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INVESTIGATING THE MODEL OF TARGETED PUNISHMENT IN THE LAWS OF ISLAMIC COUNTRIES WITH EMPHASIS ON IRAN

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ABSTRACT

It is necessary to draw up a lawful, rational and fair, regular legislative criminal policy that enables the maximum achievement of the purposes of punishment as well as the provision of the rights of the victim, the offender and the community in the areas of limited retribution.

In the area of Islamic countries and Iran, proceedings have been taken regarding to legislation and certain crimes and punishments. By study the mentioned laws, it is possible to extract and categorize 3 models of legislating the direct design of jurisprudential content related to limits in the laws and referring to jurisprudential and mixed sources that are the result of combining the two previous models (Iran).

Regarding the causes and number of crimes, due to differences in jurisprudential opinions, divisions in the mentioned issues can also be seen in Islamic countries. In the present articles, by study the opinions and views of Shia and Sunni jurists and the laws of Islamic countries specific to our country, we discuss the principles, possibility and methods of implementing the targeted punishment model in targeted crimes as a possible and desirable model.

INTRODUCTION

Social and political systems in different and diverse historical processes, constantly with criminal interventions and numerous and variable justifications, have tried to direct the methods of responding to crimes from chaos and unregulated revenge that matters such as punishment should be organized according to special principles. These criminal interventions as tools for exercising the power of governments to regulate social affairs have been the subject of much debate and controversy due to serious restrictions on rights, individual liberty. It is very clear that when individuals encroach on the lives, property, freedom and psychological security of individuals and society, the community and the government also act in support of individuals and individuals and choose ways to respond to them. Punitiveness is one of the first theories about the justification of punishment. This idea is as old as the history of human life. Punitive believe that punishment has inherent legitimacy, based on the notion that anyone who commits a mistake deserves punishment (Javan Jafari and Sadati, 1390, 120). Others see the imposition of punishment on offenders in order to prevent them from committing a crime in the future (special deterrence) or others who have the capacity to commit a crime (general deterrence). Some also believe that punishment, if it does not have a deterrent effect, can be executed in such a way as to deprive the offender of the possibility of committing a crime and harassing another (Empowerment of crime). Another group sees punishment as a way to correct, rehabilitation and readmission of the offender (Correction and treatment) (Ibid., 121). The doctrine of deterrence of punishment and its effect on the offender and non-offenders is not only an important basis for justifying punishment but also expresses the expectation that there is a punishment as the most important factor eliminating the idea of delinquency. Disability, which is a step towards depriving the offender of power, is based more on one inevitability, and that is that the purpose of intimidation or correction of punishment is not effective for some offenders. And a group of criminals as far as they can criminals, the only way for society to support itself is to put aside or deprive these criminals of their criminal capacity (Haji Dehabadi, Salimi 1398, 102).

Legislative and executive criminal policymakers have used these justifications to suit their social and ideological needs and requirements. But it seems that among some goals the possibility of community is not established in absolute or partial terms. For example, can the purpose of intimidation, correction and entitlement be considered in the engineering of a combined penal system? The purpose of appropriate intimidation is to increase the severity of criminal reactions. In contrast, correctional goals require the competence and flexibility of the penal system in the face of offenders, while the punitive approach can equate the penal system with the equality or proportionality of crime and punishment (Javan Jafari vasadati, 1390, 121). In the texts of Islamic jurisprudence, rules and regulations regarding crimes and punishments have been provided. The basis of these rulings is the protection of the public interests of the Islamic society. Criminal sentences are related to crimes and crimes, which include hadd, punishments, retribution and blood money. In jurisprudential texts, philosophy and the purpose of explaining these rulings

are generally considered to be the interests of people, religion, intellects, honor, a set of high human values in material and spiritual dimensions. On the other hand, Islamic punishments, including penancing by the lash, are planned on the basis of interests and corruptions, and the purpose of enforcing the rulings is to achieve expediency (Knowledge, 1377,170). There are many differences of opinion among Islamic sects regarding the hadd crimes and their number and their execution and non-execution in the era of the absence of the Infallibles (PBUH). Regardless of the various differences of opinion in the position and expression of the definition of hadded punishments from the perspective of Shiite jurisprudence, it can be said that the hadd of some corporal punishments are of certain sizes that have been determined by the Shari'a for specific crimes.

In the same context, Article 15 of the Islamic Penal Code adopted in 1392 has been accepted by the legislature. Among the Islamic countries and influenced by Sunni jurisprudence, the legislators of each country, taking into account the jurisprudential principles and different methods, have approved the crimes as hadd, which will be discussed in future discussions. As mentioned earlier, criminal intervention is a general expression to describe the functioning of the criminal justice system in all three stages of legislation and judicial review and enforcement. Targeted punishment means policy-making in the field of punishment, both in type and extent based on a predictable and systematic logic in which the scientific teachings of penology and criminology play a significant role and it is governed by the inalienable principles of criminal law, such as the principle of proportionality, the principle of application, the criminal law committee, the principle of moderation, and so on and at the same time, they pay attention to the interests of all three parties to the crime, namely the criminal, the victim and the society. The realm of punishment is purposeful in the legislative and policy-making stage (Haji Dehabadi and Salimi, 103, 1398). In this article, we try to explain the necessity of punishment, targeting of hadded punishments and trying to implement the mentioned strategy regarding hadded crimes by examining the set of laws and regulations of Islamic countries and Iran and jurisprudential texts.

