

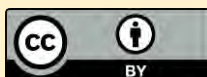


## ORIGINAL RESEARCH PAPER

Dependency of Justice in *Ta'zir* Punishment on The Fundamentals of Crime CommitmentTofiq Asadov<sup>1\*</sup>, Mohammad Hossein Sharifi<sup>2</sup>

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| ARTICLE INFO                                                                                                                                                                                                                                             |                        | ABSTRACT                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |
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| <b>Article History:</b><br>Received: 05 September 2024<br>Revised: 10 November 2024<br>Accepted: 01 December 2024                                                                                                                                        |                        | <b>SUBJECT &amp; OBJECTIVES:</b> ‘Idāaah (ustice) nn xxeuuting punishment against offenders must correspond with the circumstances of the crime and the offender at the time of commitment. Simultaneously with the determination and operationalization of punishments for various crimes, it is essential to consider all aspects of the rr iminals’ situation.<br>Given that Islam seeks to uphold justice in all affairs, this study's primary objective is to propose solutions for implementing justice for offenders.<br><b>METHOD &amp; FINDING:</b> Using an analytical-descriptive method, this study found that punishing all offenders solely based on a general law, without considering external factors of the crime and the criminal, including the individual's personality and social-psychological factors, is considered a crime itself, constituting another form of injustice.<br><b>CONCLUSION:</b> Rather than finding what the punishment for a specific crime is, we should inquire who the offenders are, what their level of education is, where they were raised, and the quality of their biological, neurological, and psychological conditions simultaneously at the time of committing the crime. Examining all aspects of the crimes and offenders, a just decree will be issued. |  |
| <b>Key Words:</b><br><i>Justice in Punishment</i><br><i>Ta'zīr (discretionary)</i><br><i>Punishments</i><br><i>Crime</i><br><i>'Afw (amnesty)</i>                                                                                                        |                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
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| This is an open-access article under the CC BY license ( <a href="http://creativecommons.org/licenses/by/4.0/">http://creativecommons.org/licenses/by/4.0/</a> ).<br> |                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |
| <b>* Corresponding Author:</b><br>Email: <a href="mailto:tofiqasadov1981@gmail.com">tofiqasadov1981@gmail.com</a><br>ORCID: 0000-0002-9460-968X                                                                                                          |                        | Article Address Published on the Journal Site:<br><a href="http://p-l.journals.miu.ac.ir/article_10007.html">http://p-l.journals.miu.ac.ir/article_10007.html</a>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |
| NUMBER OF REFERENCES<br>27                                                                                                                                                                                                                               | NUMBER OF AUTHORS<br>2 | NATIONALITY OF AUTHOR<br>(Azerbaijan, Iran)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |

## Introduction

The importance of justice in human societies is evident. A society in which oppression prevails and injustice is perceived as normal gradually becomes an unsafe land. Given that Islam places significant emphasis on the execution of justice within society, it established particular laws merely to maintain it among individuals. A man should be punished if he commits a wrongful act. For instance, one who steals someone's property should be punished, and the stolen goods must be restored to the rightful owner. However, this study concentrates on the procedures of applying punishments to avoid *al-Ifrāt wa al-Tafrīt* (exaggeration and simplicity), since it might be viewed as another form of injustice.

If we seek to delve deeper into the issue, we must ask whether it is possible to consider poverty and psychological tension experienced by the offender in punishment. Is it fair to disregard the economic, psychological, and social circumstances of the criminal? Seemingly, disregarding the circumstances of the offender might be considered oppression. Hence, we aim in this study to examine such from the Islamic perspective. Notably, we examine *Ta'zīr* (discretionary) punishments, not *Hudūd* (prescribed punishments in *Shari'ah*), *Qisās* (equal retribution), and *Diāt* (financial compensations) in which Islamic law has prescribed specific punishments.

Thus, changing a punishment to another appropriate one might be rendered a mitigating factor, if possible.

For instance, a discretionary sentence of imprisonment or flogging might be replaced by a monetary punishment, as mentioned in the 37<sup>th</sup> Article of the Penal Code of the Islamic Republic of Iran.

