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THE CRITERIA FOR DETERMINING THE PUNISHMENT WITH EMPHASIS ON THE IRANIAN CRIMINAL LAW

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ABSTRACT

Determining punishment is one of the most critical processes on criminal justice system, So that the main result of done efforts in criminal process, such as prosecution, investigation, and judgment, in this stage is represented. Justification of this stage requires cognition of criteria and measures, which are necessary to create balance and equipoise in the system. Mentioned criteria become apparent In the absence of accordance and coincidence among triple factors of offense, offender, and Victim, the Issue that required to performance of active role from the legislator, from the view of specifying exact and adequate criteria, from one side, and effectiveness of Criminal Judge In implementation of these criteria, from the other side, considering findings of the various sciences, such as anthropology, sociology, psychology And generally within the framework of criminology.

Creating coordination in the two field of legal specifying punishment, and judicial sentencing, is not always easy, therefore, we should consider fundamental criteria and measures, in order to legitimating criminal justice, besides, access to Governing Purposes of it, such as Treatment of offender and protecting society against delinquencies, without any judicial Incompatibility and anarchy , or causes injustice in criminal system.

In this research, we tried to study criteria for determining the punishment through emphasis on Iranian criminal law, and evaluate this issue from the view of epistemology.

Keyword: Sentencing, Penalization, Criminal Justice

INTRODUCTION

Mankind with various thought has a social temperament essence. He / she learns own life because of his nature and by social behavior boundaries and freedom

limitation as a basic rule on own civic life. Moving in direction of these rules is putative and society demand, so, breaching ought to / not ought to, exposes human being on social reaction, that is different from normal actions based on breached rules kind. The most severity reaction on punishment exacting frame as repressive executive sanction, is done by Qualified official accountable through available laws. Even though, since, in world rights systems, attitude on punishment and defining its threshold has been under individuals absolute authority or by ignoring other individuals, defend of society, and so on. but it had the most important impact on criminal process on fixation control criteria stage to appoint the punishments. These criteria allows legislative to prevent offensive against social and subjective right by following these rules, at first, then, directs judges' statement into a logic and justice result. The policy of fixing punishment in legislation duration, and punishment selection in pronouncement stage by Qualified entities in Judicial system is remarkably under effect of mentioned criteria, in order to obtain the best possible result from punishments. In this research, considering religious judge attitude on Iran criminal rights, we have paid to answer Questions about Quality of proper measures to fixing punishments. So,

in the first section of this paper, we study punishments designating and its stages, and in the second section, we pay to control criteria on punishments designating.

SEMANTICS

From the view of logic, discussion place of perceptual foundations is prior than propositional foundations, thus, it is necessary to specify semantic domain of individual parts of decisive criteria of punishment measure line combined.

"punishment" or penal, from the view of vocabulary means rewarding of goodness or evil (**MOIEN, BITA, 3866**), in law domain has certain characteristics in criminal Right, and without its identity and rules preparation to execute that right, it would not be effective and will lose its existing nature. **Fletcher (1998) (P 25)** demonstrated that segregation of punishments from similar criminal reaction, supportive and cultural, from one side, and the other right sanction such as official sanction, civic and disciplinal from the other side is a difficult and relative affair, which according to kind of legal systems attitude may be variable. But, we can express it briefly as "punishment refers to penalize official actions that are privative or limited of society membership social or subjective right, in the case of crime commitment, will be impose on them from the Qualified persons of criminal

responsible s based on laws and by statement issued from juridical Qualified references , in order to rehabilitation and remake criminal and defending society values .

Specify kind and the certain amount of punishment will be feasible, when it is based on some of principles and underlying some standards . In this regard, we can reach criminal right main purpose , that is surveillant of prevention of crime commitment , through criminal rehabilitation in a way that he / she assay criminal punishment flavor.

