographic camera. Previously, biology theories claim that human behavior is determined heredity (succession). This kind of explanation and viewpoint was mainly utilized for violence and aggression and murder. The killing of human beings by each other, or any kind of aggression and violence against each other, is a manifestation of an instinct to harm and injure others which can be eradicated. This is a natural instincts which is similar to natural needs, such as water, food, sexual need.

Examining individual reasons

Genetic factors influence on crime

Studies done by Professor Mandela of Austria, which conducted on plant inheritance, indicated that all traits are not simultaneously transmitted by one generation to the next, but only some

of them inherited. Karl Roth was a researcher who studied 98 prisoners and their families before World War I and published their results in 1918 in Stuttgart. He concluded and demonstrated that some prisoners were exactly governed by Mendel's inheritance laws, i.e the crime was a recessive and final consequence of the inherent laws of the genes. The results of his studies and theories were not ultimately approved by the researchers (Najafi Tavana A, 2003).

Effects of alcoholic drinks and subsequent detriment

One of the researchers distinguishes between the four groups of theory in terms of the alcohol influence:

1. The theory of direct cause: Alcohol directly affects the mechanisms of aggression deterrent in the brain.
2. Indirect cause theory: Alcohol consumption minimizes the capability to simultaneously notice several indications and their displacements. As a result, the attention of an alcoholic individual is restricted to only one sign or stimulus. Therefore, the deterrent symptoms or prediction of future outcomes rarely informed the individual.

3. Theory of alcohol consumption motivation: the stimulation of individuals to consume alcohol is to diminish anxiety or to increase potency.
4. Theory of correlation between alcohol consumption and aggression: Aggressive alcohol consumers are distinguished from non-aggressive consumers in terms of delinquency, hostility and domination (Dadsetan P, 2002).

Examining the influential psychiatric disorders in committing crimes

Psychosis is a psychiatric disorder that engages a large part of the individual's personality, and the patient's relationship with his human links is fragmented. Such patients have delusions and hallucinations and suffer from mental abnormalities.

A. Schizophrenia

The first time in 1896, Emily Kerailin proposed the term "Demence Hecoce" for such mental illnesses. This term was particularly used since the behavior, actions, intellectual currents and personality of an illness somehow disjointed (Najafi Tavana A, 2003). Schizophrenia is divided into four

groups: simple, hebfernia, catatonic, paranoid. It appears that schizophrenia can play an important role in the committing delinquency. Due to the results of numerous surveys, the combination of this disease with other environmental factors leads to crime rate enhancement.

B. Paranoid

In psychiatry, the term paranoid has extensive application than other terms in mental illness. Originally paranoid is a Greek term means delirium. Paranoid may lead to committing serious offenses such as suicide or homicide. Affected by these circumstances, an individual may engage in acts such as violent crime, assault, robbery and other crimes by the aim of taking revenge on those whom he/she supposed have raped and abused him/her.

C. neurotic disorders

The most common symptoms of these mental disorders are anxious, displeased and affected persons are constantly dissatisfied with themselves and others, and always feel humiliated and guilty about their nature and deeds.

D. Mood disorder and its relationship with family assassinations

The most striking signs of mood disorders are mood-altering, which varies greatly with the mood of healthy people, and its manifestation is in the form of inordinate depression or pleasure.

Anxiety Disorder

Depression disorder

Manic episode disorder

Sometimes it can be manifested as a mixture of depression and manic.