## Conceptual Framework

### 1. Justice in Punishment

It refers to a system where all aspects of a crime, including its causes and circumstances, are considered. In other words, the application of laws should not be general-based but case-based, i.e., the necessitations of a crime and the conditions of its commitment must be examined on a case-by-case basis (Goāāmī & Bābī e, 2000, p. 158).

### 2. *Ta'zīr* (discretionary) Punishments

They are other than *Hudūd* (prescribed punishments in *Shari'ah*), *Qisās* (equal retribution), and *Diāt* (financial compensations) in which Islamic law has prescribed specific punishments. In this respect, based on the prevailing societal conditions, the legislators of society constitute discretionary punishments such as deprivation of social rights, monetary punishment, etc. (Fereidūnī & Morādī, 2016, pp.14-16).

### 3. Crime

As a legal and social concept, it refers to an unlawful act that often violates the rights of people or society. Crimes are mainly categorized into the following two primary groups:

- Crimes Against Individuals: As examples, we can name murder, assault, bodily harm, etc.
- Crimes Against Property: As instances, we can name theft, fraud, etc. (Mssaāī aard, 2999, p.18).

#### 4. 'Afw (amnesty)

An action sanctioned by governmental institutions aimed at halting the prosecution of suspects or forgiving all or part of the sentences of convicted individuals (ūūrJnnī, 2117, pp. 21-23).

#### Literature Review

Some researchers have conducted noteworthy studies concerning the general aspects of the topic, e.g., the book *Alternatives to Imprisonment or Intermediate Punishments* compiled by Mohammad 'Ashūri in Persian is considered among the most prominent works. The author has argued that the alternatives to imprisonment can potentially fulfill the objectives of justice in punishment while reducing the financial and spiritual costs of imprisonment. In this perspective, imprisonment is the last resort, i.e., imprisonment is deemed unjustified as long as other accessible and beneficial forms of punishment are available.

Historically, these alternatives were first found within the justice system in punishment as alternatives to short-term imprisonment since it was observed that such punishments not only have had little influence in rehabilitating and reforming offenders but also have led inmates

toward corruption and preparation of opportunities for crime commitment. However, alternatives gradually evolved and were incorporated into the penal laws of various countries, some of which allowed judges to resort to them instead of imposing custodial sentences, while others were recognized as distinct forms of punishment and added to the list of punishments. Applying certain methods of punishment, like deferral or exemption from imprisonment, is deemed among the alternatives (Ġīīī & ī hāksār, 2019).

Concerning alternatives to imprisonment by recidivism and probation, we can name the book *The Oxford History of the Prison: The Practice of Punishment in Western Society*, written by Morris Norval and David J. Rothman (1997). This study examined factors such as age, employment status, number of offenses committed, completed sentences in rehabilitation centers, and the duration of supervision for probation as the most significant elements of the probation outcomes (Norval & Rothman, 1997, pp. 16-44).

However, we have not encountered any book or article that addresses the various types of crime factors and optimal execution methods of crime in the same depth as our paper.

#### 1. Non-Priority of Punishment in The Eyes of The Holy Shāri'

Punishment is not particularly desirable in the Islamic penal system; rather is resorted to merely as a necessity. Examining

Islamic jurisprudence, it becomes evident that Islamic *Shār'ā* (law) does not seek to find criminals, probably due to preserving human dignity, especially in *Ḥaq Allah* (right of God), or to avoid revealing the *Qubḥ* (evil) of sin, which is disliked by Allah. To substantiate, four proofs come as follows;

### 1.1. The Instruction of the Quran, 49:12

Allah said, “*O you who have faith! Avoid much suspicion; indeed, some suspicions are sins. And do not spy on one another or backbite. Will any of you love to eat the flesh of his dead brother? You would hate it. Be wary of Allah; indeed, Allah is all-clement, all-merciful*” (The Quran, 49: 12).

