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A COMPARATIVE STUDY OF THE PATTERN OF SENTENCING SCHEMES BASED ON GUIDANCE IN IRANIAN AND BRITISH LAW

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Abstract

Penalization is one of the most complex difficult, and sensitive cases of criminal law, therefore, it must be by the principles and foundations of criminal law and based on reasonable criteria. In the Iranian legal system, one of the patterns of sentencing that is always controversial is the sentencing schemes based on guidance which in this research is one of the axes of research in the legislative stage, the English penal system must follow a single criterion, namely the principle of proportionality of crime and sentencing (principle of Sentencing) and in the sentencing phase, by giving powers to the courts and providing guidance to other purposes of their sentencing, to establish coordination and rules. This article aims to infer the criteria for choosing sentencing in the Iranian and British criminal law system, to determine the commonalities and differences between the Iranian and British criminal justice system, to determine the strengths and weaknesses of Iranian sentencing compared to British law in the form of presumptive sentencing or based on guidelines which have been done by library study method and field report. In this study, results such as that British law has generally used different principles of sentencing in criminalization and sentencing and the legislature in laws such as the Law on the Powers of the Criminal Courts 2000 and the Criminal Justice Law of 2003 and 2005 has established the basis of sentencing in the legislative stage of criminals, which deals with the principle of proportionality of crime and sentencing and then, by giving powers to the criminal courts and, of course, by providing guidelines and instructions from the appellate courts and the sentencing council, obliges them and this method of legislation in compliance with the Sentencing Schemes in national laws.

INTRODUCTION

Contrary to popular belief, criminal law should focus on ways to respect individual rights and freedoms, rather than on how to restrict and threaten the rights and freedoms of individuals. The inclusion of the basic principles of criminal law in the constitution should also be considered from this perspective. The criteria for sentencing in Iranian law are somewhat ambiguous therefore, in this research; we will try to study these criteria, to eliminate the ambiguities mentioned in this research, the criteria and principles of sentencing in the law of Iran and the United Kingdom will be comparatively examined (Mehra et al., 2017: pp. 20, 107).

Basic principles governing criminal law, such as the principle of innocence, the principle of equality of individuals before the law, and the principle of legality of crime and sentencing, which the constitution seeks to protect, express the importance of these rights from the point of view of the constitutional legislator and so the constitutional legislature is in a position to explain this point. Determining sentencing can be considered as one of the most important areas of criminal law. Sentencing is the area of criminal law in which the government has the most involvement and coercion. On the other hand, sentencing is not only the most politically controversial and sensitive area of criminal law but also the most incoherent area of criminal law. It is not always easy for judges to decide on the type of sentencing. Every criminal event, every criminal, and every trial is different from another trial and criminal. Sentencing is also a major concern for judicial reform advocates. In most countries, sentencing laws have been amended in response to critics who see current sentencing practices as discriminatory based on gender, race, ethnicity, and socioeconomic status (Mehra et al., 2017: pp. 20, 107).

Criminal law, along with other disciplines of law, is specifically responsible for maintaining order in various human societies and different penal systems, using the guarantee of special performances in this field, apply a quantitative and qualitative criminal response to the protection of society's values. The quantitative reaction can be considered as the variety and amount of sentencing and qualitative reaction can be considered as the factors affecting the type and amount of sentencing.

Different legal systems for sentencing follow four main models, which are indefinite sentencing, definite sentencing, and presumptive sentencing or based on sentencing guidelines and mandatory sentencing (Mehra et al.: 2017,136). The basis of this article is the study of sentencing based on guidelines in Iranian law and similar to this model in the United Kingdom. Examples and laws that exist in both countries are examined and the common and non-common points of these patterns are discussed.

Indefinite sentencing: in indefinite sentencing, judicial discretion has a great role in determining to sentence, and judges are guided by a range of sentencing, although they are not binding on the judiciary. In this type of sentencing, the legislator does not determine the duration of the sentencing and makes the determination of sentencing subject to judicial discretion,

Specify the minimum and maximum period and allow the judge to determine the sentence based on the circumstances of each case.

Definite sentencing is the first type of sentencing pattern. In this model, the offender is automatically sentenced to a certain and fixed amount of sentencing determined by the legislature, which he must fully bear. In this model, unlike the indefinite model, the offender is not sentenced to a range of sentencing and judicial discretion has no place.

In presumptive sentencing, which is now commonplace in the UK as a criminal model, there is an independent body such as the Penal Council. In the UK, the proposed penalties for each offense are available to the courts in the form of sentencing guidelines. This model leads to increased homogeneity of sentencing, transparency of sentencing, and the ability to predict and appropriateness of sentencing.

Mandatory punishment is the imposition of imprisonment sentences of a certain duration for specific crimes or a specific class of offenders; In this model, there is no authority to suspend custody, suspension, review the offender's right to parole "(Mehra et al., 2017: 136).

The Concept of Punishment

Punishment, in legal terms, means legal punishment.

Disciplinary punishment of judicial officers; (Law term) is a criminal offense that a disciplinary court can rule on if a judge's misconduct is proven, according to its degree of importance. Disciplinary punishment; (Law term) is called punishments related to disciplinary offenses. Subordinate punishment; (Criminal law term) Subordinate punishment is the effect of the sentence without any stipulation in the sentence (such as deprivation of social rights) and the supplementary punishment is the same as the subordinate punishment, with the difference that it is mentioned in the court ruling like the main punishment (Such as compulsory residence in a special place). The opposite of the subordinate and complementary punishment is the "main punishment", the supplementary punishment.

The indictment has different meanings, the most famous of which in Persian is "putting something somewhere". Another popular meaning is to allow. Putting in the true sense of the word is "placing objectively and visibly." But putting in the virtual meaning means "placing, establishing" (Moein, 2010: 391).

In principle, punishment is achieved when the criminal rule is violated. The criminal justice process has three stages: the production of criminal values (punishment), the commission of a crime, and the violation of a norm; Punishment means punishing the perpetrator (Najafi Aberandabadi, 37: 1994).

Punishment also means punishment and guaranteeing the execution of crimes, which is determined by the legislator in the form of law. Thus, punishment is "the enforcement of a crime against the legislature." (Jafari Langroudi, 276: 2015).

Punishment is a process. When the legislature defines an act contrary to social order as a crime, it imposes a series of punishments on such behaviors as punishment and reward for these acts. This step is called punishment. In the next stage, which is called sentencing, the judges, and the mechanisms for determining the punishment in the judicial stage will implement the orders and rules set by the legislator in the sentencing process. (Abbasi, 2003: 29).

Determination of punishment is done in two stages. First, in the legislative stage, one or more punishments or a range of punishments are determined for each crime. According to the principle of legality of crimes and punishments, one of the duties of the legislator is to determine the punishment for each of the crimes. This act of the legislature is called "punishment". The second stage of sentencing is also the responsibility of the criminal courts. At this stage, the judge during the issuance of the sentence determines the amount of punishment within the limits of legal authority (Pasha Saleh, 1969: 197).