TYPOLOGY OF HADD PUNISHMENTS IN IMAMI AND GENERAL JURISPRUDENCE

In Arabic, the word “hadd” literally means forbidden that is why the people who prevent people from entering are called Haddad. In the mentioned language, the prison guard is called Haddad because of the obstacle they have for the prisoners to leave, and sometimes he is also called Haddad because it prevents the entry of other meanings. For this reason, punishments have also been called hadd because it prevents the commission of a crime (Fathi Behnesi, 1980, 21). Others have expressed hadd as meaning border, chapter, mediator between two things that prevent its mixing (Ragheb Esfahani, 221: 1412). In existing Persian cultures, concepts of equality such as border, size, end, side and synonyms such as end, size, amount and border have been expressed (Moin, 1981, 1342/1). In general, it seems that the common value expressed the lexical meanings of hadd in Arabic and Persian in the two concepts of obstacle and matters hadded to quantity, size and boundary. In the

Holy Quran, it is determined based on the verses in which the words, Hududah and Hudud are used, out of the total of 14 times (hadd) mentioned in the Qur'an, eight are related to divorce and its rulings, and the other six are related to the guidance of marital affairs (Surat al-Baqara, verses 187, 229 and 230, Nisa, verses 13, 14, at-Tawba, verses 97 and 112, al-Mujadala, verse 4, and al-Talaq, verse 1). Therefore, it seems that the Holy Qur'an does not call crimes or punishments hadd, and the word hadd is used in its plural form (hudud). In narrations, hadd has been used in its literal meaning, ie border, and sometimes it has been used in the meaning of divine law. In some uses of hadd, the meaning of the framework and boundary of the divine laws is willed, in these three meanings, hadd is not necessarily associated with punishment. In some narrations, hadd is used to mean a criminal act subject to punishment and not the punishment itself. Hadd in the sense of what we call ta'zir today is also widely used. The opposite of this usage, that is, the use of ta'zir and discipline, is also common. This means that in some narrations, the word hadd has been used, but the jurists have carried it on ta'zir. Hadd has been used in the absolute sense of punishment in a way that includes even retribution, so we should not lose caution in carrying the word hadd on what we call today hadd against ta'zir (Nobahar, 217, 1392).

In religious terms and from the perspective of the technical and specialized language of jurisprudence, the punishment is hadded to the ta'zir punishments that have been assigned to the Islamic ruler; “Promoting according to what the ruler sees” and “Punishment for every forbidden act” according to the rules of jurisprudence (Mousavi Khomeini, 2001, 2.477). Its type and amount are specified in the Shari'a. The views of Imami jurists regarding the term definition of hadded punishments have aspects of distinction and distinction. Some jurists in this position stated that the hadd of non-financial punishments are set in the holy Shari'a of Islam for certain crimes and the amount and manner of certain punishments are stated in Islamic sources (Tabatabai, 1412: 415/13).

Sometimes it is used in a broader sense, so that other punishments such as "ta'zir" are also included (Hashemi Shahroudi 1387: 3/251). Some have defined the Hadd for crimes with specific punishments. (Mohaqeq Hali, 1408: 136/4). The owner of the jewel has stated in the definition of hadd punishments that the sharia hadd is a punishment that is imposed on the obligated body and its amount is determined by the shari'ah in all crimes (Najafi, 1440: 254/41). Some Sunni jurists, like the Hanafis, consider hadd to be a punishment whose amount is specified and its implementation is the right of God (Sarakhsi, 1406: 9/36). Others have stated the hadd in the term of the jurists as a specific punishment that God Almighty has made obligatory (Al-Jaziri, Bita, 11/5). It should be noted that some Sunni jurists have also considered retribution as a hadd (Zuhili, 1404: 13/6).

It is important to note that the assumption of a number of crimes as "hadd" and the imposition of another category as ta'zir do not depend on the origin of their design in religious sources. It is not the case that the punishments mentioned in the Holy Quran are hadd and the punishments mentioned in the Sunnah are

considered ta'zir. A number of punishments that are now considered hadd have been expressed in the tradition of the word and the current tradition of the infallibles (Nobahar. 137.1393). The causes of hudud by the Imami jurists can be examined in two sections: jurisprudential texts and narration. The causes of hudud in the eyes of Imami jurists in jurisprudential books, sometimes as an example, some jurists have stated the crimes of sodomy, leadership and adultery under the title of one of the causes (due to the implication of the documents and different interpretations of the jurists from the narrations of the source of inference of the rulings or that despite the unanimity in the first part, they differ in the way of classifying the crimes). Some other Shiite jurists have mentioned the crimes that lead to serious punishments under the four headings of adultery, theft, qazf, and moharebeh (Meqdad, 1384: 851-869 / 2). Sheikh Tusi has stated the topics of hudud in six chapters: adultery, qazf, theft, cutting the road, drinking alcohol and apostasy (Sheikh Tusi, 1387: 71 / 8-72). Some have also stated the causes of hudud, including adultery, the functions of adultery (sodomy, sahq and qiyadat), qazf, drinking alcohol, stealing, cutting off the path of moharebeh). The crimes of apostasy and fornication have been mentioned as punishments. (Mohaqeq Hali, 1408: 136/4). The late Imam Khomeini stated the causes and hadd in the six causes of adultery, sodomy, fornication and fornication, qazf, drinking alcohol, theft and moharebeh (Mousavi Khomeini. Bita, 585/1380: 2-622). Some contemporary jurists have considered the causes of hudud as eight (Makarem Shirazi 17.1818) or 16 cases, which are avoided for brevity (Khoii. 1422: 55-32). According to what was said The following can be considered as a set of disputed boundaries: Crimes of adultery, sodomy, drinking alcohol, theft, adultery, leadership, fornication, apostasy, moharebeh, Masturbation, Sex with animals, Sex with the dead, Marrying a woman after marrying a Muslim woman without her permission, kissing a boy lustfully by Muharram, sab al-Nabi, magic, claiming prophethood, selling a free man. The definite and definite hadd in Imamiyyah can be classified into the following: Crimes of adultery, qazf, drinking alcohol, stealing moharebeh and the types of punishment for these crimes can be divided into six sections: murder, stoning, flogging, amputation of exile and flogging, as well as stoning in adultery (Mohaqeq Hali, 1408: 141 / 4-142).