The purpose of principles is basic rules that punishment will resulted from. being logical principle of punishment indicates the necessity legislative ' s previous knowledge on being behavior criminal and clarity of punishment essence in a clear legal text format , and punishment personal principle indicates the power of surveillant on devotion punishment imposed on criminal perpetrators , and also protecting the individuals , who has not committed crime personalization principle of punishment is when justified that according to his criminal social and personal condition .

Besides mentioned principles, there are standards and criteria to specify punishment, that different from system to another system. Some of these criteria consider punishment legislation stage, or in the other

hand, they pay to specify punishment, that in this condition , obligates resulted from legal principle , which is necessary . Some of these criteria consider more punishment judgment stage or in the other hand , they pay to select punishment , that in this condition , personalization principle has a clear and exact effect . Here , we explain these two concept in details :

Specify Punishment

In this section, legislative should select proper criteria for punishment process based on standards of adjusted with crime.

This process is called specify punishment, idiomatic. Legislatives in this stage use carious methods. From the view of from the he sometimes specifies article and kind of punishment as a classical style and sometimes select it based on after analyzing crime and getting results , also , often through doing crimes category , and ranking punishment , or by combining these two methods .

Islamic punishment or reprimand article issue 1991 and 1996 is resulted from classical method , and Islamic punishment article passed at year 2013 follows recent method , that is called description of (19) and (20) articles , in legal persons crimes , specially in category system.

But from the view of its nature, that is our major discussion , legislatives consider some standards to specify the range and

criminal sanction context , which , we pay it on the next section .

Selecting Punishment

This stage has legal and criminology essence , and is surveillant on specifying juratory official authorizations in choosing imposed punishment for criminal on a defined framework in previous stage (punishment legislation stage). (Zeraet , 2013 , p 130) . this stage should be adjusted , so that besides increasing juridical system efficiency , may reduce the amount of out breaking intensification on juridical procedure . Generally , these authorities during right punishment cycles have delegated to judges in 3 methods , that , we discuss briefly here :

A) First , Absolute Authority

In primary societies , rulers had absolute authority to specify punishment , and punished criminals on their own arbitrary . but , after a which , most of thoughtful people in human societies started to criticism rulers such as Montesquieu and becaria , from one side , and believers to religious values , from the other side , so that they provided stromash this system.

B) Second, lack of authority:

In this method, punishment is confined and not inflection , and judge role is just reflection of

standard punishment in petition format . This method was faced with failure, since , it did not have an appropriate place among crime and criminal , therefore , subsequently , could not rehabilitate and define society effectively so , it condemned failure.

C) Third , Relative Authority

Recently , this method is adapted in most of world punishment systems , that is according to specify the punishments previously by legislatives based on being legal , in a inflectional method , that makes judge to select the punishment on confined domain considering the Quality of crime commitment , criminal backgrounds and his condition , and society condition **(Ebrahimvand , 2013, p 19)**.

In this condition , our discussion about the criteria of specifying punishment will continue .

Control Measure On Specifying Punishment On Penalization

1. In ratification laws stage , legislative should follow some standards to specify punishment based on some measures , that can warrant general and special disincentive of crime committing , and from this viewpoint , may notify the value

importance in supporting society memberships and also explain and reduce breaking possibility of laws in society relationship bed. By Specify a proper punishment that resulted to access these purposes , requires pay attention to some standards , that completely recounting them dose not stand in this opportunity , so , we remark just a few of them:

1. Prevention of crime commitment from person who have potential criminal property
2. Prevention of crime iteration by criminal.

A) Harm measure

Sometimes, legislative specify punishment according to malefic result from punishment interaction range crime . For instance , crime commitment of liar press , whether had less harm for society , according to 698 reprimand article ratified 1996 has 2 months to 2 years prison or 74 lashes , but if this crime resulted to prime damages , according to Islamic punishment article (286) ratified 2013 , it called perpetrator of evil deeds and deserving execution.