As noted in the book *Al-Mīzān fī Tafsīr al-Qur'an*, the avoidance in the mentioned verse does not refer to *Dhan* (suspicion) itself since it is a kind of soul perception that suddenly enters the heart, whereas man cannot make a barrier for his soul to prevent suspicion from coming within. Hence, the prohibition of suspicion itself is not considered valid; rather might be done from certain optional preliminaries. Thus, the verse prohibits admitting bad suspicions, i.e., do not permit a negative thought about someone to enter your heart and do not act upon it. The term *Tajassus* (spying), mentioned in the original Arabic version of the verse, denotes secretly investigating individual affairs to keep private. Therefore, according to Allah's directive, we should not seek

out what is hidden or concealed (Ṭāāṭabee, 199, p. 323).

### 1.2. Difficulty of Proving Crime

Islam imposes strict criteria for proving crimes to protect the accused and society. In other words, Islam tries to ensure that only the most credible evidence qualifies as proof of a crime.

Accordingly, the evils and immoralities in society remain hidden, a primary objective of Islamic law, are not tarnished, their honor is not easily violated, and their human dignity is saved (Mnīrī & Wāī zzāde, 001)).

To demonstrate certain offenses against public morality is dependent upon specific legal evidence in the Islamic Penal Code. If such evidence is not found, the committed offenses will not be substantiated. This approach often results in many offenses remaining unprovable since finding the evidence required by the legislator may either be easily or entirely unfeasible. Consequently, the rights of crime victims and private plaintiffs are trampled in crimes against morality, leaving society vulnerable to more serious offenses (hdddi, 2003).

For example, in the case of *Zinā* (fornication) as an example of *Ḥudūd* (prescribed punishments in *Sharī'ah*), four just witnesses are required alongside the stringent conditions outlined in Islamic jurisprudence.

Even in ordinary circumstances, two just witnesses are needed to prove a

crime in Islam, whereas an accused man in other societies might be detained or sentenced based on the testimony of a single witness, with no requirement for his/her justice. Overall, Islamic jurisprudence in the context of *Hudūd* has made criminal conditions exceedingly difficult to prove.

### 1.3. Man's Confession and Its Rejection by Infallible Imams

As numerous traditions signify, infallible Imams, through their words and actions, used to redirect those criminals who confessed to their crimes, to dissuade them from repeating their confession.

For instance, fornication is established through confession made four times, each of which counts as a just witness. In this respect, Abi Maryam reported a tradition from Imam al-Baqir in which a woman came to Amir al-Mu'minin 'Alī ibn Abī Ṭālib and said, "I have committed fornication." The Imam turned away from her. She returned and insisted on repeating her confession until she did so four times, each of which Imam did the same reaction. Eventually, Imam ordered her imprisonment (Şqqqq, 1992).

### 1.4. Preventing Punishment Execution Through Jurisprudential Rules

The principle of *Dar'* (ward off), as a fundamental principle of criminal jurisprudence, is among the proofs by which it might be claimed that Islam does not pursue finding criminals. In this

respect, Prophet Muhammad said, "Ward off *al-Hudūd* (prescribed punishments) by doubts" (Muttaqī Hindī, 1995, p. 226).

Concerning whether the principle of *Dar'* applies to *Ta'zīr* i.e., discretionary punishment for crimes for which no specific punishment is stated in Islam, it should be noted that the term *al-Hudūd* conveys the absolute meaning of divine punishment since this plural Arabic term contains the particle 'Al' at the beginning, implying generality in the language. In other words, it includes *Ta'zīr* punishments, and no specific argument restricts the generality of the mentioned principle to only *Hudūd* punishments.

Referring to the words of jurists, it is often found that the term *Hudūd* includes *Ta'zīr* as well, e.g., the author of the book *Rawḍat al-Muttaqīn fī Sharḥ Man lā Yaḥḍaruhu al-Faqīh* said, "(The term) *Hudūd* includes *Hadd* (prescribed punishment), *Ta'zīr* (discretionary punishment) and *Qisās* (retribution) (Mallis, 2009, p. 230).

Additionally, when doubt arises while prescribed punishment is not applicable, discretionary punishment should not be applied *Bi al-Qiyās al-Awlawiyya* (through fortiori analogy).