There is also disagreement among Sunni jurists about the number of causes; However, in total, the three crimes of adultery, theft, and qazf are consensus and are considered as definitive examples of hadded punishments, but he has pointed out the difference of jurists on its hadd. (Al-Jaziri, Bita, 12/5). According to Shafi'i jurists, seven crimes are punishable: the first is the book of injuries, which includes retribution for the soul and limbs, ransom and others, the second is fornication, the third is apostasy, the fourth is adultery, the fifth is qazf, the sixth is theft, and the seventh is forbidden drinks (drinking alcohol). As mentioned earlier, some Sunni jurists also examine retribution under the headings of hadd crimes. Abu Hanifa also considers the crimes included in the title of hadd to be hadded to the crimes specified in the Qur'an and the number of them has been stated in five cases (Al-Jazeera Bita: 12/5).

Some other Sunnis also stated the causes of hudud up to seven cases, which include adultery, qazf, drinking alcohol, theft, moharebeh, apostasy, and

fornication (Odeh, Bi Ta, 1.79). However, according to what has been said, the general jurists of scoundrels, procurement, Homosexuality, Intercrural sex, false accusation of unlawful intercourse, insult to prophet, magic, and apostasy do not bring you the causes of hadd. And the crimes of prostitution, drinking alcohol and war are also disputed. It is necessary to explain that the rulings and other related matters such as evidence, manner of execution, etc. will be omitted in order to be concise, and if necessary, the issues related to the laws and regulations of Islamic countries will be stated. And the crimes of prostitution, drinking alcohol and war are also disputed. It is necessary to explain that the rulings and other related matters such as evidence, manner of execution, etc. are omitted in order to be concise and if necessary, the issues related to the laws and regulations of Islamic countries will be stated.

EXISTENCE AND NATURE OF TARGETED PUNISHMENT OF CERTAIN CRIMES

According to what was said

In this section, we try to study and analyze the elements of the targeted punishment model in criminal offenses, deal with the issues of the situation and methods of punishment in juvenile crimes in Islamic countries, especially Iran, the jurisprudential principles of implementing the model in juvenile crimes, as well as identifying and finally introducing the desired and effective model of targeted punishment in juvenile crimes.

Punishment of certain crimes in Islamic countries

Before entering into this article, it seems necessary to mention this introduction that the realm of punishment is purposeful in the legislative and policy-making stage. In fact, punishment is the first step to achieve the ideal of justice in the legislative stage. (Haji Dehabadi, 1398,103).

Therefore, in this section, we try to examine the current situation in Islamic countries in the legislative stages against certain crimes in the field of punishment.

In response to the crimes subject to the punishments of hadd, the Islamic countries have each, in accordance with the school of jurisprudence and the legal framework of their respective countries, legislated and criminalized the crimes of hadd and determined the prescribed punishments. In a general classification, 3 models of legislation can be identified.

Some countries have directly criminalized these crimes in their criminal laws.
Some countries have used the model of referring to jurisprudential texts, while others have used the mixed model, which is a combination of the two previous models, which we will examine. It should be noted that some countries that have taken direct action in the law have used extensive methods (a large number of crimes and some narrow (minimal crimes), which we will examine below.

Direct Design Model in Law

In this way, the legislator raises certain crimes in full according to the jurisprudential standards he wants and specifies the punishments and conditions for their realization, some of which we refer to.

Yemen

According to the Penal Code of Yemen, adopted in 1994, in the first book (general sentences of crimes and punishments), the second chapter (types of crimes), in the 11th month, crimes are divided into two types: hudud, retribution and ta'zir. And in Article 12 on finite offenses at the top of the article, Hudud has been introduced as a crime whose punishments have been determined based on the Shari'a texts and they are pure Haqq Allah or Haqq Allah mixed with the right of the people) which are interpreted as Sharia Hudud. In the following article, the causes of hudud are seven cases of fornication, apostasy, moharebeh, theft, adultery, false accusation of adultery or sodomy, and drinking alcohol. According to Article 2 of the law, personal criminal responsibility is not a crime or punishment except by law, and Article 4 stipulates that the law in force at the time of the crime is binding.

Despite the clarification of these recent articles, in some other legal articles, crimes subject to hadd and retribution are generally excluded from the rules governing other crimes. For example, in Article 19, the punishment for committing crimes subject to hudud and retribution is excluded from the general sentence contained in the article. Which shows the legislator's determination to draw special conditions for such crimes (Legal Republic Decree No. (12) of the year 1994 on crimes and punishments).

Pakistan

In order to bring the legal provisions in line with Islamic concepts, the country has developed legal guidelines for some crimes that are subject to hadd. These crimes include adultery, theft, false accusation of adultery or sodomy and drinking alcohol. Regarding the criminalization of adultery and its sharia punishments, the Instruction was adopted in 1979. According to Article 2 in the definitions, the age of criminal responsibility is 18 for men and 16 for women. In the mentioned instruction, the hadd means the punishment determined by the Holy Quran or Sunnah. Pursuant to paragraph 2 of Article 5 of the Instruction on Adultery, it is divided into two types: adulterer and adulteress and others. In the first part of the punishment for adultery, stoning in a public environment and in the second part (non-adultery) the punishment of flogging in a public environment is provided. It should be noted that in the mentioned instruction, the method of execution of the prescribed punishments is also specified, which is refrained from expressing them in terms of brevity.
Regarding the crime of theft, an instruction called the Instruction on Crimes against Property (Hudud) was approved in 1979. Pursuant to Section 3 of Article 2, the age of puberty is stated to be 18 years old. The penalties for theft are: amputation of the right hand (in the first stage), left leg (second stage), life

imprisonment (third time). A noteworthy point in the law is that the execution of amputation punishments by the surgeon and in the hospital (paragraph 7 of Article 9).