In other words, sentencing is a guarantee of execution during criminal legislation and as mentioned, it is the duty of the legislator. The legislature must follow principles and rules in determining the type and amount of punishment. "The principle of legality is as valid in determining the type and amount of punishment as it is in determining the type of crime. In addition to knowing what acts are a crime, everyone should be aware of the consequences of these acts. Knowledge of how much and how well a person is informed of the ugliness and intensity of the work he intends and is unaware of." (Ardabili, 143: 2007).

Also, the legislature must consider the right to human dignity, the proportionality between crime and punishment, the use of a variety of punishments, and the need for an expert view in determining punishments.

Legislators use a variety of methods in determining punishment. Sometimes, after criminalizing any criminal act, in the text of the legal materials, the amount and type of each punishment is determined against it. Sometimes, after classifying the crimes, the punishments are also classified and a range of punishments is imposed for each crime, and sometimes they use both of these methods. Our legislator has also had different orientations in determining the method of punishment in different legislative periods. In the Islamic Penal Code of 1370 and the Law of Punishments of 1375, the classical method of punishment has been used and the Islamic Penal Code of 1392 has used the mixed method. In this way, according to the specific characteristics of these punishments, Qisas and blood money Diyat have been used in the classical method. And in ta'zir crimes in Article 19 of this law, by grading the punishments to eight degrees, it has used the grading method for punishment. (Moazami, 2013: 117).

The Concept of the Sentencing

Punishment; Bad rewards; they say good rewards and bad rewards, Rewards, and punishments for bad deeds. It means punishment, instead of bad punishment. "Punishment is a process that tries to control the potential future

dangers by punishing the offender in violation of the law. Punishment for a crime is based on the principle of proportionality, according to which the severity of the punishment should be commensurate with the importance of the criminal behavior of the offender. When the behavior of the offender poses a danger to society, judges can deviate from the principle of proportionality of the crime with the punishment in imposing punishment and impose a much heavier punishment on the offender "(Fallahi, 2016: pp. 110,102).

Achieving a rational basis in determining punishment requires following the principles and rules that prevent the perpetrators from authoritarianism limit the legislator in criminalizing behavior prevents pessimism of revenge, resentment, and stubbornness of its results. Inadequate punishment for a crime has always been a concern of criminal justice executors. A look at the principles of each of the branches of criminal law shows that the most basic justification for determining punishment is to observe the proportionality of punishment and crime (Hart. H.L1963: p.26).

Sentencing in the Iranian legal system can be summarized in four models, in this regard, four main models can be seen, which are: Definite punishment, indefinite punishment, presumptive punishment or based on sentencing guidelines, and mandatory punishment. Certain punishment is the first type of punishment pattern. In this model, the offender is automatically sentenced to a certain and fixed amount of punishment determined by the legislature, which must be fully tolerated. In this model, unlike the indefinite model, the offender is not sentenced to a range of punishments and judicial discretion has no place. In indefinite sentencing, judicial discretion plays a major role in determining punishment, and judges are guided by a range of punishments, although they do not have the aspect of binding rejection for a judicial official. In this type of punishment, the legislator does not determine the duration of the punishment and determines the sentence subject to judicial discretion. Specify the minimum and maximum period and allow the judge to determine the sentence based on the circumstances of each case.

Iran's penal system is closer to a certain and mandatory pattern of punishment; So that in Islamic punishments such as diyat (regardless of the theoretical controversy regarding the punishment of diyat) is close to the pattern of mandatory punishment; That is, after proving guilt, the judge is obliged to impose only the punishment specified in the law. In determining the ta'zir punishments, sometimes it is compatible with the characteristics of a certain punishment system and in some cases with the characteristics of an indefinite pattern; So that the legislator has determined the minimum and maximum punishment and left it to the judge. Certain and mandatory punishment that has been accepted in the Iranian penitentiary system as a common pattern of punishment can create many problems in determining punishment; These include inconsistencies in sentencing in similar crimes, lack of transparency in sentencing, lack of appropriateness in sentencing, poor judicial intervention in sentencing, inability to pay attention to the offender and disregard for the role of the victim in committing a crime. In the UK criminal justice system, a hypothetical sentencing model is applied based on sentencing guidelines. The advantage of the hypothetical punishment model that has encouraged this

penal system to move towards such a model is that the level of judicial authority in determining punishment is systematic and disproportionate punishments are avoided, and in determining punishment, a kind of uniformity and capability is provided. Unpredictable is created. It seems that hypothetical punishment with guidance can bring us closer to achieving the goals of punishment (Abbasi, 2003: 28). In hypothetical sentencing, which is now commonplace in the UK as a criminal model, an independent body such as the Council on Penalties in the UK provides courts with proposed punishments for each crime in the form of sentencing guidelines. This model leads to increased homogeneity of punishment, transparency of punishment, and the ability to predict and appropriateness of punishments. Mandatory punishment is the imposition of imprisonment sentences of a certain duration for specific crimes or a specific class of offenders; "In this model, there is no authority to suspend custody, to suspend, to examine the offender's right to parole." (Mehra et al., 2017: pp. 136, 20).

Thus, by separating the sentencing stage from other stages of the trial and by anticipating sentencing guidelines and requiring judges to state the reasons for each sentencing, fair punishment can be determined and disproportionate sentencing, and judicial tyranny can be avoided to a large extent (Fallahi and Akbari, 2017).

Since the basis of punishment in the Iranian legal system is based on Islamic law and to a large extent they are unchangeable and fixed, and the punishments of qisas and diyat are considered to protect the five interests. Therefore, it can be said: Criteria such as deterrence and prevention of crime, correction, and reconciliation of the perpetrator, equality of individuals before criminal law, building trust in society, implementation of justice, and change in punishment according to time and place can be considered as the most important; But in another part of the punishments, which are called punishments, it may be possible to discuss the criteria for sentencing in proportion to the crime, considering the role of punishment in correcting and reconciling criminals, intimidation and learning lessons, flexibility in punishment, dynamics of punishment, Considered human dignity in punishment.

Sentencing based on Guidelines (Assumed and Optional)

Optional or presumptive punishment, or in other words, punishment according to the guidelines is a part of criminal types in Iran, which because it is based on the judge's authority, is in the change of legal punishment. Based on the assumed pattern of punishment, the law prescribes a specific punishment for each crime, which the judge is initially required to determine. However, in determining the sentence, the judge must observe other special cases that have been effective in changing the sentence and in the law or guidelines for determining the sentence. For example, the judge is required to take into account the defendant's background, behavior, age, social status, and then determine the appropriate punishment.

The naming of the presumed punishment is also based on the fact that the legislator assumes that any person who has committed a crime, the

determination of punishment is appropriate for a certain amount of punishment, and this reason, the legislator, and the name of the presumed punishment model is named after that (Mehra, 2016: 176).

But as for the standard of the penal system in English law, we can; the principle of proportionality of crime and punishment because the 2003 and 2005 Criminal Justice Laws of this country have divided the basis of punishment into two stages and in the punishment stage, punishment is considered as a criterion, which is the theme of the principle of proportionality of crime and punishment, and in the sentencing stage, by giving powers to the criminal courts and, of course, by providing guidelines and instructions from the appellate courts and the sentencing council, has obliged them, to determine the punishment according to the amount of damage to the victim of the crime and the extent of the ability to blame the damage.