B) Supporting value importance measure

Legislative considers value opportunity , which is to protect societies values , and specifies variable punishment for criminal . For example , while , legislative in reprimand article (698)for a simple insulation specified 74 lashes or 50000 – 1000000 Rial cash

C) Penalty, but whether

Such insulations is done related to saints , except cases that deserving lash , it has also 1-5 prison penalty , according to 513 article .

D) Perpetrator criminal capacity measure

Legislative considers criminal dangerous condition and the capacity of annihilation crime resulted of Quality of criminal behavior commitment to specify punishment from the viewpoint of laws. Article **137** and **136** are about penalties intensification of recidivation individuals , and article **130** is about penalties intensification of criminal commitment leader .

E) Punishment kind efficacy measure

One of the another legislative measures in punishment specification is efficacy of kind and the amount of penalties , as converting short – time prisons to replaced punishments according to

65 , 66 of Islamic penalties law ratified 2013 , because of lacking efficiency of these penalties , and its other harmful result , it has not any usage no longer .

F) legal limitations of not reversal measure

Of the other measures , that legislative should consider in ratification condition , is following legal texts on kind and limitation of penalties , so that , in crimes like deeds which resulted to lash , nemesis , blood money , and principles reprimand , which is discussed on note (2) of Islamic penalties law (115) article ratified in 2013 , and these penalties laws are according to Quality and Quantity condition of legitimation confined in society , and in the other reprimand crimes , it follows less reprimand standards , so that its amount of reprimand punishment should not be over the standard level.

It should be noted that specifying exact measures previously and through regarding its principles in all ratification process in a scientific format , and away from own taste or style is a very difficult affair , and is a subject that finally , and may evaluate it based on an exact

measure in comparison different crimes penalties related to each other , as in Ander van Hirich ' s interpretation says: ordinal proportion evaluates the success of legislative and makes society memberships to support protecting penalties system.

Affairs that its efficiency depends on simultaneous considering all measures related to penalties specifying for each crime separately . this issue directs legislative to use a set of considered measures , for example , in selecting penalties variety , we should attention simultaneously value importance for protecting society membership and imposed Harm and personal characteristics of criminal (peivandi , 2013 , p 179).

3. Control measures on penalty specifying in penaltization stage

In order to define penalty selecting measures in penalization stage , two issues should be studied separately : at first , give judges selecting penalties authority in a limited domain , so that their freedom to select these penalties does not seem to be an absolute authority system. Second , applying this authority will be under control of some exact

measures , so that , one can control it.

3.1. The format of penalization juridical authority

Expediency of penalties legal principle is that this penalty principle was specified by legislative and its penalization authority does not give judges . Islamic right system in some cases of crimes punishments , and all criminal properties has discussed in law , such as punishments prescribed , nemesi s , blood monies , and legal principles reprimands (punishments specified by Quran and Hadith discretionary). But , in legal non – principles reprimands , that mainly , most of these crimes are in this domain , there is a famous frame , means its authority transferred to juridical governor. (Religious superior) (Shaid e Aval 1410 , Mohaghegh sani 1414 , p 320).

The meaning of religious superior is judge , or Government , that there is some divergence of views . Some people believe that the meaning of religious superior is the judge who hearing and verifying Quarrel. In this way , and / according to such deduction Guardian council assigned reprimands specified in its statute

21/10/1983 as intercalary statement in legal bill of reprimand s ratified 1983 , which explain that reprimand specification authority was / divested from judges by congress juridical committee , is disagree with legal standards , so it declared and assigned this way :

" since , in reprimands , religious superior ' s viewpoint of variety specifying and level of reprimand , and criminal forgiveness is valid from the view of legal , and specifying special level on some cases resulted to cancel a proper and necessary reprimand , and it is an injustice component on desert criminal , therefore , this kind of specifying is contrary with legal standards .