Regarding 1979, false accusation of adultery or sodomy was criminalized and a religious instruction was prepared. In this decree, in the definitions section, references are given to the criminalization instructions of adultery, which was mentioned earlier and has used the definitions and generalities of that decree. According to Article 3, if a person makes a false accusation of adultery, either in writing or orally, with the intention of causing harm to others and without four religious witnesses proving his claim, he will be subject to 80 lashes (Articles 3 and 7).

Model Of Referring to Jurisprudence

In some other Islamic countries, which believe in enforcing the hadd, instead of directly stipulating the materials related to crimes and serious punishments in their adopted laws, they use the method of referring to the jurisprudential texts in question. In this category of countries, this is achieved by legislative provision in the penal code. We will examine this method of legislative policy.

United Arab Emirates

According to Article 1 of the Penal Code of this country, crimes are divided into hadd, "retribution and blood money". And these crimes are subject to Islamic Sharia rules, and also these crimes have been declared in the law, their definitions, conditions and examples are subject to Sharia rules.

It should be noted that in some articles of the law, such as 26, 28 and 66, hadd crimes are considered as crimes and the punishments of death, life imprisonment and temporary imprisonment for crimes, without any specific punishment for the hadd are stated. It should be noted that hudud is considered as one of the main punishments and it is stated that in case of not fulfilling the sharia conditions to prove the verdict, the courts are free to determine the punishment according to the punishments stated in the law (Law of Punishments of the State of the United Arab Emirates, Number (3), Year 1987).

Oman Country

Article 1 (Preliminary Articles) of the Penal Code of this country stipulates that the punishments contained in this law are considered ta'zir, except in cases where there are hadded punishments or retribution. Examining other articles of the law, it seems that in this country, the method of referring to jurisprudential texts has been used and in the division of crimes and punishments, there is no clear definition of certain crimes. It is noteworthy that in some chapters, including the seventh chapter (crimes against public morality, corruption and prostitution)

Some crimes that are similar to some crimes such as prostitution (AD 254), adultery and sodomy by rape (AD 258), adultery (AD 259), incestuous adultery (AD 260), Saab al-Nabi (paragraph 269 AD), drinking alcohol (AD 286) are foreseen. It seems that these crimes are ta'zir and if the conditions provided in the crimes are not met, they will be tried based on these articles. (Omani Penal Code, No. 7, 2018).

Maldives

The first chapter (general explanation) of paragraph 2 stipulates that this law will be applied as the law of the Maldives in all parts of the land (air, land and sea). Exceptions and restrictions on this absolute ruling are the Shari'a rulings and laws that are passed for a temporary period. The clause further states that judges have the power to reduce the punishment, except for the crimes envisaged in Islam. In the mentioned section and chapter, it is stipulated that except for the crimes subject to the punishment of hadd, the other crimes foreseen will be considered according to the mentioned law. Section 5 of the above-mentioned chapter defines a prison as a place where criminals are imprisoned in connection with crimes prescribed by law or sharia as punishment. According to the ruling Shari'a, hudud refers to crimes whose punishment is determined in the Holy Quran itself or the biography of the Prophet (PBUH) and the number and causes of about seven cases are stated. In order to amend the Pakistan Penal Code (ACT XLY1850) and bring it in line with Islamic law in 1979, a ban (enforcing the hadd) ban on the consumption of alcoholic beverages was passed. In the second chapter, according to Article 8, if an adult Muslim drinks alcohol through his mouth, he is criminally liable and should be punished with 80 lashes. According to Article 6, urgency and reluctance can prevent a person from being blamed.

Sudan

In this country's penal code, punishments are divided into 10 categories, among which there is no hadd punishment as an independent and specific category, but among the articles in the law, hadd crimes have been criminalized in a scattered manner. In the fifteenth chapter, in articles 145 to 150, the crimes of adultery, sodomy, adultery or sodomy by rape and incest are foreseen. The punishment for adultery is stoning and other than flogging. Article 157 defines the crime of false accusation of adultery or sodomy and its punishment is eighty lashes. Articles 167 and 170 also criminalize the crimes of moharebeh and theft. The noteworthy point about theft is that the punishment for the thief in the first stage is amputation of the right hand and in case of repetition, the punishment is imprisonment, which is not less than seven years. Article 126 also provides for the death penalty for apostasy if it is insisted upon and without repentance (Criminal law of 1991 Sudan). Considering the legislative criminal policy of these countries that have used the model of direct design of crimes and punishments in the law, some points can be pointed out. First, there is no single procedure for the number of crimes subject to hadd, and the causes of hadd have become multiple and different. Secondly, the same fragmentation can be seen in determining the punishments.

Third, the lack of use of disciplined and coherent legislative practices that have led to disproportionate distribution of legal material. Fourth, the non-use of new criminal and criminological facilities in the legalization and punishment phase, which is generally affected by the perception that crimes are not fixed and inaccessible and it must be identifiable exactly as it is stated in the jurisprudential texts and is included in the legal texts. It should be noted that in addition to these countries, as an example, a number of other Islamic countries such as Indonesia, Malaysia and Nigeria have also used this model of the plan, which in terms of brevity, the legal provisions related to them were avoided.

Mixed Model

In this model of criminal policy, in the stage of legislation and punishment, a combination of the two previous models (the model of serious punishment in approved legal texts and references to jurisprudential texts) has been used. In our country, after the victory of the revolution and the emphasis in the constitution that the model of legislation in the country should be based on the Qur'an and Sunnah, laws were passed in accordance with the rules of Sharia. On 6/3/1361, with the approval of the law (hadd and retribution and its regulations), some punishments were counted. In this law, the causes of about eight crimes were adultery, drinking alcohol, intoxicants, sodomy, fornication, prostitution, false accusation of adultery or sodomy, moharebeh and corruption on earth and theft. It should be noted that in 1985, in Article 26 of the Press Law, apostasy was added to the number of hadd without mentioning a specific definition. After that, in the Islamic Penal Code approved in 1991, certain crimes were dealt with in the same way as the law (hadd, retribution and its provisions). And in 1996, in the book of Ta'zizat, in Article 513, the sentence and punishment of the sub-prophet were dealt with and the articles of the previous laws were practically repeated, and generally the Iranian legislator was inclined to use the first model.