The English penal system seeks to follow a single criterion at the legislative stage, the principle of proportionality of crime and punishment (the principle of punishment) and in the sentencing stage, by giving powers to the courts and providing guidance to other purposes of their punishment, establish coordination and rule.

According to the above, the researcher seeks to: Using the written works and legal input of other researchers to deduce the criteria of punishment in the Criminal Procedure Code of 1392 and its compliance with the criteria of punishment in the English legal system and also to express its strengths and weaknesses and express their suggestions for removing obstacles.

Basis of Sentencing in Countries

Punishment has undergone various changes in the legal systems of different countries based on the needs and mesh line of governments. Criminal Procedure Code 2013 with extensive numerical, formal and substantive changes in the Code of Criminal Procedure and the manner of prosecution of the accused, the type of tendency to apply the "principle of narrow interpretation in favor of the accused", observance of principles and norms of civil and human rights and efforts to achieve the judicial system Fair to the plaintiff, the accused, the victim, the witness, the informant, the lawyer and the like in the criminal proceedings, However, in this law, we face challenges, including in the field of punishment for economic crimes. In addition to addressing the challenges of the Code of Criminal Procedure in the field of criminalization, which highlights the need for forthcoming research, it should be said; A comparative study with the British penal system can also help solve the challenges facing the Iranian penal system. The above-mentioned cases reveal the necessity of the forthcoming research.

Background

Ebrahimvand and Tavajohi (2017) in his article entitled "Punishment and Punishment in the Field of Deprivation of Liberty in Iranian and British Law"; they have stated that the penalty of deprivation of liberty is one of the most severe punishments that guarantee the execution of many crimes in British and Iranian law. There are rules in English law for the use of negative penalties,

but the place of these rules in Iranian domestic law is empty. The Iranian legislature has not envisaged any specific and codified mechanism for determining the negative punishment of freedom. Criteria for determining the penalty of deprivation of liberty in the legislative phase include the "necessity of using the penalty of deprivation of liberty for serious crimes" along with "the need for public protection" and in the judicial phase include the "principle of deprivation of liberty for dangerous criminals." The penalty of deprivation of liberty should be imposed only on dangerous criminals, in the face of serious crimes, and only if there is a need for public protection. To regulate the determination of the penalty of deprivation of liberty in Iranian law requires the definition of specialized mechanisms for determining the penalty and the formulation of laws that determine the place of the penalty of deprivation of liberty in the level of punishment. This study in the field of studying punishment and punishment in Iranian and British law can be our guide and it should be said that addressing issues such as punishment in Iranian and British law is one of the strengths of this research. However, in this study, the patterns of punishment in the Iranian and British legal systems have not been addressed much (including weaknesses), and considering that in the present study, the patterns of punishment in the mentioned legal systems will be examined. Therefore, from this perspective, it is different from the research done by Ibrahimovand and is Tavajohi.

Mehra et al. (2017), in their article entitled "Comparative analysis of penal patterns in the penal system of Iran and the United Kingdom", have stated; Punishment has undergone various changes over the years. There are different patterns in sentencing. In particular, there are four different types of punishment patterns; Indefinite punishment, definite punishment, presumptive punishment, or based on guidelines for determining punishment, and mandatory punishment. The nature of each of these patterns varies according to the position they give to judicial discretion in determining punishment. In recent decades, penal systems in the United Kingdom and many US states have shifted to a hypothetical pattern of punishment; however, the Iranian penal system still follows a certain and mandatory pattern of punishment. This article, using the analytical-descriptive method, while analyzing and examining each of these patterns and determining the characteristics of each pattern, tries to identify the pattern governing the penal system in Iran and the United Kingdom. The UK judicial system is important in terms of comparative study in this area due to its reliance on various criminal procedures and the developments that have taken place in recent decades to systematize criminal procedures. Also, due to the similarity of the Kamnella systems, examples from the US states are sometimes provided. This study in the field of studying the patterns of punishment in the Iranian and British penal system can be our guide and the study of patterns of punishment is one of the strengths of this research. However, in this study, issues such as forms of sentencing and the basics of sentencing have not been addressed and as in the previous case, it can be said that it has a weakness from this perspective and considering that these issues will be examined in the forthcoming research, it can be said that in a way, the forthcoming research is different from the research of Mehra et al.

Background of Sentencing and Punishment in Iran

The study of the course of criminology's in Iranian law and the comparison of the pillars of each is useful both in terms of understanding the history of developments in Iranian law and terms of sociological, legal, and political studies, and finally in terms of technical legal issues. In this regard, the Constitutional Revolution can be considered the beginning of new legislative developments in Iran. This development took on a special shape and characteristics with the creation of a centralized government in the Pahlavi period, especially the first Pahlavi. Before this period, the private relations of the people were regulated according to the rules and regulations of Shiite jurisprudence, and the resulting disputes were settled on this basis and more or less before the courts of Sharia and disputes were resolved. The government also dealt with crimes and violations, without defining them, in an authoritarian and authoritarian manner and exercised power (Bayat, 2016: 14).

After the Constitutional Revolution, the assemblies of the National Assembly began to formulate laws and legislation in all areas, which accelerated in the Pahlavi era. From the point of view of the subject under study in this study, and based on the natural course of lawmaking, it seems at first that the civil law was approved by the constitutional legislature before the penal code, but the reality is something else. The General Penal Code was passed in 1304 in the fifth parliament of the first constitution and then the civil law in 1307 and its articles in the following years (Mahmoudi Janaki, 2003: 35,17).

Despite this irrational course of compilation, the same logic as before has been observed in nature; What is more, civil rules were practiced according to Islamic jurisprudence throughout this period and before that. Thus, although the Civil Code was passed after the Penal Code, due to its implementation by jurists and sharia courts, its general meanings were known and clear. The Penal Code criminalized some civil titles and, in addition to civil enforcement guarantees, provided for punishment, although the penal code was based on their civil record (ibid., 36).

The Constitutional Revolution put an end to the multiplicity of powers of the states, classes, and social groups of the Qajar period, which was a kind of sectarian monarchy that tended to focus and exercise authoritarian power And intending to achieve the above three goals, it led to changes in the construction of political and social power in Iran. However, unfavorable contexts diverted it from its most important goals, especially the first two types but it was effective in creating a new centralized and absolute government that culminated in the emergence of the first Pahlavi. Hence, some experts put an end to the Constitutional Revolution in the sense of the disintegration of the Qajar power and system and at the beginning of the creation of the modern absolute state within the civil society was weakened, the historical border of Iran is considered old and new (Bashirieh, 1999: 69).