Sociological standpoints

1. Durkheim's Anomy theory

Durkheim focuses on the social structure change of mechanical solidarity into organic solidarity and believes that the deviant behavior occurs in all societies, but its modern form is particular to modern society with organic solidarity which mainly appears in the form of anomy state as a modern disorder (Momtaz f, 2002). In order to regulate social relations in the labor system, just economic development is not sufficient, but moral principles and normative rules must also be created to clarify the rights and duties of

individuals in a specific way. Therefore, the main issue regarding the deviant behavior is social structure and its impact on individual. Durkheim considers social solidarity (cohesion) and external control as essential factor for the survival of social life. He believes that if this control, whether external and internal, varies and get imbalance, then it will be problematic. Suicide is one of the social phenomenons which Durkheim has analyzed it according to solidarity and social control as follows: 1- fatalistic suicide due to the severity of social control and tight regulations 2- Anomic suicide relates to a low degree of regulation and social control 3- Altruistic suicide due to internal control and "individual solidarity with collective values". 4- Egoistic-suicide due to lack of internal control of weakness of individual solidarity with collective values (Abdolahi M, 2002).

In related to the issue of family, according to Durkheim's thought, marriage and creating family is a replica of the small world within the larger community. He explains the social harms and family problems and dissociation of them in relation to social institutions. He claims that varies in economical, religion and educational system, and state laws

and regulations can confront families with more problems (Sotoudeh H and Bahari S, 2007).

Parson's social systems are constituted by four sub-systems as follows: culture, society, personality, and economics and he is to explain social deviations based on this hypothesis. He claims that appropriate controlling functions in society are striking factors in the survival and sustainability of the social system; although the imbalance and disorganization in these sub-systems threatens the society and pave the way for deviant behavior.

2. Theories of social strain

Strain theory which is a structural theory, holds the community and society is responsible for all deviations. The onset point of strain theory is the assumption that crime is essentially a social phenomenon and is related to significant parts of society or social process that represent social strain within society (White R and Hines G, 2002). Hence, the social strains inevitably motivate individuals to more deviant and divergence rather than harmony and convergence. This theory claims that most people have similar

values and aspirations, but only a relatively small number of them have the strength or means for social and economical achievement. Failure to achieve social goals leads to negative emotions, as well as anger (rage), resentment and aggression. Among socially low classes, acceptable social and legal tools for success aren't provided so individuals may resort to deviant techniques to achieve their goals or to reject and deny socially acceptable tools for deviant purposes.

Generalization of strain theories are owed to the American prominent sociologist, Robert Morten. He believes that the distinctions of cultural goals and methods for institutionalizing of them to achieve the goals enhance the rates of crime (Sekhavat J, 2002). Merton claims that the society is a combination of structural elements, especially culture and social structures, which the former determine the rules of collective and integrative action and legitimate means of achieving the goals. He thinks that social issues are as collective, real, objective and legal phenomena, and are the result of the divergence or convergence (coordination) of the structural elements of the social system. Given the structural basis and social

issues, it can be said that their extent is the function of the gap and divergence that exists between culture and social structures. This kind of structural or functional inconsistency not only undermines and debilitates but also target the solidarity and balance of the social system and provide socio-cultural opportunities for individuals deviant behavior, including psychological or mental personality, limited to a variety of socio-cultural conditions deriving from the combination of structural elements. The social system is (Abdolahi M, 2002).

3. Social learning theories

The scholars and theorists who have raised the issue of social learning claim that deviant behaviors and legal behaviors are learned through analogous and similar processes. The deviant behavior is learned through learning deviant norms and values, especially in the context of peer groups and subcultures. Therefore, the core idea based on these theories is that individuals learn deviance behaviors through their interaction and over certain processes which will be described. In accordance with the theory, close relatives and peer groups who are delinquent have a

considerable impact on the formation and intensifying the attitude of crime and induce individuals to delinquency. The differential association theory deals with the social content of delinquency and considers the offender in his/her social status in terms of his connection with family, neighborhood, comrades. (Ezazi Sh, 2001).

4. Social Control and supervision Theory

What is scrutinized in this theory is the principle of individuals' tendency to use force in order to achieve goals or authority. The second principle states that social monitoring and control have deterrent function against dominance and violence and since without social constraints individuals inclined to delinquency and abusive behavior, community's "mechanism" for monitoring and supervising it should be created. Some authors, such as Hirschi, whom they followed theory of social control raise this question: why all those who are motivated by delinquency do not commit crimes? They claim that identification and detection of offender is significant but more importantly factors leading social behavior and avoiding deviant behavior must be

investigated. In fact, external strains such as "unemployment, poverty, etc." aren't the essential for delinquency, but the absence of social monitoring and control provokes such behavior. Supervisory authorities, such as the police forces, school, parents and neighbors, can directly monitor the actions and manner of the individual. But, on the other hand, it acts like indirect social monitoring (Ezazi Sh, 2001).