In 1392, a new criminal policy regarding the model of legislating criminal offenses and also a broader interpretation of the causes of hadd was stated in the Islamic Penal Code. In the first chapter, Article 14 introduces hudud as one of the four main punishments of the Islamic Penal Code and considers it as one of the punishments that causes, type, amount and quality of its implementation in the holy sharia. In Article 220, the legislature effectively declared the use of the mixed model, which had not been explicitly stated before: The hadd not mentioned in this law shall be acted in accordance with Article One Hundred and Sixty-seven of the Constitution of the Islamic Republic of Iran.

According to the mentioned principle, the judge is obliged to try to find the verdict of each lawsuit in the above-mentioned laws and if he does not find it, to issue the verdict based on valid Islamic sources or valid fatwas and the judge cannot refuse to hear the case and issue a verdict on the pretext of silence or defect or brevity or conflict of laws. It should be noted that some jurists before the adoption of Article 220 and citing Article 36 of the

Constitution which stipulated that the sentence and its execution should be believed only through a competent court and in accordance with the law and the principle of legality of crimes and punishments, that Article 167 does not include criminal matters (Habibzadeh, Mohaghegh Damad, 1374).

Some also considered it to include only formal criminal law. On the other hand, some jurists, in evaluating the opinions and arguments presented by the opponents, did not consider the judge's right to refer to reliable sources and fatwas to be valid, and considered their opinions to be contrary to the rules of Sharia (Haji Dehabadi, 2016). Some, while defending this legislative action and that the existence of jurisprudence in the judicial system is considered a guarantee of dynamism, problems of not explaining Article 167, the existence of many problems such as the comprehensiveness of reliable sources, the ambiguity of the concept of validity and conflict in sources and fatwas with each other have also been expressed as problems (Ahmadzadeh and Elham, 2016, 268). In general, it seems that the legislator has used a non-integrated policy in this area and in criminalizing certain crimes and Regarding the causes of hadd, in comparison with the previous laws, we are witnessing an increase in the causes of hadd, and regarding the punishments, we are witnessing problems in practice due to the reference to jurisprudential texts, which has necessitated the adoption of a purposeful punishment model. It should be noted that in some Islamic countries, despite the fact that according to the constitution, their official religion is Islam, for various reasons, including the lack of conditions for the implementation of Islamic boundaries, laws on Islamic crimes and punishments, especially boundaries, have not been established. One of them is Egypt, which, despite the constitution stating that it is Islamic, is governed by customary law (Egyptian Penal Code 1937).
It is necessary to mention that in our country, some jurists also discuss the issue of establishing hudud or closing it during the absence of the infallibles (PBUH), have pointed to the lack of a comprehensive society, its conditions, and the existence of perfect human beings at the top of social management, whose effective role in educating society is obvious and they had strong possibilities that they doubted the implementation of the sharia hadd (Mohaghegh Damad, 1378, 73).

Among the early jurists, Ibn Idris and Mohaqeq Hali have also opposed the implementation of hudud in the era of the absence of the Infallible (pbuh). Ibn Idris does not allow the establishment of hadd for anyone except for the Sultan of the time who was appointed by God Almighty and also the person who was appointed by the Imam to establish the hadd, and no one except these two people can establish the hadd. Mohaqeq Hali also says that during the presence of the Imam, no one other than him or someone appointed by him for this position is allowed to implement the hadd (Mohaqeq Hali, 1413: 816/1).

By carefully considering the words of the opponents, the permission to perform hudud during the absence of the infallibles is obtained, which some jurists say that The faqih should not perform hadd during his absence; Apparently, they do not want to say that the hadd should not be performed at

all, but they want to say that one of the duties of the jurist is not to perform the had (Masjid Sarai, Momeni, 1388, 142).

Some Sunni jurists believe that the addressee of Quranic verses is the Imam and they claim consensus on this matter (Fakhr Razi, 1420,313 / 22).

Some of the contemporary Sunni jurists have also divided the duties of the Imam and the leader of the Islamic society and have stated that supporting the divine hadd and punishing the opponents and violators of the hadd are among the prescribed duties (Zuhili, 1405: 699/6).

THE OPTIMAL MODEL OF LEGALIZATION IN HADD AS A MODEL OF TARGETED PUNISHMENT

According to what was said in the previous sections about the criminal policies of Islamic countries in different models regarding hadd crimes, the lack of a theoretical and practical framework in which the matter of punishment is properly and in accordance with the principles by which every person has criminal responsibility to commit and by which he is punished in a logical, fair and regular manner. Therefore, in this section, we try to design the theoretical and practical frameworks of the purposeful punishment model, to study the current and desirable situation regarding hadd crimes in our country, and to use the results and fruits of this issue in criminal matters related to crimes.

Theoretical Foundations of Purposeful Punishment in The Implementation of Hadd

Punishment in its conventional sense is one of the characteristics of the government as one of the tools to prevent, control and fight crime. And each of the political systems according to their accepted principles and goals and actions have determined their crimes and punishments (Mohebbi, Riyazat, 2016, 35). Crimes that are used today in the literal and specialized sense are generally among the signatures of Islam for example, in the pre-Islamic period, in the conditions of the Arabian Peninsula, it was one of the usual punishments to cut off the hands of thieves, as the Quraysh also carried out this punishment. In this section, we intend to respond to the review of fines, in the mirror of the theoretical foundations of the purposeful punishment model and the purposes of punishment.