This transformation began with the idea of law, freedom, and the creation of a centralized and cohesive government with authority but for various reasons, the early years were accompanied by numerous internal group conflicts and the constant intervention of the great powers and for this reason, the

assemblies of the National Assembly could not properly institutionalize this new movement, which was to be based on parliamentary laws. However, the constitutional assemblies took action for the same purposes and to co-fertilize the absolutist state and transfer it from the previous formulations to the new forms of early capitalism, administration, and law. The conflict between the constitutional government and the absolutist state led to the serious supremacy of the absolutist state with the rise of Reza Khan. Unprecedented focus on the sources and tools of power and the decline of pluralism and dispersion in the construction of power was a major feature of this government during Reza Khan. Among the means of exercising power - which was no longer merely in the style of the Qajar period - were appropriate criminal laws to strengthen this new structure as well as to preserve and preserve the survival of power, among the most important of these tools.

That is why, with Latif al-Hail, they directed the National Assembly to declare the extinction of the Qajar dynasty and the Pahlavi dynasty to establish the legal foundations of the new system. On the other hand, they made great efforts to study the legitimacy of the new system and government (which is the second pillar of political power). The two main factors that led to Reza Khan's government were the widespread drafting of bills and the pressure and direction of the National Assembly to pass the laws required by the government. First, the law, and especially criminal law, as a new tool for exercising power to replace raw coercion and the former authoritarian method. This was necessary both in creating and maintaining centralized power. Second, wherever the legitimacy of political power, for whatever reason, is shaky, the government seeks to legitimately increase the legitimacy of its political system so that it can somehow strike a balance between the two. In particular, this method is current when the government gains power based on fragile and primitive democracy (Mahmoudi Janki, Firooz, ex: 62).

Because criminal law and how it is enforced is a repressive face of political power, such governments first enact and enact such laws, and other laws, such as civil law, take second place. Of course, we should not neglect the fact that the implementation of such penal laws will automatically be effective in regulating people's relations. But the important point is with what point of view and according to what criteria the criminal law is prepared and approved. The concentration of political power requires the exercise of authority over all aspects of social life, and in any case, where there is a possibility of instability in this concentration and authority, the absolute government does not shy away from a punitive and repressive presence in that area (Moazami, 2013: 119).

On the other hand, the prerequisite for exercising absolute authority through criminal law in a country that - although not semi-institutionalized - has entrusted the adoption of laws to the National Assembly is to influence the legislature. From this perspective, Reza Khan's many efforts in forming orders and influencing it enticing and threatening the representatives to find meaning. With the government's relative domination of all institutions of power and strong influence in parliament, the government took another step to facilitate the passage of laws. The Shah asked the Minister of Justice to submit a bill to

the parliament, according to which he asked the parliament to review and approve the justice bills only after the government's proposal in the Judiciary Law Commission and not to present them in the parliament. The "Law on Permitting Legal Bills of the Ministry of Justice after the approval of the Parliamentary Commission of Judicial Laws" was passed by the deputies in different periods of the parliament and thus paved the way for the approval of the required laws.

The first Iranian penal code - which marked the beginning of a criminal transformation in Iranian law - was the General Penal Code of 1925, which was introduced and approved only by the Parliamentary Law Commission using the permission of the parliament. In this law, committing and abandoning acts was recognized as a crime, and some of the civil titles mentioned in Islamic jurisprudence were considered criminal.

Subsequent assemblies passed other miscellaneous laws, such as the Penal Code on the Transfer of Other Property. In these laws, actions against the security of the country and the aggression of government employees, and acts against public order were given more importance than individual rights and freedoms. Restrictions on the authority of government employees and sub-rulers, as well as the suppression of influential groups and tribes that had previously exerted influence within the government, were among the main criteria for this criminalization. Recognizing that the legal developments and the influence of legal and philosophical ideas and schools in Iran at that time were not such that governments could legislate with an open mind, therefore, it can be criticized from today's point of view, In particular, some of the crimes committed at that time remain on the crime list without being re-evaluated. (Habibzadeh, 2010: 97).

For example, the lack of a document registration organization and conducting movable and immovable transactions based on ordinary and even undocumented documents caused some to sell the property of others as their property or to introduce their property in return; The need to protect the sanctity of the people's property required the government to take action Among them was the criminalization of the transfer of another's property or the introduction of another's the property in exchange for his own. Another is that, contrary to the natural course of law-making, criminal laws were written first. It is true that before that, according to Islamic jurisprudence, the private relations of the people were regulated in the courts of Sharia or in another way and disputes were settled but all this was done by civil institutions and sometimes the government and as long as a centralized government does not use legal and non-legal tools in a unified manner and with a certain policy, it cannot be said which practical method has been more effective in regulating people's relations and maintaining public order and individual rights.

Found in this direction, a government that has not yet drafted civil laws, established an institutionalized judicial and non-judicial organization to enforce and guarantee it and immediately criminalized acts or omissions has acted without regard to legal or technical considerations. For example, the loss of people's property by usurping it and usurping another's property is

guaranteed by Islamic jurisprudence, and the perpetrator is the cause and usurper of the same or similar guarantor or the price of property and damages. How a government can criminalize such measures before the government experiences the implementation of such rules, or at least investigates their usefulness? It does not seem to be worth judging each of these cases in this brief, it can be said: Some crimes with the same title in civil law can be re-evaluated, To what extent is the criminalization of some forms of destruction, such as the loss of an animal belonging to another, the usurpation of the property of others, such as the aggressive seizure and transfer of property, unnecessary and useful? Does criminalizing these cases have better effects than civil guarantees? To what extent are these actions detrimental to public order and individual rights that require the intervention of criminal law?

Of course, it is largely natural that in a situation where the new government is more on the move to building a strong and centralized political system, it will pay less attention to other goals in drafting and passing criminal laws, as well as other factors involved in criminal intervention but the concern is that not only have such cases remained on the crime list for years, but new laws have been passed in the same way. (Moazami, 2013: 121)

Crime-based Penal System

The principle of equality of individuals before the law stems from the so-called conservative justice thinking According to which, those who have committed a similar crime deserve equal punishment and if they are to be punished differently for any reason, justice has not been done (Yazdia Najafari, 2006: 43) In this system of punishment, which is also called the system of definite and fixed punishments, the judge, in determining the punishment, focuses more on the type and severity of the crime than the characteristics of the offender, and determines the punishment on this basis. Therefore, the basic and old principle of proportionality of crime and punishment is the basis of the operation of this penal system. The origin of this principle should be sought in the theory of punishment and deserving justice. The relationship between the severity of the crime committed (the extent of the injury and the ability to blame the accused) and the severity of the punishment is the main focus of the merit-based punishment pattern, although this approach evolved in the 1970s. (Rahmadl, 2015: 66). It is precise with this view that the individualization of punishment is overshadowed and sidelined. The tendency towards fixed and definite punishments, as well as the elimination of institutions such as suspension of punishment and parole under the heading of just entitlement, has been derived from this thinking for the last few decades in the United States and several other countries.

Criminal-based Penal System

In the late 19th century, under the influence of criminological and criminal studies, the system of criminal punishment and the thinking of entitlement justice were modified and in the position of sentencing, the personality of the accused was considered as another factor and variable affecting the type and amount of punishment.