### 1.5. Tawbah (Repentance) As a Factor for Punishment Exemption

*Tawbah*, as an element for punishment exemption, is a significant jurisprudential-legal topic wherein the philosophy of punishment is highly evident. In contrast, remorse does not nullify punishment based on the general

rule in worldly legal codes. In some countries, such as England and India, even a mere attempt to commit a crime might lead to punishment, regardless of whether the offender desisted voluntarily from fully committing the crime. However, repentance is regarded as a prominent element to nullify the punishment in Islamic criminal law, denoting that punishment itself is not desired in Islam but applied for other particular objectives (Qorban Nia, 2001).

Furthermore, citing the general compassion of Allah, especially in *Haqq Allāh* (the Right of God), there are times—even when sin is proven—when reductions in punishment and granting of forgiveness are not only permissible but are also consistent with Islamic teachings, substantiated by numerous instances from the lives of Ahl al-Bayt.

#### **1.6. Government's Responsibility in Crime Reduction Rate**

Just as people have certain responsibilities toward the government, the government also has duties toward the people. To prevent crime, governmental actions, as one of the mentioned responsibilities, are considered necessary. If the Islamic government does not properly fulfill its duties, not only will crime and sin increase, but criminals may also find justification for their wrongdoings.

However, the most essential responsibilities of the government to prevent crime are categorized into the following five items;

#### **1.7. Rational and Ethical Education of Individuals and Guiding Society Toward Perfection**

The government is obligated to enhance and update public awareness concerning virtuous deeds and *Qubh* (wrongness) of crime, as well as its negative consequences. Additionally, it must awaken the inherent nature of the community and strengthen public belief in Allah and the Day of Judgment. If the structure of a society is based on a pure nature and belief in the unseen, the result will inevitably be a community adorned with ethics and human dignity.

#### **1.8. Preparation of Essential Facilities for the Excellence and Growth of Society**

The government has to provide the conditions by which man can find his regarded placement and qualifications, enabling him to fulfill his roles toward himself, Allah, others, and the environment. Otherwise, government expectations of the people may not be fair or reasonable. By 'conditions for excellence and growth,' we mean providing resources and facilities such as free schools and educational courses, beneficial television and radio programs, publishing educational books and magazines, and making them available to the public at no cost.

#### **1.9. Establishing Justice in Society**

Establishing justice in social, economic, educational, and health arenas is one of the nnnnnmnnnnn

pivotal responsibilities. It breeds resentment and complexity among those who experience injustice. If a government merely meets the needs of one city while neglecting another, prioritizes affluent neighborhoods over poorer ones, or focuses on one group while ignoring another. People are not able to tolerate injustice, even when it might not exist. As a Quranic extension, the brothers of Prophet Joseph resorted to crime and threw their brother into a well, believing they were unfairly treated by their father. In this respect, Allah said, *"When they said, 'Surely Joseph and his brother are dearer to our father than [the rest of] us, though we are a hardy band. Our father is indeed in manifest error'"* (The Quran, 12: 8).

#### **1.10. Supporting *Mustad'afin* (Deprived People)**

Despite the government's best efforts to provide all necessary facilities for individual growth and progress, some people may still be unable to stand on their own due to severe illnesses, physical disabilities, or cognitive limitations. In such cases, the government must extend a helping hand and provide both material and spiritual support.

In this respect, Imam Alī bbn Abī bbbbbin the letter to Malik al-Ashtar regarding the bvveroo's duty toward people said, "Then is the lowest class of the needy and the destitute, support of and heppfor whmmss an oll iaatinn" (Shāfi'a l-Raḍ, 2008, eetter N.. 53).

#### **1.11. Providing Circumstances to Meet the Needs of People**

The government must prepare for some circumstances in which all individuals and groups in society, including children, youth, the elderly, the rich, and the poor, meet their needs. By 'needs,' we refer to diverse aspects, e.g., material, spiritual, health, sexual, psychological, and recreational ones, as well as the need for personal prosperity.

#### **2. *Keyfar* (Punishment)**

As a pertinent question, if the government fulfills all its duties to decrease the crime rate, but persists in society, how should the government decide on punishment? Notably, punitive-oriented governance is neither in line with Islamic compassion nor human dignity, since it is evident that heavy penalties not only led to reduced crime rates but also decreased the age of criminals, as reported.