5. Conflict Theories

In general, conflict theory targets the personal and social consequences of accumulation of wealth and power by minorities. A major turning point is that wealthy and influential classes have a common economic and political interest and those in possession of wealth and resources use or actually exploit and misuse their political power to protect and hoard those resources (Ezazi Sh, 2001).

Modern industrial societies displayed a variety of social and cultural contradictions which were the result of their diverse, complicated, and heterogeneous nature, while the main features of traditional societies were

value consensus and social harmony. Social contradictions and tensions are related to incompatible interests, needs and demands of the liberal political groups and conflict among white and black people. That is, what is perceived as a correct form in one subculture may be considered incorrect or wrong in another subculture. Controversialists mainly claim that the differential distribution of power and resources in pluralistic societies makes it possible for some classes that have an adequate share of power to enforce laws and regulations that serve their own interests and suppress the poor and powerless.

6- Gender Socialization Theory

This theory emphasizes the importance of socialization as a cornerstone of formation and continuation of attitudes when seeking the reasons of social deviations and social harms. Socialization is a procedure of internalizing attitudes, values and proper behavior by individuals as members of the culture. Gender roles can be defined as expected behaviors, attitudes, tasks, and preferences that a society assigns to any gender. Gender socialization leads to the constant

domination and supremacy of the man (male) and the subjugation and oppression of the woman (female). Gender socialization theory claims that socialization is the process of internalizing inclinations and gender identities in family and transferring it to the next generation which is the reason of men's permanent domination and the subjugation of the women, as girls and women are generally expected to be composed, submissive, passive, emotional and men are generally expected to be independent, firm, aggressive, and bold. In such a situation and circumstances, women admit the traditional role of submissiveness and, on the contrary, men accept the role of domination. Therefore, men's aggression and violence against women are considered natural.

7. Theory of Power Resources

Power resource theory was first discussed by William Goode's which is around domestic violence. According to the theory, the family system, like any other system or other social unit, has an authoritative system, and individual with more resources and accessibility in the family can gain and

obtain more control over others and is capable of inducing other members to their desired activity. The obstacles and complications regarding the implementation of these definitions have led the majority of researchers to still employ Blood and Wolf's decision-making methodology to determine authority, which generated in 1960. In this method, one family member is often asked who takes the final decision in the family. Particular questions about family decisions were asked such as car purchasing, spending family budgets, buying a home. Therefore, the member who takes the final decisions is more authoritative and potent. How to reach a decision isn't examined in this method, but the consequences of the decision along with power and authority within the scope of decision-making is considered. In addition, authority and dominance are measured in terms of family decision making, and the impacts of the outside area, the working environment and society that affects couples is ignored. Good says that potent family members are less likely to employ physical punishment. There are many other resources through which they can use power.

Cultural and Educational Factors

1- Immigration

Immigration represents a variety of demographic movements between territories that cause permanent or temporary changes in place of residence. The term migration in the Persian language dictionary means moving from one's homeland to another.