In this system of punishment, which is also known as the system of indefinite or unstable punishments or punishment based on criminal reality, The court determines the punishment at its discretion and based on the personality and characteristics of the accused and with extensive judicial powers (albeit within the minimum and maximum legal limits). This system of punishment is judge-centered and the result of the thinking of the research school. From the point of view of radical justice advocates, not only is there no conflict between the principles of individualization of punishments and equality before the law. Rather, these two are complementary to each other, which is why the punishment is lessened in the punishment stage.

In this penitentiary system, instead of the "principle of proportionality of crime and punishment", the "principle of proportionality of punishment with the crime" is used. In other words, instead of committing a crime commensurate with the punishment, they should change the punishment commensurate with the crime. Punishment and punishment can be changed and flexible. The principle of individualization of punishments, which expresses this meaning, stems from the evolution of criminal law in the direction of paying attention to the perpetrator of a criminal act and his personality.

Guideline-based Penal System

The guidance-based penal system, which is found in countries such as the United Kingdom and some US states, such as Minnesota, and is considered the equilibrium between the aforementioned penal systems, pursues the goal that: Provide a moderate and logical solution in determining the punishment before the judges, and in this way, prevent the dispersal of opinions and significant differences between the legal punishments in similar situations. The Minnesota Legislature has been emphasizing the need for the state courts to follow sentencing guidelines since 1980 (Morley, 2014: 2) The purpose of sentencing guidelines is to provide a mechanism by which to define reasonable and appropriate standards for sentencing and to prevent dispersal in sentencing procedures, ensures the proportionality of the punishment with the severity of the crime committed and the extent of the perpetrator (Edbled, 2011: 1).

Types of Punishments in Iranian Criminal Law

The main punishment is the punishment that is specifically and specifically specified in the law for each crime. In law, the main punishment is divided into 4 categories:

1-Retribution 2- Hodod 3- Diyat 4- Punishment.

Types of Punishments in English Criminal Law

Penalties in the UK, like other legal systems, are divided into different aspects and are divided into three categories by nature; 1- Deprivation of some rights, 2- Restriction in doing certain things, 3- Obligation to perform some actions.

All offenses in English law have a high level of punishment set out in the law, and in a few of the offenses which the legislature considers particularly sensitive, a minimum sentence is imposed on them. In this way, for

premeditated murder, life imprisonment must be carried out, and for second-degree sexual or violent crimes, automatic life imprisonment (Mehra, 2007: 45).

The UK criminal justice system is responsible for arresting, prosecuting, prosecuting, and punishing offenders, along with guarantees of a fair trial. So much so that it provides the ground for correcting their behavior and actions and eventually their return to society, especially through the deprivation of liberty.

In this way, many institutions and individuals operate and intervene in the criminal justice system. These include the police, the courts (courts of peace and tribunals), the Royal Prosecution Service, the local juvenile delinquency unit, the Queen Prisons Organization, and the Welfare Office. The Ministry of Interior and Basic Affairs is responsible for managing these institutions. For this reason, "the criminal justice system is, in fact, responsible for the actions that must be taken after the commission of a crime to arrest, prosecute and prosecute the offender."

METHODOLOGY

The choice of research method, or in other words, which of the research methods is the best method for a particular study, depends on the method of defining the problem and formulating hypotheses. Research can be categorized according to different criteria and bases.

Classified based on the Purpose

What the research will achieve, what its application will be, and how generalizable it will be can determine the type of research in terms of purpose. In terms of purpose, research can be classified into basic research (pure or pure research), applied research (applied research), and practical research (clinical research in medical sciences, etc.). In other words, applied or applied research examines theoretical constructions in practical and real findings and situations. The type of research of the present research is fundamental. In this research, information and raw materials of analysis are collected by the method of libraries, and then it is rationally analyzed by different methods of reasoning, and conclusions are drawn.

ANALYSIS

A Study of the Principles of Sentencing in Iranian and British Law

Achieving a rational and reasonable basis in determining punishment requires following the principles and rules that prevent the authoritarianism of the execution of punishments create restrictions for the legislator in criminalizing behaviors, prevent pessimism, revenge, resentment, and resentment. For this purpose, to study these principles, an attempt has been made to examine issues such as the basis of guidance-based and voluntary punishment, which is based on two main and complementary methods, and the principle of proportionality, which is the most basic justification for sentencing. One of the disadvantages of judicial law in Iran is its heavy dependence on the discretion of judges. Despite the penal regulations prevailing in Iran, the ground is fully prepared

for the process of determining punishment to be purely judicial-oriented instead of crime-oriented and criminal-oriented. (Najafi Irandabadi, 2012: 31).

The main problem in the field of punishment is the philosophical discussion of the justification of punishment. How to justify punishment in terms of moral philosophy and political philosophy is a very complex and precise field. Another issue that exists in this area and we consider it hypothetical is the discussion of the method and the subject of punishment in Islamic jurisprudence. Supposedly, in the field of retribution and punishments, a utilitarian approach is considered. Of course, some are skeptical of retaliation But in the field of punishments, everyone is convinced that it is utilitarian and has been left to the Islamic ruler. « بما یراه الحاکم»؛ That is, as he recognizes, he should determine the ta'zir according to the interests he knows. The Sunnis have emphasized that the public interest must be taken into account (یرعی فی التعازیر المصلحة العامة)؛ But in ta'zeer in Islamic jurisprudence, the public interest is not considered as a condition and he can apply any other interest that the Islamic ruler recognizes.

There are different theories for determining punishments, and I will express it here in a different way. There are four general approaches to punishment there are three of them with the nature of compensation and one with the nature of prevention: 1- Compensation for the damage to the victim; 2- Compensating for the damage to the morals, values, and feelings of the society; 3- Compensation for damage to the validity of regulations and laws.

The personal consequence of committing a crime is that First, it has harmed a victim; Second, it has hurt the feelings of society; Third, it has invalidated the law. By committing a crime, the offender says that he does not consider this law valid and conveys a valuable message to society. Of course, in the field of the purposes of punishment, one should pay attention to this message of the offender, and this is something that is less considered and often hurts the victim and the feelings and values of the society. When a law is enacted, it must be recognized and validated and its prestige preserved.

In the field of punishment, to achieve the goals, one must follow a principle. The two principles that have received less attention, namely that we all read and believe in and pay less attention to in the field of enforcement, are the issue of "proportionality of crime and punishment" and the issue of "personalization of punishment". We all believe that these two principles are considered important and fundamental principles and that punishment should be commensurate with the crime and its severity. But there is less talk about the appropriateness of its type. What is the meaning of proportionality of type of punishment and type of crime? When it comes to the appropriateness of crime and punishment, years of imprisonment are measured by the severity of the crime. But there is no mention of the appropriateness of imprisonment for the type of crime - for example, theft or fraud, or injury. In practice, there are no penalties that are commensurate with the type of crime. If the type of crime is sexual, security, economic, public morality, religious, sacred, political, and financial, when it comes to the appropriateness of crime and punishment, only the extent of imprisonment is discussed. And we do not doubt that

imprisonment is a punishment. Now a serious challenge in the field of punishment is that; the basis of our punishments has shifted to imprisonment, and non-imprisonment punishment - especially in the case of corporal punishment and flogging - has gradually diminished and moved towards imprisonment. However, the basis of the Islamic penal system is not based on imprisonment. But our system is now moving towards a penal system of imprisonment. Of course, we are far from the penal system of imprisonment in the United States; because the number of people imprisoned in the United States is nearly three and a half times that of Iran; in other words, out of every 100,000 people in Iran, 200 are imprisoned, while in the United States, this number reaches 700.

