

Fundamentals of Islamic jurisprudence in the criminals' reformation and treatment

Mohammad Ali Hajidehabadi¹

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Abstract

this regard, various measures have been taken by the different societies that have pursued specific objectives such as punishment, deterrence, compensation, etc. These measures include reforming, rehabilitating, and resocializing the criminals. This issue has a history of only more than two centuries in the Western world, but there are many propositions in Islamic texts. However, the basics of the reformation of criminals have been less comprehensively investigated, especially from the perspective of Islamic jurisprudence. This article aims to analyze the fundamentals of Islamic jurisprudence on reforming criminals with a descriptive-analytical method. The findings of the research show that, in addition to the numerous verses of the holy Qur'an, in the manner of the imams (S.A), especially the governmental life of the Prophet (S.A) and Imam Ali (S.A), attention to this matter is seen. In addition, the reformation of criminals is also subject to the proof of the "preventing of evil". Even if these jurisprudential evidences are ignored, the need to avoid the harmful consequences of not reforming the criminals, demands that we put the expediency in accepting these measures.

Key words: rehabilitation, resocializing, jurisprudential evidences, preventing the evil.

¹ - Associate professor of criminal law and criminology, University of Qom, Faculty of law: Dr_Hajidehabadi@yahoo.com

Introduction

Punishment has been an ancient concern of mankind against crime. The different measures have been taken by the different criminal systems that pursued specific goals such as deterrence, compensation, etc. Also, rehabilitating and resocializing criminals are some of the mentioned measures. Although the Western world's idea of rehabilitating criminals returns to the positivist school and modern social defense, it was reported that it could not flourish in the late 1970s. However, its believers did not give up the idea, and again it has been accepted in the realm of some crimes and for some groups of criminals.

Today, the rehabilitation of criminals still has the required validity and value, especially because it is in the direction of respecting human nature and dignity. For this reason, this idea is recommended by the United Nations and other international institutions. Now there is a question what is Islam's approach to the rehabilitation and treatment of criminals, and to what extent has this important issue been paid attention by the Islamic criminal jurisprudence?

This article aims to discuss the jurisprudential foundations of this issue. But first of all, it is necessary to analyze the nature of these measures, because on the one hand, finding arguments for the prescription of such measures, and their kinds of Islamic precepts i.e. obligatory, recommended, or just permissible, and identifying the responsible people for it, and on the other hand, the possibility of combining or replacing these measures with other punishments, depends on the understanding of the nature of these measures from a jurisprudential point of view.

Therefore, we will discuss the topics of this article in two parts: the nature of reformation and treatment measures (section one) and the jurisprudential proofs for these measures (section two).

Section one: The nature of reformation and treatment measures



A . Definition of reformation and treatment

The term “reform” is used in various social, economic, political, and legal fields. In the current discussion, “reform” means “improving” the individual's conditions, but this improvement does not mean only changing the individual's social behavior. Rather, “reformation” implies a change in attitude, recognition of the badness of the action performed, and an honest decision to correct the future life” (Cottingham; 2014; pp. 162-163). Therefore, reformation requires a change in the criminal's moral attitude. Although there have been many controversies in realizing reformation in the sense above through punishment, many believe that punishment cannot achieve such an important goal. Reformation in the aforementioned sense may take place spontaneously and due to the increase in insight and awareness of the criminal, or for the reason of change in his social conditions and with his age. However, in the field of criminal law, reformation refers to those types of non-criminal measures and programs, mainly educational and treatment ones, which are said to be carried out in a planned manner by reformation and treatment institutions with social background, that lead to the reformation of the criminal. It is obvious that this meaning is less meaningful for criminals who commit crimes with benevolent and moral motives.

Some criticisms have been made in realizing reform in the previous sense, along with non-criminal programs and measures; because, on the one hand, the spirit governing the mentioned programs must be moral and have a benevolent intention, and on the other hand, the criminal must understand and accept those programs and participate in them voluntarily and actively (Cottingham; 2014, p. 163). Therefore, reform has a moral burden, and any forced and one-sided program is less able to achieve it. In addition, the reform implies the availability of organizational facilities and a lot of material resources. It should be noted that changing people's behaviors may

require entering the legal field of the individual, which is not compatible with human rights standards.