Uncontrollable immigration and the constant movement of people from one region to another have considerable impacts in expanding crime rate. Immigrants can rarely adapt to the legal conditions and the new atmosphere and culture of the destination. Immigrants occasionally behave unexpectedly in order to reinforce their position and it is a rare case for the first generation of immigrants but the rate of crime in the next generations of immigrants is intensified as the privileges they supposed; subsequently delinquency exacerbate within second generation to the extent that some of them suffer from personality disorder. Immigrant children who constitute the minority are ashamed of their parents and this is the main causes of multitude troubles. The following circumstances influence delinquency rate: the

relationships breakdown, the decline of friendships and intimacy, the lack of mutual interaction and late adaptation with the social environment. Deficiency and vulnerability regarding interpersonal relationship can also lead to invasion and negligence of others in our society (Sarvestani S, 2003). Generally, immigrants tend to deal with poverty and bad economic conditions and suffer from so many problems and shortcomings, while they have no supporter and even nobody feels sympathy with them. On the other hand, their families dwell in another place or region and their conditions get worse in terms of immigration's cost and this new and abusive circumstance has great impact on delinquency

2- Being obedient (loyalty) to religious beliefs

Faith and Religion has almost the similar meaning, though in verbal terms religion is a moer particular than faith. The term religion conveys meaning such as "nation, obedience, worship, obedience, account, reward, punishment, and retribution" and also means "canon law, nation, account, habit, use, subjection, modesty, obedience and

submission". Within societies, various social, cultural, economical and other measures are applied to eradicate delinquency and create a healthy society in such a way that even the decision delinquency doesn't cross in the minds of the individuals. Meanwhile, religion plays a considerable role in religious obligations and commitment, growing patience and forbearance against the temptations of crime and constituting solidarity and social interaction. If these general measures were not effective to inhibit individual and still determination and intention to commit a crime is being existed, society should provide severe circumstances for criminal act, which is called conditional prevention. This method sometimes considered an individual who is exposed to delinquency and supporting that person in order to prevent from realizing a criminal act and in some cases, modified environmental conditions such as time and location to prevent committing crime by a determined person. An offender, as the decision-maker to commit a crime despite all social and radical prevention measures, should be controlled. In religious teachings, aside from attempts to enhance culture and guide individuals to salvation, there are

deterrent non-criminal strategies designed to prevent a person determined to commit a victim. Sometimes these resolutions imposed restrictions on individuals, to the extent that the person may be detained due to the existence of inferential evidence against him for committing a crime in the future. Supervision and control over the potential offender are carried out as follows: The first one is governmental measures and applying state's jurisdiction to control potential offenders (Islamic government can employ religious methods) and the second one is supervision and vigilance of people derives within the society (Mir Khalili SM, 2004).

3- Drug consumption

It is not so scientific and viable to deem that merely narcotics consumption or recreational drugs leads to the commission of crimes such as murder and assault. As mentioned before, individual must be prepared for delinquency due to cultural, economical, social and educational aspects and consumption of narcotics, especially recreational drug such as cocaine, crack, glass and heroin, can facilitate the

commission of crime. Primary drug consumption considered as tranquilizer which can reduce stress and tension but as soon as it is consumed and repeated, mental and physical attachment occurred and gradually the personality and reactions of individuals affected by drug consumption than wisdom and rationality and the least external stimulus or failure to meet their demands by others may pave the way for criminal acts such as murder. Accordingly individual suffers from mental and personality disorder and also psychological disobedience and cause instant madness. So that individual's action is no longer controllable. This person isn't aware of his own behavior at all since unconscious impulse leads him to violence and (Goodarzi F, 1998).

4. Economical factors

Frequently, the amount of income is far less influential than methods of earning money. This is an undeniable fact that in the relationships of family and friendship, even those who are not financially rich are able to engage in activities that are the source of the greatest pleasures. Nevertheless, conditions and situation derived from

destitution, especially in populated area, neutralized individual's activities and skills. Individuals who feel poor and solitary in metropolitan have less opportunity of interacting and socializing with others. Undoubtedly, their physical, psychological and ethical incompatibilities can be due to other reasons than destitution, although poverty is the most significant factor for this inconvenience. However, some of the deviations that extend alongside poverty are not solely due to destitution and, generally; destitution can be pernicious for the poor.