The second principle that must be considered is the principle of personal punishment. Punishment should be applied only to the offender, and this is an indisputable principle. When it comes to criminal liability for non-compliance, there are several conditions for its application and theorizing but this sensitivity does not exist regarding the definite consequences of imprisonment. In the social system of Iran, where the family still has a strong position and is governed by special legal and economic relations, the effects and consequences of imprisonment are very different from Western countries. In the studies conducted, we can also refer to the compensation of the victims in the Islamic penal system. In most penal systems, there is no higher crime than murder. If it is not the highest, it is certainly in second place and will not be lower. How is this crime dealt with in the Islamic penal system? How is retribution applied? Punishment is applied only after the request of the victim, or the request of the parents of the victim. In the model of Islamic punishment, the greatest punishment - which is the execution of retaliation - is tied to the feelings, will, and desires of the victim. This is a native model. I do not imitate restorative justice here; Restorative justice, however, has been theorized by Westerners by looking at the East, the epistemological and civilized East, Africa, and East and Asian countries. The Westerners came and studied Orientalism, and this idea was transferred from the East to the West, but in the end, it was the Westerners who codified this theory and presented it in the form of a theory.

In the matter of murder and retribution, the Islamic criminal model says that you should involve the guardians in the criminal process and the ruler should follow any conclusion reached. If the guardian says I will not retaliate and forgive, the Islamic ruler cannot say that in my opinion retaliation should be done. Now in our country - right or wrong - there is a ta'zir for it, but of course, it must be examined whether a person can be punished twice for an act. Because in practice, retaliation is based on the forgiveness of the plaintiff or their reconciliation in any amount of blood money, and this in itself is a kind of punishment. The fact that the Islamic ruler performs ta'zir in the form of imprisonment, in any case, is a view that is not in the Islamic way of life and has probably been influenced by other systems and has been created within the framework of ta'zir. In the model that I am emphasizing, there is no such punishment in the form of double punishment. According to the model that Islam has drawn for us, in a desirable model of punishment, compensation for all the damages to the victim must be considered first of all.

In our penal system, we have provided for imprisonment and fines for committing fraud. Fines that go to the state treasury and imprisonment in government prisons; so what happens to the victim? Here only the money lost is eventually returned. To compensate for the damages and harms inflicted on the victim, there is the only imprisonment, which we have practically become a prison government; Without envisioning a model for reparation - especially in a major crime such as fraud or a crime of betrayal of trust that affects all the feelings and trust that exist in society.

Numerous articles have been written in the field of correction and treatment through imprisonment and almost the failure of imprisonment in the rehabilitation and treatment of prisoners is presumed to the extent that school confinement is a crime. These observations are so frequent that they have reached a level of frequency. Extensive studies conducted by the Research Office of the Prisons Organization of the country, the issue of the reasons for returning to prison has been extensively studied and evaluated in all provinces. The overall conclusion of all these studies is that; Prison cannot be seen as a place for correction and treatment, and a fundamental alternative must be sought. The alternative I am referring to has nothing to do with the alternatives in the law; because these cases are very minimal and sometimes they are not considered punishment in nature. In the ideal punishment model, considering the serious harms of imprisonment and considering the non-observance of the principle of its personality in the Iranian family-oriented system, imprisonment should be recognized as the last type of punishment. Imprisonment should be applied only to a minority of criminals whom we seek to expel and neutralize. Imprisonment in Iran does not imply observance of the principle of personal punishment, because Iranian society is a family-oriented society and the imprisonment of a man is considered the punishment of his wife and children, and even seriously expands the scope of the crime. These are facts that are serious in the field of imprisonment and less attention has been paid to imprisonment.

The United Kingdom has been enacting criminal justice reform measures aimed at reducing the prison population since the seventies of the twentieth century. That the 1991 Criminal Justice Act is one of the most important criminal justice laws before the 21st century, but if we refer only to the legal developments of the 21st century, the legislator of this country first passed the law on the powers of the criminal court in 2000 to harmonize the regulations related to the determination of punishment. The 2003 Criminal Justice Act then became one of the newest and most important laws that largely transformed the criminal justice system in England and Wales; however, several articles of the law also affected the penal systems of Scotland and Northern Ireland. One of the changed parts is sentencing, which is almost replaced by the provisions of the 2003 Criminal Justice Act (2000). The most important institution related to sentencing, the Punishment Strategy Council, was established by this law for the judiciary of England and Wales (Tawhidi Nafeh, 2016: Previous, 3).

Although the 2003 Criminal Justice Act seemed comprehensive, it is still the main law on sentencing in England and Wales; however, the judicial

determination of punishment is not currently limited to this law and has undergone other amendments.

In particular, we can refer to the Forensic Medicine and Justice Law approved in 2009 which eliminated the Punishment Strategy Council and established the Punishment Council instead. Also, the two Judicial Cooperation Laws, the Punishment and Punishment of Criminals, adopted in 2012, and the Crime and Courts Law, adopted in 2013, provide for the provision of punishment. Like the Iranian legislative system, there are many special laws in the United Kingdom, all of which specifically deal with criminal justice; Including the Terrorism Laws of 2000, 2001, and 2006, as well as the Criminal Justice and Immigration Law of 2008, the Serious Crimes Law of 2007, the Violent Crimes Reduction Law of 2006, the Sexual Crimes Act of 2003 and the Anti-Social Behavior Law of 2003.

Whereas in English law, which follows the common law system, there is no such mechanism in other legal systems, which already provide for the punishment of crimes in law; the vacancy of this issue has been filled by judicial procedure. To resolve disputes in the judicial proceedings regarding the determination of punishments; Guidelines for sentencing have been in place in England and Wales for more than 20 years. An important step was taken in 1998 to expand the base of guidelines and increase their scope and a sentencing advisory board was established. But the courts were not required to accept the board's proposals. In 2001, following a Holliday review report, it was recommended that; a new structure is needed to move towards coherent and complete sentencing guidelines and so the 2003 Criminal Justice Act created a sentencing guidance council. The Punishment Advisory Board continued to work in the same manner. Of course, he handed over his instructions to the council instead of the appellate court.

In 2009, by Section IV of the Law on Justice and Forensic Medicine, the Punishment Council was replaced by the Punishment Advisory Board and the Punishment Guidance Council to promote greater transparency and coherence in sentencing.

The purpose of the Punishment Council is to promote a coherent, clear, and fair approach to sentencing, to provide expert analysis and to conduct research on sentencing, and to improve public confidence in sentencing.