For this reason, while considering reform as a very valuable and ideal goal, some consider it a dream goal (Najafi Abrandabadi and Hashem Beigi 1377 p. 290). Perhaps, some authors downgraded reform to the mentioned ideal concept and considered it synonymous with "rehabilitation" in this matter. From the point of view of these authors, reform or rehabilitation is the idea that punishment can reduce the tendency to commit crime, provided that it is in a way that improves the behavior or individual characteristics of criminals and reduces the likelihood of their recidivism.

B: The difference between reformative measures and preventive and educational measures

Reformative measures are a part of protective, educational and therapeutic measures, and not all of them, which are aimed at creating a positive transformation in the personality and behavior of criminals to return to a healthy life;

It is obvious that not all protective, educational, and therapeutic measures have this type of orientation, and perhaps it is only a form of forced prevention of committing a crime, and includes measures such as house arrest, electronic monitoring, exile, and even prison.

But the characteristic of corrective measures is to create a kind of structural transformation in a person's personality and hence to correct his attitudes, insights, feelings, habits and behavior through education and special training, occupational therapy and vocational training, etc. So that a person, knowingly and willingly, stops committing crimes and sins and respects the laws and observes them.

Now the question is, what is the name of such measures, some of which are included in the protective and educational measures, in terms of Islamic jurisprudence? Can they be called punishment, in the sense that they are convicted and executed by a criminal judge? Or that the nature of these



actions is different from what is called punishment in Sharia law. Undoubtedly, as some researchers (Rohami 2011) have also noted, there is no specific title in jurisprudence books called “protective and educational measures”, or “corrective measures”, and the criminal responses of Islam just have been mentioned under the headings of Hudud, Qisas, Diat, and Tazirat.

Even recently, titles such as deterrent or governmental punishments, specific Shari'a punishments, indefinite and non-specific punishments, punishments delegated to the judge or the ruler have been raised too, in which there is not clearly a discussion of reformative or preventive and educational measures.

Yes, writers and jurists have always emphasized on the reformative and educational aspects of Islamic punishments and considered the reformation and education of criminals as one of the functions of Islamic punishments. Abd al-Aziz Amer, an Egyptian researcher, writes about Ta'zirat: "Islamic law has legislated Ta'zirat to prevent the committing of crimes and to reform the criminals, so that by means of it, a righteous community can be created and corruption and vices can be prevented" (Amer 1375 p. 247).

Now, can correctional and educational measures be considered a form of Ta'zirat punishment?

Some jurists who consider ta'zir to include whipping, also consider such actions to be included in the title of ta'zir. But the problem is that if such actions are a form of ta'zir punishment, is it possible to combine them with specific Shariah punishments (such as Hudud and Qisas) where a person is sentenced to such punishments, in the assumption that a person remains alive after the execution of the punishment?

Some researchers believe that the same punishments specified by Shari'ah should be applied to the individual and other measures such as exile etc. cannot be used. Yes, assuming the existence of a "dangerous state", it should be under "permanent care" (Rahimi 2018).

Some jurists who are aware of Islamic penal jurisprudential issues, believe that "protective measures" are not penal regulations, but government regulations which are established on the basis of social expediency, and if they are among the criminal regulations, it is because of their similarity. And Mainly, it does not conflict with Islamic regulations, in any case, it is not a punishment, but it is a preventive measure, so there is no relationship between these [actions] and Ta'zeer" (Gorji, quoted by Rahami, ibid.)