Impossibility Of Aggregating the Goals of Punishment With Each Other Absolutely

Combining the goals of punishment completely in one or more types of punishment is something that is not possible in practice. That is, the four goals of intimidation, correction, and punishment cannot be met by one or more punishments at the same time, although it is possible to achieve two or more goals at the same time (Haji Dehabadi, Salimi, 2009, 106). Regarding the purpose of criminalization of crimes and legislation of certain punishments, it should be distinguished according to the type of punishment. For example, in

some crimes against chastity and public morality, the Shari'a has imposed the death penalty, stoning, flogging, shaving, and deportation in order to protect the honor and integrity of the family. Execution of the death penalty and stoning will certainly not ensure the correction and rehabilitation of the individual, and in the first place, bringing the individual to punishment for his action (punitiveness) is the goal and secondly, the possibility of providing a secondary goal of creating public deterrence and threatening potential offenders to stop committing a crime by threatening to carry out severe and irreversible punishments of execution and stoning. It should be noted that the public execution of these punishments, which are also mentioned in some jurisprudential sources and laws of some Islamic countries, is in line with achieving the same goal. (Article 56 of the By-Laws on the Execution of the Rulings on Hadd, Deprivation of Life, Amputation, Retribution of Soul and Organ and Injury, Diyat, Whipping, Exile, Denial of Knowledge, Compulsory Residence, Prohibition of residence in a certain place or places; Approved on 03/27/1398 by the Head of the Judiciary). The punishments of flogging, shaving the hair on the body of the convicted person are intended for punitive and degrading purposes, and in the next stage, the purpose of looking to the future, which is the specific deterrence of the offender and the general intimidation of potential offenders. The harsh nature of such punishments can hardly serve the purpose of correcting and rehabilitating offenders. Therefore, by accepting the presumption of the incorruptibility of the goals of punishment, you should think about the point where the highest degree of aggregation of goals can be achieved and by combining punishments with the observance of the jurisprudential principles of the issues, this important goal was achieved. In this section, the goals of punishment and intimidation are largely met but the goal of reform does not seem to be achievable in the current way. It should be noted that the legislature, by adopting a criminal policy on crimes committed by children and juveniles, has stipulated in Note 2 of Article 221 of the Islamic Penal Code adopted in 1392 that a juvenile who has committed the crime of adultery will be sentenced, as the case may be, to the security and educational measures provided for in the first book of the law. Regarding the adoption of corrective measures for adult offenders, it seems that it can be applied by observing the jurisprudential principles and emphasizing the implementation of the hadd of emerging criminal institutions. It seems that before the passage of Article 23 of the Islamic Penal Code adopted in 1392, it was not possible to sentence a person who had been sentenced to a maximum sentence to a supplementary sentence. However, with the passage of this law, there is a supplementary punishment commensurate with the crime committed and the characteristics of the offender. Some jurists have also emphasized that the legislature must make every effort to achieve the maximum possible goals and must specify the main purpose of the imposition of penalties and according to it to impose punishment and in these cases, with more blind totalitarianism, the more important goal should not be sacrificed to stereotyped punishments that violate it (ibid., 107). It should be noted that some authors believe that in Islamic law, the punishment of the Shari'ah hadd and retribution are prescribed with the description of being fixed in terms of type, amount and even the manner of its implementation. The existence of jurisprudential institutions such as the

eternal sanctity of marriage, non-acceptance of the testimony of the deceiver and non-acceptance of the testimony of the witness and prohibition of inheritance as a consequential punishment and the punishment of adultery and drinking alcohol in the holy time and place, the punishment of adultery and sodomy with corpse and exhumation, shaving the head and exile in a prostitution can be applied with the definition of supplementary punishment. But from all these special narrations, it is not possible to impose the imposition of other ta'zir punishments in addition to the prescribed amount in all instances of hudud and qisas (Salehi Moghadam, others 1397, 182). Acceptance of these approaches means that the holy shari'a of Islam in the category of punishment and social reproach in the realm has separated its way and method from the wise of the world, but in the field of punishment has accepted this way and method (Nobahar, 1390,149). In order to use new and emerging new institutions, we can speak against the common perception of the idea of changing the expediency of fines (Nobahar, 1397, 185).

In other words, the ruler today, using the secondary rulings and the element of expediency in cases of conflict between the criteria and the rulings of Sharia, the possibility of the effect of the conditions on their failure to act, the ruling may not apply some hadd and to determine alternatives for some hadd, so it is necessary to consider the expediency of the hadd and the quality of their implementation by observing the requirements of the time, place and persons of punishment according to the narrations of jurists (Momeni, Rostami Najafabadi, 1394, 9).

The Priority of Certainty Over the Severity of Punishments

In principle, there is no relationship between the severity of the punishment and the achievement of the goal, and the severity of a punishment adds to its desirability if the type of punishment is in line with the crime and in line with the four goals. In fact, the effect of the amount of sub-punishment on the correct choice of the type of punishment and secondly that it is not too much is needed (Haji Dehabadi, Salimi 1398, 107-108). As stated in the previous section, serious punishments are usually severe. This has caused the ill-wishers to weaken the religion of Islam in the minds of the public and the world public opinion by referring to the issue of the severity of severe punishments with negative propaganda. Such global aspects of the execution of hudud caused Imam Khomeini (may God have mercy on him) to state regarding the execution of stoning that it is not advisable to carry out stoning at the moment. We have many enemies who are propagandizing against us, and we should not provoke the enemy with our actions. No action should be taken in court at all to prove the crimes in which the divine hadd have been determined. Ayatollah Makarem Shirazi also regarding the execution of stoning in some circumstances and times believes that the execution of the above hadd is not possible and has great corruption (Makarem Shirazi; 2002; 2.373 and 374). In view of these issues and the contents of the issues, it seems that we have provided the severity of the punishments in the hadd crimes at the level of legislation, but their certainty has not been ensured in practice. Some jurists believe that the level of human perceptions and consciousness is