The guidelines should set the range of punishments that the council deems appropriate, and this is just like the Roman-German system of punishment in countries; the difference is that the scope of punishment has already been determined by the legislator.

The council's main task is to issue sentencing guidelines and the courts are obliged to follow them, unless the interests of justice so require, in these cases, too, the court is required to provide a reason for not following the instructions, however, the existence of a sentencing council in English law is due to the lack of a formal punishment for crimes; but it does not seem to be in vain for an institutional provision in Iranian law to issue similar guidelines. In English

law, these authorities determine the sentencing policies in practice, and the existence of such authorities in the Iranian penitentiary system is well felt (Sabzevari Nejad, translation, 2012: 136).

Punishment is seen as a reflection of society to commit a crime and violate the law by criminals and many thinkers believe that; Execution of punishment can have two parallel effects. The first effect is to warn the offender and the second effect is to teach other people in the society who are thinking of committing a crime. Therefore, the more effective the punishment can be, the more we can ensure its effectiveness. Complementary and subordinate punishments, which are used in addition to the main punishment in the Islamic Penal Code, have been established because; If necessary, and at the discretion of the court, if the punishment provided for in the law is not able to respond to the offender's actions or does not have the necessary effect and deterrence, by enforcing it, to help intensify the effectiveness of the law. Studies show that; The existence of the above punishment along with the main punishment can have a great deterrent effect on the commission of a crime by the individual because the examples of supplementary and subordinate punishments are considered in such a way that a person needs to use those services to continue living in society and the lack of the above services can increase the cost of committing a crime, which is the view of the legislator to implement the above punishment. The court order must be by the law, therefore, by determining the main punishment for each crime in the law, in addition to preventing the judge from confusing in determining the sentence, the legislator also makes the members of the society know what the punishment of each crime is and the fear of punishment acts in part as a deterrent, however, in some cases the judge does not consider the main punishment to be sufficient and complete for the offender. Therefore, the judge will determine the additional sentence to complete the main sentence. Of course, it is not the case that the judge decides on a supplementary sentence at any time and according to his taste. A judge can do this when the legislature has authorized the judge in law to specify a supplementary sentence in addition to the main sentence. In this article, we will try to study punishment based on the main and complementary types of punishment.

There are various complementary types of punishment available to the judge. The nature of some of these complementary punishments is related to the strengthening of punitive goals, others are related to compensation for the injured party, and others are preventive. The purpose of determining these types of supplementary punishments is to prevent the offender from carrying out short criminal activities that are dangerous for others (Ashouri, 4: 1).

Law in Britain, like most countries in the world, is divided into two categories: public law, which shapes the relationship between citizens and government, and private law, which shapes the relationship between individuals and private organizations. But there is a more important division, and that is the division of rights into civil rights and criminal law. Civil law covers matters such as contracts, family matters, employment matters, and matters such as wills, and criminal law, which is, in fact, a branch of public law, defines the boundaries

of permissible conduct. As a result, a person who does not cross this border is considered a perpetrator of a crime against the whole society.

It is necessary to distinguish between punishment and prevention. According to the European Convention on Human Rights, it is important whether special agreements are punitive or have only a preventive effect. If the court decision involves punishment and punishment, it should be proportionate and with some kind of standard, it should not be past-oriented and its scope should be specific and after considering all the decisions stipulated in criminal proceedings. For example, the European Court of Human Rights in the case of Witch v. The United Kingdom ruled: "The court has violated the confiscation of property under the Drug Law of 1986 and Article 7 of the Convention because it has imposed retribution on the perpetrator."

Trust has a special place in English law and its examples include will, gift, and power of attorney and… Because in the Middle Ages the rules of common law prevented the inheritance of land, the creation of the trust was an escape from the rules of the common law. In a way, by creating a rule called trust, the legal ownership of the trust was transferred to the trusts, and the real ownership remained for the heirs and sometime after the death, the legal ownership was also transferred to the heirs. In this way, people were freed from paying heavy taxes. The trust consists of 3 pillars: the trust, the beneficiary, and the property of the trust. A trust is a legal entity. In this institution, a person entrusts property to one or more other persons and stipulates that this property be managed for the benefit of one or more other persons. The people to whom this property is entrusted are called trustees. The nature of trust is a special contractual obligation.

The trust has legal ownership over the trust property and can even trade or donate it, but the trust property is not part of the trust property and creditors cannot seize it.

The crimes committed in the twentieth century, which led to the victimization of millions of people around the world, called for effective measures to prevent the recurrence of these tragedies. The Statute of the International Criminal Court was signed by a majority of the representatives of the participating countries and entered into force on July 1, 2002. With the entry into force of this Convention, the groundwork was laid for the establishment of a permanent international tribunal; something that can limit the phenomenon of disobedience. Crime as a social or human or legal reality or possessing all three aspects has long existed in different human societies. But the reaction to crime has been different and sometimes even contradictory in different periods of history because, in each period, this phenomenon was analyzed from specific angles. This difference in perspective has led to different approaches in society. The first approach was a punitive one and was merely a criterion for the reaction of the criminal community.

With this view of crime, the victim does not remain in the consequences of the crime, and the victim is marginalized and in this type of justice, the offender does not create any obligation towards the victim, rather, it criminalizes the

criminal due to the violation of values and consequently, but it owes the criminal to the society due to the violation of criminalized values and consequently public order which does not have a proper place in this process with the execution of punishment and the victim, In this system, which emphasizes the authoritarianism of public power, criminal justice flows from the top of the pyramid of society to the body of society, so that criminalization and criminal proceedings are accompanied by the prominent and active presence of public power as the most important actor in the field of criminal law.

From the last decades of the twentieth century, the theory of repressive criminal justice has been criticized by criminal law thinkers and criminologists for its specific features and practice. Critical thinkers believe that; Classical criminal justice has forgotten, or at least neglected, all the shareholders of the crime in the interest of public authority by enacting criminal laws that do not give them a dignified role, and criminal justice comes to the executive stage with the execution of punishment, and certainly, this type of justice is not in the interest of any of the shareholders of the criminal phenomenon. The offender faces punishment for committing a criminal act and violating the penal code to be held accountable for his violation of the law and violation of public order and the victim who has suffered real harm due to committing a criminal act and has suffered pain.

To prove a violation of the penal code, it has no application beyond a single witness and a positive reason, and even by participating in the criminal justice cycle, it may suffer secondary damages and sufferings and by attending this process, the criminal and his lawyers are accused of lying and not being explicit in expressing the sufferings and pains caused by enduring the criminal act, and thus become the loser of the criminal justice process. In the classical criminal justice system, the government, by establishing the rule and principle of legality of prosecution and giving a public character to crimes, as well as the spread of criminality in crimes without victims, has acquired the status of victim and the philosophy of this action with a stereotypical view of social contract Justify while this involves aggression and occupation of the roles and rights and duties of members of society on a large scale before it is considered the delegation of particles of public authority. As a result, public officials are lawyers who have dismissed and replaced their clients. Meanwhile, the modernist idea of criminal justice reform and education is also criticized because, in this view, the government has used all its tools to correct the offender, but has forgotten the victim, on the other hand, criminals have not been successful in reducing the number of crimes and preventing a recurrence through correction with the introduction of these criticisms by criminal law thinkers and criminology has now provided the ground for the third approach to emerge, this approach has a comprehensive view of the interests of the shareholders of the criminal act so that each of these shareholders plays an appropriate role in the decision-making process and the view that conflict is the property of shareholders, that today this property has been confiscated by the government and now it is time to return it to its real owners, namely the shareholders.