Accordingly, the punitive-oriented justice approach may not effectively maintain societal discipline. Nevertheless, the determination and implementation of punishments in certain circumstances would yield significant benefits, such as fostering personal accountability, deterring from committing a crime, disciplining offenders, serving as a deterrent for others, ensuring community safety, preventing chaos, etc. However, it must be emphasized that punishment itself is not an ultimate goal in Islam (Şāeeq Nejdd, 0022, p. 109).

Remarkably, the penal justice system, claiming to justly penalize criminals, sometimes encounters injustices since it emphasizes the execution of punishment, not the individual and societal factors of crime and criminals. Noticeably, human nature requires the implementation of comprehensive justice (Muṭḥhrrī, 2021, p. 74).

Moreover, all aspects of the victims' rights must be carefully considered in *Haqq al-Nās* (the Right of People), i.e., the criminal has to compensate for the overlooked rights of the victims, if possible.

Even if the criminal lacks financial means, the government should cover the restitution and subsequently recover the amount through payment plans like installments or community service, such as cleaning parks. Consequently, the victim will receive their due, and the criminal will be spared from the harsh consequences of punishment. However, if the offense is not financial, such as insulting someone, the judge should encourage the victim to forgive, even personally incentivizing them with certain governmental rewards. For instance, the government could grant the victim a week off and reduce the offender's leave by a week. Notably, physical punishment of the criminal, like imprisonment, should be the last option (Ṣddeq Neāḍ, 0022, p. 96).

### 3. Causes of Committing a Crime

They might be classified into two categories:

- Causes with no reasonable justification that should not be

considered, e.g., great embezzlements or sexual abuse.

- Causes with reasonable justification, i.e., to judge without considering the causes is not just (afargh 211, pp. 21-36).

The most important factors in the commission of a crime by which the judges can find proximate, desirable justice in the execution of a ruling are as follows;

#### 3.1. Economic Tension

Poverty and dire financial straits are too perilous since they might lead a man toward *Kufr* (disbelief). A poor man becomes deeply affected when he sees his miserable condition as well as his family; losing his patience may lead him toward theft and betrayal, and allying with oppressors. In this respect, Prophet Muhammad said, "Poverty is close to disbelief" (Kulaynī, 1992, p. 307). Hence, when poverty brings a person to the brink of disbelief, by extension, the poor can lean towards committing crimes and financial offenses.

#### 3.2. Sexual Tension

It can lead man toward sin, especially if specified within certain circumstances, e.g., both parties are young and single, or a married person has not benefited from a sexual relationship with his/her spouse for a long time due to problems. At the same time, both find themselves in a secluded place. It is worth noting that simplifying marriages, providing significant marriage loans, and establishing a reasonable limit for the

dowry, rather than 110 Iranian official gold coins as legislated for a conventional amount of dowry, are essential responsibilities of the government. As an important question, can an ordinary young man afford this conventional amount of dowry? Remarkably, a man who cannot pay a dowry will meet legal and criminal repercussions if his wife requests.

### 3.3. Lack of Awareness about *Qubh* (Wrongness) of Sin

Being away from the city or living within a particular atmosphere, some people cannot comprehend the wrongness of sin, e.g., the offspring of an addict may be inclined towards addiction, primarily requiring education, which might be other than punishment.

### 3.4. Biological Problems

As an example, we can name women during menstruation, which has been characterized by the Holy Qur'an as something hurtful. In this respect, Allah said, *"They ask you concerning [intercourse during] menses. Say, 'It is hurtful.' So, keep away from wives during the menses, and do not approach them till they are clean"* (The Quran, 2: 222). Additionally, premenstrual syndrome (PMS), as a disruptive set of emotional and physical symptoms that regularly occur one to two weeks before the start of each menstrual period, can negatively affect women's behavior, providing the elements that contribute to criminal activity.

### 3.5. Psychological Disorders

Certain psychological disorders can lead individuals to commit crimes, like bipolar disorder or manic depression, sexual hormonal disorders, severe depression, etc. Notably, a patient taking medication during severe depression may not be in a normal state for the first three weeks, possibly even becoming suicidal due to high psychological stress. Following some jurists, killing while intoxicated is not subject to retribution under the following two conditions in the Islamic penal system;

- The intoxicated man has completely lost his/her will
- S/he has not intoxicated him/herself to commit murder (Hājī Dehābādī, 2008).