Conclusion:

Crime is a modern legal term and its nature is different and distinct from religious or judicial sins. Among religious and juridical resources, the violation and infringements of Islamic bans and orders has been mentioned by terms such as sin, guilt and offense. The sanction (executive enforcement) of the Islamic norms is nothing but faithfulness and virtue for believers, but the punishments foreseen in certain respects are the necessity. In the legal literature, the comprehensive term of "crime" is employed and its sanction (executive

enforcement) is punishment and retribution. When a verdict wants to acquire its sovereignty or religious (canonical) nature, that decree or verdict must go along its stages from the initial to the end. These steps involve fabricating and announcing and implementing and enforcing.

Islamic school deems that human being has two dimensions: physical and metaphysical, and is eternal being. What is obligated or forbidden (banned) in Islamic or religious standpoint is all based on the philosophy of guidance, divine legislation, and taking advantages and removing of the material and spiritual disadvantages from human beings. Protecting individuals, intellects, beliefs and property of the people, preserving public interests and establishing the social order are all purposes of the Islamic canon law which is tried to protect them by bans and orders. On the other hand, Islamic jurisprudence has also addressed unsocial and non public rules. These affairs are completely personal and mainly related to the morality of men. Accordingly, it involves significant parts of private situations and behaviors of individuals and faithful believers. Punishments vary significantly. Here,

the punishment consists of various types, whether principal or subordinate, complementary, discretionary and deterrent and along with these punishments, deprivation of all or some of the social rights is also raised. Article 36 of the Constitution states that decree of punishment and its execution and enforcement should be issued only through a competent court and in accordance with the law. Therefore, the execution and enforcement of punishment and retribution is in the scope of government and canon law and is the consequences of crimes.

Hence, considering the legal nature of crime or legal nature for sins requires the fulfillment of the following conditions:

-The decree and sentence of that particular delinquency has been issued by the competent authorities.

- At the same time, the same sentence was established at the first institution and interpreted in the second institution. Therefore, considering two natures for crimes and sins is subject to the establishment of a verdict from the viewpoint of one source and institution, and ratification or approval of that verdict from the point of view of another source. Parts of the laws established by

legislator will have Islamic and governmental nature if the government legitimize or recognizes them in penal code.

The absolute acceptance or admission of the discretionary punishment awarded by judge for every sin will confront us with practical constraints in the realm of law, including the following:

- Conflict with customary legislation (enactment)

- The inability of most judges to refer to authoritative sources of jurisprudence and extracting the relevant validity

There are also suggestions in this regard:

1- Explaining and clarifying the constraints of "valid sources of jurisprudence" and "reliable judicial decree ", which is not clear at all. Ambiguity in the meaning of resources and comes from the fact that "legitimate sources of jurisprudence" can be sources for the inference of jurisprudential rules or juristic jurisprudential books. The legislator has supposed that all judges are able to deduce the jurisprudence law from the original sources of jurisprudence. It is completely unrealistic imagination or it can be

argued that, in spite of that legislative knows that the majority of judges aren't religious jurisprudent, the legislator's purpose by sources of jurisprudence means books and jurisprudential works. In this case, the legislator has appointed judges to something that is out of the capacity of the majority of them. So the first recommendation is that the legislator explains and clarifies this phrase in the principle of 167. In the light of the explanation of that phrase, legal position and the legitimacy of this principle is specified for discretionary punishment for any sin and the judges will not be confused.

2- Explaining and clarifying the implications of prohibition acts' instances in Article 638 of the Islamic Penal Code: due to the lack of a unified source and the existence of different opinions and ideas, recognizing the instances of prohibition act by referring to the sources of jurisprudence for judges under Article 638 of the Criminal Code, will result in a difference of votes in the courts and based on this fact, execution of justice will be confronted with serious problems, as it is always possible that an individual who has committed similar crime in equal terms, faced with different votes and sentences by different courts.

It's contrary to the principle of equality of individuals in front of the law which is set forth in clause 14 of article 3 of the constitution and according to Article 161 of the Constitution it would be necessary to establish unified judicial procedure. Therefore, it's required that if the legislature intends to regard the banned act as a crime, its instances should be specified in the law as clearly as possible.

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