Section two: Jurisprudential proofs regarding reformative and educational measures

In jurisprudential discussions, when examining the proof of a subject, they use the Qur'an, the Sunnah, and the traits of Imams (S.A.) as narrative proofs, and besides, they use the ruling of wisdom or rational reasons. The researchers who have researched protective and educational measures from a Sharia perspective have argued with the Qur'an and Sunnah and cited examples of such measures from the Qur'an and the manner of the Imams(S.A.) as proofs of the approval and prescription of the Sharia regarding such measures;

Such examples include: keeping adulterous women at home (Nisaa, verse 15), the requirement of the presence of believers during the implementation of punishment of adultery (Noor, verse 2), disqualification of the qadhef (a person who attributes adultery or sodomy to another) , in testifying (Noor, verse 4a), the exile of Hakam bin As (Har Ameli, 1388, vol. 14, p. 259)

And also the exile of effeminates by the Prophet (Tabarsi, 1408, vol. 5, p. 118; Ibn Hisham, 2012, vol. 4, p. 175 and Seyyed Mohammad Hossein Tabatabai, vol. 9, p. 424.)

And the exile of Mohareb (Har Ameli, 2008, vol. 4, p. 429) pointed out. it is clear that although such measures may have reformative and educational effects on criminals or people with a dangerous state, they are



mainly measures of a protective nature, but what is followed in this article is to find criteria and examples that its reformatory feature prevails.

Of course, researchers (Rahami pp. 153-154) in the discussion of precautionary measures and in other words protective and educational measures in Islam have benefited from the Quranic standards of commanding good and forbidding wrong, preventing corruption, reforming and educating, the need to protect the interests of the individual and society and establish Social justice, which will be used in the present discussion as needed.

Some researchers do not consider the basics of such measures to be different from punishments, as they have the same nature as punishments. And they consider matters such as the justice in the community, purifying, reforming, and educating souls, warding off corruption from individuals in the community, as the most important jurisprudential foundations of protective and educational measures.

In any case, in the following discussions, we will try to express the most important jurisprudential bases justifying the acceptance of reformation and treatment of criminals in Islamic penal jurisprudence. Obviously, this issue, like other cases, should be searched in the Qur'an, Sunnah and wisdom. This issue has not been examined from the point of view of the consensus of jurists.

A) The proof of the Qur'an

In the Holy Quran, there are explicit instructions regarding the reformation and education of criminals, some of them are mentioned here.

In the Holy Qur'an, God Almighty orders non-repressive actions, with a pleasant and good nature, as a policy in order to guide His servants in dealing with crimes and deviations. In Quranic literature, these measures are interpreted as "the best measures". The Quran says in this context:

“Good and bad are never the same; Repel evil with good, suddenly (you will see) the one who is an enemy between you and him, become warm and intimate friends.”(fosellat34)

“ [O Prophet] Repel the evil from the way that is better.”(moumenon 96)

When we place these verses next to verse 40 of Surah Shora, we can clearly infer the great desirability of non-criminal answers from the point of view of Sharia; “The answer to a bad action is an evil like it.”

Especially, in this verse, God has mentioned examples of these measures and says:

So whoever forgives and makes amends, then his reward is on God, indeed, He does not like wrongdoers.

In this verse, apart from forgiving the offender, God has also encouraged him to reform; Mentioning reformation next to forgiveness indicates that the two are different, although these two things are related to each other. Because the requirement of reformation can be ones forgiveness in the beginning;

In other words, although the features and consequences of forgiveness can be the reformation and education of the criminal, but in addition to that, reformative and educational measures should also be used to rebuild the character of the criminal;

In addition, God says at the end of the verse: "Truly, He does not love the wrongdoers"; Commentators have presented various possibilities in the interpretation of this part of the verse and how it is related to its previous forgiveness.

One of the interpretations is that the order to pardon and reform criminals does not mean that God loves the oppressors, but rather, the purpose of this order is to guide the misguided and strengthen social bonds.

among the other cases in which the Qur'an has clearly ordered the reformation and training of criminals is in Surah Aal Imran, where God says to the Prophet: So [O Prophet] forgive the wrongdoers and seek forgiveness from God for them.(159)



Explaining the method of forgiveness, as one of the methods of reforming and educating criminals, requires an independent research, but what needs to be briefly stated here is the effect that forgiveness has on rebuilding the character of criminals, and it is also mentioned in the words of the Holy Prophet (S.A).