This view seeks to strike a logical balance between the interests of shareholders and the criminal justice system; the description of this approach is restorative justice. The approach that has been sought to mobilize the facilities and talents of the victim community, the offender, and the criminal justice system to repair the gaps and ruptures of human relations and to repair and treat the injuries suffered by the victim, the offender, and their dependents and the community, in addition to the conventional tools of criminal justice, the existing criticism uses the peaceful method for delinquent management and has called for a positive change in the current situation, role and performance of the victim, the offender, and society and it has balanced the interests of these three groups and uses effective tools and means to achieve more humane and popular goals.

In this approach, the emphasis is on resolving the conflict between the offender and the victim by addressing the offender; on the one hand, he seeks to reconcile him with the victim, the victim's family, and society and uses punishment as a last resort, on the other hand, it seeks to promote the status of the victim as a forgotten element of the criminal justice system. This approach, which seeks the active and voluntary participation of all stakeholders in a criminal action in the decision-making process, on the one hand, seeks to improve the victim-centered approach to prioritize reparation to the victim and marginalize the victim. Seen in the criminal justice system to play an active role in this approach, on the other hand, in this approach, with a sense of shame and responsibility of the offender, to persuade the offender to reach an understanding with the victim and fulfill his restorative obligation in the face of the crime he committed. This approach also considers the local community, whose order has been violated by the occurrence of a criminal act, to be a participant in the decision-making process for 21 years.

Although only a few days have passed since the emergence and revival of this view, now more than one hundred countries in the world have somehow resorted to implementing restorative programs in resolving criminal disputes and has emerged as a competitor to traditional criminal justice in these countries. In Iran, due to cultural diversity and long experience of resolving disputes in informal and indigenous ways, Also, with a deep understanding of religious teachings, especially about the dialogue and negotiation capacities of the litigants and the recognition of their agreement in criminal matters, the possibility of pardon and reparation, emphasis on repentance and attention to the consequences of the crime, etc. Discussed examples of these concepts and emphasized restorative justice and by implementing these concepts in the restorative structure, strengthened the implementation of restorative teachings. In our penal system, due to the reduction of judicial density and decompression of criminal cases and creating constructive participation of civil society institutions in criminal justice and reducing the costs of criminal proceedings, General dissatisfaction with the length of the review process, Easy access to dispute resolution authorities and non-observance of court procedures and as a result, liberating victims from confusion due to the complexity of the judiciary, non-payment of fees, dealing with the issue of labeling and the active participation of shareholders in the decision-making process, etc., we see that the participation of the people and civil society in

criminal justice has received more attention than before. In this view, a non-confrontational method is used to resolve disputes and this approach aims to lighten the burden of the judiciary and to distribute it among other systems such as civil and administrative institutions.

CONCLUSION

In the penal system of Iran in general and in the valley of the penal system of England in particular, until the early 1990s, the general criterion and principle of determining punishment in the stages of legislation, law, and execution cannot be considered and in general, in criminalizing and determining punishment, they have benefited from different principles of determining punishment. The British legislature since the early 1990s With the enactment of the Criminal Justice Act of 1991 and then in subsequent laws, including the Law on the Powers of the Criminal Courts, 2000, and the Criminal Justice Law of 2003 and 2005, And then, by giving powers to the criminal courts and, of course, by providing guidelines and instructions from the appellate courts and the sentencing council, obliges them to Due to the extent of the damage done to the victim of the crime and the extent of the ability to blame the damage, do not try to determine the punishment. With the recent approach, the mentioned penal system intends to follow the single criterion in the legislative stage, ie the principle of proportionality of crime and punishment (the principle of punishment), and in the implementation stage by giving powers to the courts and providing guidance to other purposes and coordinate and regulate its penal system.

The penal system, which has logical coordination and coherence in the field of criminalization and punishment of behaviors, is less confronted with illegitimacy in the field of criminal justice. If there is no basis or standard in the stages of criminal justice, the limitedness of the legislature in criminalizing unjust behaviors and punishments will follow. Punishment appropriate to the offense is always a concern of the administrator of criminal justice. The most basic justification for determining punishment in different branches of criminal law is to observe the proportionality of punishment and crime.

In the Iranian penal system, although the system of punishment in any of the punishments of hodod, qisas, diyat, and ta'zir punishments can be justified with reasons for each of them, the principles of punishment can be justified but it cannot be said with certainty that all of them have a single primary purpose and foundation. The incoherence and incoherence of the valley of sentencing (legislation and execution) in the valley of the Iranian penal system is something that is not hidden from anyone. The deep distance between the minimum and maximum punishments without setting a standard that will sometimes reach forty, lack of obligation of the perpetrators of criminal justice to the existence of a hierarchy of punishments and criminality according to the rule and the main principle, especially in the ta'zir punishments, which constitute the main system of punishment and the lack of a classification of punishments is one of the problems that the Iranian penal system faces.

That is why; If two criminals commit a single crime under the same circumstances Considering the lack of criteria for proportionality of

punishment with the crime of committing a crime, one of them is sentenced to a fine and the other to 3 years of imprisonment seems normal. Deprivation of social rights, as one of the examples of society's response to crime and criminals, has advantages and disadvantages. Hence, legal thinkers differ on this point and each of its proponents and opponents argues for rejecting or accepting this punishment for some reason. As a result, the punishment of deprivation of social rights is not only not useful and appropriate in all cases, but in many cases has the opposite effect and negative consequences and restricts the legitimate rights and freedoms of individuals. Also, in most cases, the negative effects of these restrictions and deprivations are to the detriment of third parties and the convicted family. Especially if this deprivation includes all social rights and is permanent and lifelong.

For this punishment to be just, the moral characteristics of the offender, his psychological personality, his job position, and his social and family dignity must be taken into account. Also, it is necessary to implement the punishment of deprivation for a certain period; So that it has a deterrent effect and a corrective effect for the offender and has a supportive effect and social benefit about the interests and values of society. All these cases are defined in the form of voluntary punishment and guidance-based.

Regarding the subordination of the punishment of deprivation of social rights, it seems that its cases should be kept to a minimum. The two should not be legislated and ruled except in necessary and effective cases and in its limited cases, the proportion between the crime committed and the type of deprivation must be fully observed. In some countries, such as France, subordinate punishments have in most cases been removed under the provisions of the 1992 Act. The form of punishment is in line with the title of punishments and since ta'zir is a proper punishment that has been assigned to the ruler of the sharia and the judge, it can include both supplementary punishment and security measures. Therefore, it is better in our laws, which are adapted from the criminal law of Islam, to consider the deprivation of social rights as an example of ta'zir and to be implemented within its scope.

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