never at a level that violates or closes the divine laws and hadd therefore, according to the international problems and dilemmas that are created for the Islamic system, the hadd must be within the hadd of legislation and inclusion in the laws, but in the executive position, he used other solutions. The reflection of these jurisprudential approaches can be seen in Article 225 of the Islamic Penal Code and Article 50 of the By-Laws on the Execution of Hadd, Deprivation of Life, etc., approved by the Head of the Judiciary on March 17, 2017. According to Article 225 of the Penal Code: If it is not possible to carry out a stoning upon the proposal of the court issuing the final sentence and the consent of the head of the judiciary, if the crime is proven by evidence, it will result in the execution of the adulterer. Adoption of local and special measures such as this article, in addition to undermining the principle of certainty of punishments for other crimes in question, such as amputation of the thief's hands and feet, will not be helpful. Therefore, in this part, the legislature should find a way to reduce the negative burden of enforcing certain punishments, emerging institutions at the level of legislation as penal punishments or citing institutions such as consensual reactions at the level of enforcement to reduce its negative functions. It should be noted that in the recent strategy, fines still remain in the text of the law and can also serve the purpose of intimidating punishment. The agreement of some punishments has jurisprudential principles however, its implementation requires dynamic ijtihad and consensus and cooperation of lawyers, criminologists, sociologists, psychologists and policy makers in the field of social sciences in order to strengthen the foundations and determine the executive method (Haji Dehabadi, Niknasab, 1397, 87). 3-2- Priority of restoration over punishment: In the purposeful punishment model, it is important to note that repairing the damage takes precedence over punishment. In other words, in cases where the victim situation and society can be returned to the pre-crime situation, between punishment and restoration of the previous situation, priority should be given to restoration of the previous situation and by preparing a specific mechanism to restore the former situation, the perpetrator should not be punished. (Haji Dehabadi, Salimi, 1398, 108). In the Islamic legislative system, certain crimes, according to their philosophy and the purpose of their status, which are the protection of the most fundamental social and human values, are in the forefront of other crimes and punishments in terms of importance as if in the Holy Quran, one of the attributes of the believers is the protection of the divine hadd (Repentance, 112). Therefore, in the Islamic legislative system, the precedence of restoration over punishment cannot be explicitly mentioned however, among some of the provisions of hudud, especially in the crime of theft, there are cases that somehow encourage the offender to return to the status quo ante and repair and compensate. For example, paragraph (r) of Article 268 of the Islamic Penal Code stipulates that:

One of the conditions that can prevent the crime of partial theft is the theft of the stolen property before the proof of theft.

Or clause (g) of the same article stipulates that:

The stolen property did not belong to the thief before the crime was proven, so in these cases, there are traces of compensation.

Repentance is one of the other solutions provided by the legislator in certain crimes. Article 114 of the Islamic Penal Code stipulates that in crimes involving hadd, with the exception of qazf and moharebeh, if the accused repents before the crime is proven and his remorse and correction is proven to the judge, he will be dismissed. This legal establishment can pave the way for the introduction of restorative attitudes and the solution of the crime problem in a fundamental way by preparing and approving executive regulations or other legal solutions that are based on the teachings of restorative justice. For example, the legislature may suggest that in the event of a person's repentance and repentance, the reason for the person's correction be to take practical measures such as compensating the victim, repairing the injuries and psychological suffering of the victims, and calming public opinion in appropriate ways. Therefore, in evaluating this case in serious crimes and punishments, it is not possible to raise the issue of the priority of restoration over punishments in extreme crimes.

However, by adopting the proposed measures, solutions can be proposed in which the alignment of the restoration index with the punishment can be ensured.

Paying Attention to The Right of The Victim and The Offender in Determining the Outcome of Lawsuits

In the model of purposeful punishment, the offender is not seen as a tool and means to restore order and prevent crime by imposing punishment on him, but the offender is the end of punishment and his inherent dignity is respected by granting the right to intervene in determining the fate of litigation. Of course, this is not an absolute right, and both in the execution and in the degree of interference of the delinquent will, it is bound by many conditions, such as the correction of the purpose of the punishment or the consent of the victim. This approach can be observed by examining the practical tradition of the Holy Prophet (PBUH), for example, in the stoning of Ibn Malik al-Islami by a lady from the Ghamdi clan. The Prophet (pbuh) confessed to the crime of adultery even though people voluntarily and consented to him and asked the Prophet to be cleansed of the great sin of adultery. The Holy Prophet tried to prevent them from committing adultery by trying to dissuade them from confessing. Obviously, if the sole purpose was to carry out punishment and to achieve general prevention and restoration of social order, or the very first confession that was made public and in the presence of other people according to the issues raised, they should have sentenced the adulterer. In fact, by providing the possibility of confession of guilt and crime and confession at various levels and even at long intervals, they provide the offender with the opportunity to determine his own destiny. Predictions have also been made about the impact on the fate of litigation by the victim. For example, paragraph A of Article 26 of the Islamic Penal Code stipulates that: If the mocker confirms the mocker, the mocker is void, or according to the provisions of Article 268, the owner of

the property is required to sue the thief before a judicial authority and the owner of the property does not forgive the thief before proving the theft.

Obviously, mentioning these hadded legal cases in minor crimes does not mean that it is in restorative justice, and does not constitute the full authority of the victim and the offender in determining the fate of criminal complaints on the subject of minor crimes and punishment. However, granting the mentioned rights in addition to these hadded cases by observing the jurisprudential criteria can lead to the preservation of human dignity, justice, correction and rehabilitation, increase the responsibility of paying attention to the personality of the offender, proportionality of punishment and crime prevention (Haji Dehabadi, Ghaderinia, 2016, 73).