It has been narrated: "A man complained about his servants to the Prophet (S.A) the Prophet (S.A) said: Forgive them so that you can correct them in this way." (Noori, 2012, vol. 9, p. 7)

In any case, from many verses of the Qur'an, the priority of adopting corrective and educational measures in response to deviations and crimes is inferred ; Especially, such responses have been interpreted as rehabilitative in the logic of the Qur'an. God says in the Holy Quran:

"For this reason, We have decreed on the children of Israel that whoever kills a human being without committing murder or corruption on earth, it is as if he killed all humans. And Whoever revives a human being, it is as if he has revived all people. " (Maidah 22)

In the interpretation of the last part of the verse, the commentators, referring to the hadiths, have considered the removal of humans from misguidance and the reference to guidance and the straight path as its clear examples.

Allameh Tabatabae writes: "What is meant by it [revival] is what it is considered as "revival" in the common sense; When a doctor cures a disease, or a diver saves a drowning person from drowning, or frees a captive from the hands of the enemy, the wise say: So-and-so saved such-and-such a person.

God has such interpretations in the Qur'an, for example, he called guidance to the truth, revival and said: "And the one who was dead (due to ignorance and misguidance), We revived him and gave him light (knowledge and religion) so that he walks brightly (exalted) among the people" (An'am 122)

So, according to this verse, the one who guides astray to faith has revived him". (Mohammed Hossein Tabatabai, Vol. 5, p.)

Therefore, from the Qur'anic logic, the reformation and treatment of criminals is considered as one of the important examples of the right to life, and rather the most significant example of it, and just as it is obligatory to preserve the biological life of humans, it is also obligatory to preserve their spiritual life.

In the book "Kafi" it is stated by Fazil bin Yasar that "I asked Imam Abi Ja'far (S.A.) what is the meaning of this word of God which says, "And who revives a person , so revives all people"? The Imam said: It means someone who saves a person from burning and drowning. I said, does it include someone who saves a person from going astray and guides him to the right path? The Imam said: This is the greatest interpretation for it. (Koulaini, 1361, vol. 2, p. 210-211; and Sheikh Mofid, vol. 1, p. 230)

Also, among other cases where God's command to reform and rebuild the character of criminals can be inferred, there are verses that refer to "mediation". God says: "Correct your relations with each other (mediation) and obey Allah and His Messenger if you [correctly] believe."(Anfal 1) It is obvious that the mediation is in crimes that have a specific victim.

Just as reconciliation can be achieved by ordering to pay the damages of the victim, rebuilding of the offender's character in such a way that he apologizes to the victim and agrees on compensation with him, is also considered to be a reform of the relationship between them.(mediation)

B: Imams' method in reforming and educating criminals

Among the proofs that indicate the permissibility and even the obligation of reforming and educating criminals , is the manner of religious leaders, whose words and actions are evidence for us.

The study of the life of the Prophet and the Ahl al-Bayt(S.A.) indicates that in various cases, they were interested in the correction and treatment of criminals and their training, and even if they punished a criminal, they did not neglect corrective measures towards him.



Of course, since, except for the Prophet and Imam Ali (S.A.), there was no opportunity for Islamic government in a short period of time, other imams(S.A.) have either advised on this issue (verbally) or in the field of personal relationships, only as a citizen, did such a thing. (social way); Extracting the governmental and social practices and speech of imams, regarding the reformation and education of criminals, is a task that requires an independent research, but in this field, it is enough to only include some of them to the extent that it proves the author's claim.

1- Imam's verbal manner:

Encouraging the reformation and education of criminals is one of the important recommendations of sinless leaders , and here we mention some of these recommendations.

Imam Sajjad (S.A.) says: It is the right of your fellow believers to seek health and comfort for them in your heart, and be kind to them, and deal gently with their bad deeds, and bring them closer to you and reform them. (Khasal, p. 570.)

Imam Sajjad (S.A.) , in this important speech, considers the reformation of wrongdoers as one of the rights of fellow human beings and considers it the duty of a person to observe this right.