### 3.6. Meeting Anxiety Due to Hearing Shocking News

The probability of committing a crime or mistake is significantly increased for anyone who experiences a shock. For instance, if a mother receives a call informing her that her child has just gone into a coma due to a driving accident, it is not unexpected for her to drive recklessly or without a license toward the hospital in that emotional state.

### 3.7. Age of the Offender

This issue has to be considered in judgment. For instance, the ages of a 13-year-old girl and a 15-year-old boy when they commit similar acts of fornication or theft have to be taken into account in terms of sentencing.

#### 4. Citing a General Law for the Punishment of Criminals

To punish all criminals based on a general law, without considering objective factors of the crime and the psychological, individual, and social characteristics of the offender, constitutes yet another crime. In other words, it may not be sufficient to ask what the punishment for a specific crime is; rather, we should ask who ... Wttt is eee nnnnmnnnn level of awareness and education? Where, in which home, city, and country, was s/he raised? What was his/her biological state and nervous system like when committing the crime?

Our assertion does not imply that we should lack any general laws for determining specific punishments. Rather, we claim that within the framework of that general law, all the circumstances that led the offender to commit the crime must be examined. It could be that anyone in similar circumstances could easily fall into the same criminal behavior. Thus, we cannot expect non-criminal behavior from that specific situation. Therefore, punishing a man without considering his situation as well as the factors contributing to the crime is regarded as an injustice itself and a violation of the principle of establishing justice.

#### 5. Methods of Punishment in *Ta'zīr* (Discretionary Punishment)

##### 5.1. Corresponding With Human Dignity

Suppose the punishment does not correspond with human dignity. In that case, it will be considered an injustice toward the offender, like executing punishments in public without legitimate religious proof or those of repggnatt oees nn'Urf (common law) (Şāeeq Nejdd, 0022, p. 96).

##### 5.2. Corresponding With Time and Place

A punishment seems just if it corresponds with the time and place, i.e., when and where the offender commits the crime. Nowadays, it may not be appropriate to whip someone for his/her crime. Notably, the mentioned hint is excluded by *Hudūd* (prescribed punishments in *Sharī'ah*) since they embrace particular pearls of wisdom beyond the scope of discretionary punishments (ee hhhān and Gorī, 1977, pp. 18-22).

##### 5.3. Correspondence of Punishment with The Offender's Condition

Punishments must regard the offender's conditions, including age, physical body, gender, mentality, free will, etc. For instance, if an offender is too physically weak, the punishment poses a lethal threat to him, then imposing such punishment is deemed excessive and unjust (Farahmand & Geāām, 2024, pp. 81-89).

Notably, a being without free will might have non-volitional perfection and value, but volitional perfection, ethics, and worldly and otherworldly rewards and punishments only make sense for a being that possesses free will (Mustapha et al, 2024).

#### 5.4. Correspondence of Punishment with The Offender's Social Positions

When issuing punishment, the social positions of the offender must be taken into account to avoid constituting an injustice. In other words, the criminals' personal and social character should be respected in setting discretionary punishments. For example, an offender with a reputable academic standing who is respected in society should not receive the same punishment as an offender who frequently commits crimes, based solely on the principle of equality (of people) in law, since it is not equality but merely similarity. If possible, criminals with positive reputations or serious prior good behavior may receive connivance, or at least a punishment corresponding with their position, along with favor.

However, in conflict between the *Maṣlaḥah* (public interest) of society and an individual's social dignity, the prior one is given precedence. As a suggestion, monetary, installment-based, or community service penalties might be preferred whenever no critical need is for physical punishment or public reprimand.