(Mehrpour , 1989 , p 38) . Admission such a position from the view of operational , might cause some differences on justice process and induces executive problems on a condition that indicates most of court judges are not Qualified from the viewpoint of judgeship legality. In the contrary , some of jurisprudences believe that mainly reprimand authority appertained to Government and jurisconsult , not judges , and they argued , in order to

improve their own position that in most of available narratives , title of governor general , imam , messenger , the commander of the faithful and like these have a similar meaning with jurisconsult . this issue indicates that specifying reprimand principles is the responsibility of Islamic society leadership , as well as it was the job of immaculate , that in various narratives , is seen too , and confirms this viewpoint , reprimand principle should specify by legislation as a branch of Government .

In previous penalty law , the first attitude was dominated whatever , so that , in some of crimes , legislative only indicated to being reprimand principle of behavior , but did not specify its punishments , so defining of these penalties was judge view authority .

Article (28) of press law express: " publishing pictures and texts in contrary with society modesty is forbidden , and makes legal reprimand.

Also , insisting on it causes reprimand intensification and license repeal. " In this article , legislative mainly transfer the specifying

variety and the level of reprimand to court recognition.

But , through ratification new Islamic punishment law at 2013 year , legislative considers the second lookout , that is expressed clearly in article (18) : " variety , level , execution Quality and rules about commutation , pendency , elapse and other reprimand principles specify through and law ." Also in article (69) for assigning duties for crimes , that were not defined certain laws or reprimand principles , it has explained this way : " criminal commitment , who their penalties or the kind and level of it is not specified in case laws , they convicted to penalties instead of prison ." and it level of replaced law is explained in articles (83) and after that.

3.2- Dominated measures on penalization juridical authority

In crimes , that have not any certain legal special punishments , while , it consistent with over 99 percent of crimes in Iran.

Punitive system . In this condition , legislative specify this penalties principle , as mentioned in previous section , or transfer its authority to court judge to pay it in a limited framework based on reprimand penalties proportionate in format of petition

. In relevant narratives reiterated from immaculated imams on necessity of following applicative measures in penalization stage . A person named Hamad ebn Osman asked some Questions of Imam sadegh (p.o.H) about level of discretionary punishments. imam answered : "discretionary punishment is less than prescribed punishment" . Hamad asked : How much is it's exact amount?, Imam answered : "as much as religious judge considered it based on physical power of offender and the kind of offense". Islamic jurists expressed this fact about explanation of such Hadith , that reprimand principles are not limited to these two factors , but all affairs that have effect on punishment intensification or remission should considered by judge . **(Makarem Shrazi 1425 , P 112).**

Regarding this fact , penal legislative in Iran Islamic Republic in all periods of legislation has emphasized on necessity of consisting some standards on selecting reprimand from judges . Article **(728)** reprimand and also article **(18)** ratified **2013** confirms this subject.

In the recent article , legislative has expressed some of these standards as : " court in issuing reprimand order considers following facts based on legal regulations :

a) Criminal motive, mind condition, and his psycho condition during crime commitment,

b) Crime commitment method, limitation of duty breaking and its harmful results ,

C) actions of criminal after crime commitment

d) background and his own , family and social condition , and its effect of punishment reprimand on him.

Besides these standards, there are several articles that are assigned to damping , intensification , and exemption of punishments.

Regarding this fact as a serious anxiety, in other cases except samples that legislative has mode judge to follow some of special codes, such as damping and mandatory exemption of penalties positions , it seemed that one may not expect a fixed executive warranty for condition of lacking following legislative instructions measures from the courts . The importance of this subject will be clear more, when , judge authority is very immense . For example , crimes commitment placed on article **(571)** and **(652)** of reprimand law resulted to deserve 3 months to 10 years prison , means the judge has authority to select 40 times of punishment at least to gain penalties . Abviously , such an authority should be a proper policy to oblige courts to forecast penaltization standards , Till , it does not practically convert Trail stages to siding functions .

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