Principles And Necessities Governing the Purposeful Punishment of Border Crimes

Theoretically, the targeted punishment framework is influenced by other accepted foundations and the norms of criminal law and principles such as the principle of minimum punishment, moderation and proportionality govern it. In Article 220 of the Islamic Penal Code adopted in 1392, in the discussion of criminalization of the extended policy compared to the former and in the discussion of criminal punishment, it has adopted a reference to the law and jurisprudential texts in cases of silence, defect, conciseness or conflict which contradicts the principle of minimal use of punishment. In any case, the legal vacuum in all legal systems is quite normal and conceivable, and also the problems of compiling jurisprudential rulings in the form of law are comprehensively accurate and clear. Therefore, its solution is not to impose principles such as the minimum use of punishment, which created the next problems by granting the authority to determine the punishment in a fixed punishment such as hadd to judges. Among these cases, we can mention problems such as insufficient mastery of judges working on jurisprudential sources, the possibility of conflict in conflicting judicial opinions and lack of solutions to create unity of procedure, so it is appropriate to think of a way out of this problem by codifying the punishment (Akrami, 2015, 41).

The principle of moderation in punishment suggests that in the position of determining punishment, among the various alternatives, the most lenient substitute be chosen who meets the intended purpose. Intensity and violence of criminal laws can lead to more violence in society and harsh criminal laws can lead to more violence in society (Gholami, 1390, 300). As mentioned earlier, partial punishments due to their punitive and intimidating nature by the international community have been the main problem of the legal system of Islamic countries in the discussion of compliance and respect for human rights and similar issues. And under their pretext, some of them have approved documents for our country in international forums. Therefore, in this section, it seems that by emphasizing the observance of jurisprudential standards and the principle of enforcing the hadd, based on understanding and interpreting some of the penal concepts in the light of accepting rational changes in the hadd, new results will be achieved and reduced the penal hadd of ta'zir from the

differentiation of the system. For example, if the conditions for postponement, suspension or agreement of serious punishments are provided in a way that makes these punishments more effective in achieving their goals, it will not be incompatible with the Shari'a within the hadd of the implementation of rulings such as not allowing delay and also the principle as the principle of prohibition of double punishment (Nobahar, 1397, 202). The principle of proportionality, as one of the accepted principles of criminal law, guarantees the proportionality of the crime with the punishment and the personality of the perpetrators. In partial punishments, the legislator should not only determine the punishment according to the crime committed according to the issues raised and observing the criteria governing it, but should also take into account the personality of the offender. It seems that the practical solution to this issue is to use combined punishments. From the point of view of the opponents of this approach, combined punishment (hadd punishments in addition to ta'zir) imposes double punishment. However, according to what has been stated, it is necessary for the legislator to first determine the purpose of serious punishments in two stages of determining the type and amount of hadded punishments in terms of religious and jurisprudential restrictions on the subject. In the matter of criminalization, determine the role and hadd of the position of the victim or the offender and the society, and proceed to criminalize based on the desired priorities. In the matter of sentencing, the appropriateness of the above-mentioned goals should be followed by finding the answer that each specific punishment of which of the four goals, which was explained earlier, provides and according to it, design and implement methods for achieving the mentioned goals and evaluation criteria for them.

RESULT

A Study of the Jurisprudential and Legislative Dimensions of Serious Crimes and Punishments in Islamic Countries as Practical Experiences of These Countries can play an important role in recognizing the strengths and weaknesses of the laws of these countries and providing a desirable and comprehensive model in responding to crimes and arranging and coordinating relevant penalties. Finding a theoretical framework that can regulate legislation in this area is necessary and to some extent difficult. Therefore, in this article, in addition to addressing the jurisprudential issues of fines by examining the laws of Islamic countries, we were able to categorize three general models of legislative methods in the field of fines and fines. Some countries have used the direct design model in the law by using the method of including jurisprudential content related to hadd in the law and some other countries in their criminal laws have directly avoided the discussion of jurisprudential content and have only referred the executors to their acceptable and desirable jurisprudential books by approving hadded materials. Some, like our country, have used a mixed model. In this method, the previous two models are used in combination. This is reflected in Article 220 of the Islamic Penal Code adopted in 1392, which stipulates that according to Article 167 of the Constitution, judges can rule on the hadd not mentioned in the Islamic Penal Code, citing valid Islamic sources and fatwas. Due to the difference of opinion of the jurists on the causes of hadd and how to classify them among the jurists, different Islamic sects, including Shiites and Sunnis, and the

influence of the criminal policymakers of the countries on the principles of jurisprudence we see that the laws of the first and third countries have used the method of extensive criminalization to predict the number of crimes to a large extent and some narrow. In our country, by not accepting the standard fatwa in the field of the hadd of the approach of criminalization, it has adopted a widespread and inconsistent punishment. And the expansion of the range of hadd has not been accompanied by the expansion of punishment. Therefore, according to the studies and differences in the criminal policy of Islamic countries on crimes to the extent that reflects the differences between the schools of jurisprudence and jurists and some of the practical and theoretical policies, it is necessary to adopt a scientific solution and model. By examining the purposeful punishment model as a model that can be useful and positive in the field of serious crimes and punishments in policy and legislation, the possibility of using this model in the mentioned crimes was discussed.

It was found that in the field of maximum education of the purposes of punishment, by observing the jurisprudential standards and providing legal provisions, the possibility that the perpetrator of certain crimes can be sentenced to additional punishments, combined punishments can be used. Regarding the component of certainty of execution of crimes and legal punishments, considering the international problems, it seems that the mentioned feature has not been observed in this type of law and the emphasis has been emphasized on the severity of the legislation until certainty in execution. The solution seems to be in the current situation and temporarily, according to the fatwa of the late Imam Khomeini and some contemporary jurists, to anticipate crimes with definite alternatives to punishment or to use institutions such as the theory of consensual punishments. Regarding the restoration of hadd laws, there are some examples in some circumstances that can be used to provide some kind of preconditions for the use of the school of restorative justice in hadd crimes. For example, in the matter of the offender's repentance, the legislator can anticipate some remedial measures confirming the offender's remorse and heart and practical correction. In the field of criminal offenses, based on dynamic ijtihad and using the opinions of criminologists, psychologists and sociologists, using the punishment targeting model by drawing up a coherent and integrated criminal policy; the purposes of punishment in various areas of protection for victims and offenders and society can be served.

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