### 6. Wise Performance in Punishment

Judges must consider diverse issues to avoid injustice in the execution of punishment; three of the important ones are as follows:

#### 6.1. Respecting The Value of Man

A just state not only seeks to maintain social order but also considers the individuals' rights and personalities, both natural and legal. In this respect, Allah said, *"Whoever kills a soul, without [its being guilty of] manslaughter or corruption on the earth, is as though he had killed all mankind"* (The Quran, 5: 32). Thus, excessive punishment is undoubtedly unjust (Javān Ārāsteh, 2023, pp. 22-29).

#### 6.2. Considering The Situation of Relatives

Seemingly, the relatives of the offender should also be taken into account in dispensing punishment to ensure their rights are not infringed. Thus, the judge should consider the benefits and harms of the punishment in proportion to the committed crime. In other words, the judge should take into account the social, economic, and emotional state of the offender's relatives, as well as the number of years when s/he is imprisoned, the education and upbringing of his/her children, the sexual needs of the spouse, etc. (Sādāt ss ad., 0018, pp. 11-19).

#### 6.3. Considering The Consent of the Victim

Although we have primarily discussed on behalf of the criminals in this article,

the consent of the victim, who has suffered due to the crime, must be obtained in any possible way. Hence, there is no room to avoid legal punishment of the offender if it depends

on finding the victim's consent *Naḥī* & 'Aṭāseene,, 0020, p. 9).

| Non-Priority of Punishment in The Eyes of The Holy <i>Shāri'</i>                    |                |                                                                              |                                                         |                                                            |                                                                   |                                                                 |
|-------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------|---------------------------------------------------------|------------------------------------------------------------|-------------------------------------------------------------------|-----------------------------------------------------------------|
| The Instruction of the Qurʻnn, II - Hujurat:12                                      |                | Difficul-ty of Proving Crime                                                 | aa nʻs Confsssoom and Its Rejection by Infallible Imams |                                                            | Preventing Punishment Execution Through Jurisprudential Rules     | <i>Tawbah</i> (Repentance) As A Factor for Punishment Exemption |
| Government's Responsibility in Crime Reduction Rate                                 |                |                                                                              |                                                         |                                                            |                                                                   |                                                                 |
| Rational and Ethical Education of Individuals and Guiding Society Toward Perfection |                | Preparation of Essential Facilities for the Excellence and Growth of Society | Establishing Justice in Society                         | Supporting <i>Mustaḍʻafīn</i> (Deprived People)            |                                                                   | Providing Circumstances to Meet the Needs of People             |
| Causes of Committing a Crime                                                        |                |                                                                              |                                                         |                                                            |                                                                   |                                                                 |
| Economic Tension                                                                    | Sexual Tension | Lack of Awareness about <i>Qubḥ</i> (Wrongness) of Sin                       | Biological Problems                                     | Psychological Disorders                                    | Meeting Anxiety Due to Hearing Shocking News                      | Age of the Offender                                             |
| Methods of Punishment in <i>Taʻzīr</i> (Discretionary Punishment)                   |                |                                                                              |                                                         |                                                            |                                                                   |                                                                 |
| Corresponding With Human Dignity                                                    |                | Corresponding With Time and Place                                            |                                                         | Correspondence of Punishment with The Offender's Condition | Correspondence of Punishment with The Offender's Social Positions |                                                                 |
| Wise Performance in Punishment                                                      |                |                                                                              |                                                         |                                                            |                                                                   |                                                                 |
| Respecting The Value of Man                                                         |                | Considering The Situation of Relatives                                       |                                                         | Considering The Consent of the Victim                      |                                                                   |                                                                 |

## Conclusion

The Holy *Shāri'* (lit: The Legislator: Allah) emphasized the execution of justice in all affairs, including punishment. However, following the commitment of an offense, the Holy *Shāri'* regarded priority on the mitigation of punishment and the pardon of the offender. Applying mitigation or connivance on punishments the crimes in which *Ḥaq Allah* (right of God) has been violated aligns more closely with divine mercy and Islamic compassion. However, regarding the violation of *Ḥaq al-Nās* (right of people), the judge can only kkkk kkk "'''''''' '' nsent to forgive offenders in various forms. In all cases, factors that may have provoked the crime should be duly considered by the judge. Once the crime is proven and punishment authorized, the judge must consider necessary sensitivities in issuing punishment to ensure that neither the offender nor the victim is wronged.

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