Imam Ali says: It is appropriate for those who are far from sin, and have been blessed with the success of staying safe from sin, to be kind to sinners (and criminals) (so that they too can be led to abandon sin and wrongdoing). (Nahj al-Balagha, p. 428)

Showing mercy to those who are immersed in sin and rebellion is actually a form of providing an opportunity for reform and rehabilitation and not an approval of their behavior and actions. In fact, moving in the direction of removing the factors that caused them to fall into delinquency is to be kind and compassionate towards them;

It is obvious that this is not only a Shariah recommendation, but it is a rule of common sense, and according to Imam Sadiq's (S.A.) statement: One of

the most important solutions of common sense is to show mercy to ignorant people. (Ghourar al-Hekam, p. 303.)

In fact, one of the social principles of Islam is the “principle of friendship and tolerance” , which is not only a moral advice, and it has also been considered in the criminal policy of Islam and dealing with criminals.

The principle of friendship and tolerance has been emphasized a lot, and even against sinful, rebellious, wicked, ignorant and socially undisciplined people, which may be said it is true to reject such people, and have a negative and awkward attitude towards them.

But according to the teachings of Islam, these people should also be treated with the principle of friendship and tolerance, and none of God's creatures should be humiliated with inappropriate behavior or actions! Except for those whose practical wisdom requires something else" (Hakimi, 1409, v.9, p.609).

It is important to note that showing mercy to criminals does not mean equating them with the none wrongdoers or approving their behavior; Mercy means helping them and solving the problems that cause them to commit crimes, and not approving or praising their behavior and considering them equal to those who are not infected with sin.

Because such an equality - which, unfortunately, today is considered as human dignity and due to a misunderstanding of this important principle - is the cause of their further misguidance and deviation.

Imam Ali (S.A) says: (O` governor of Egypt) the virtuous people should not be the same in your eyes as evil and lazy ones, because this kind of behavior reduces the interest of good people in doing good deeds and encourages evil doers to continue doing bad deeds (Nahj al-balagha, letter 53).

2- Social practice:

The imams, not only verbally , but also in practice, have paid great attention to the reformation and education of criminals and deviants and have insisted on this matter, to such an extent that God Almighty in the



Holy Qur'an warned the Holy Prophet (S.A.) from putting himself to such a task and trouble.

3- Governmental manner of the Prophet (S.A) and Imam Ali (S.A.):

Among the imams, except for Imam Mahdi (God hastens his appearance), who the world is waiting for his blessed coming and his just rule, as well as the Holy Prophet and Imam Ali who found the opportunity to establish the Islamic government, unfortunately, there was no opportunity to govern. Therefore, we should only look for examples and evidence of the performance of the Prophet and Imam Ali (S.A.), which indicates their efforts to reform and educate criminals during their reign; Of course, this did not mean tolerance in adhering to divine limits in their government; The "principle of tolerance" in the government of the Prophet and Imam Ali, should be considered along with the "principle of certainty" in the implementation of divine decrees.

This is the reason why the Holy Prophet did not refrain from pardoning the criminal in cases where there was a possibility of pardoning the criminal and there was hope for his reformation. An example is "Safwan Ibn Umayyah", who was among the leaders of the polytheists of Mecca and the instigator of many wars against the Holy Prophet and Muslims, he even hanged a Muslim in Mecca in front of the people, that is why the Prophet made it permissible to shed his blood. Safwan fled to Jeddah in fear of punishment because he found out that his name was on the list of ten people whom the Prophet exempted from general amnesty and sentenced to death. `Amr b. Wahab, Safwan's cousin, asked the Prophet to pardon Safwan, and the Prophet accepted. Safwan did not believe that he had been forgiven, so he asked the Prophet to bring a sign of his pardon. The Prophet gave his turban or shirt as a sign.

Seeing this sign, Safwan returned to Makkah and when he saw the Prophet (S.A), he said: Give me two months to research about Islam. The Prophet said: I will give you four months to research about Islam and become a Muslim.

Safwan later said: No one can be this kind of soul unless he is a prophet and he said the testimonies and became a Muslim (Ibn Hisham 2012, vol. 4, p. 60; al-Maghazi, 1409, vol. 2, p. 853). It is also mentioned in the Prophet's biography that if someone committed a sin, he would discipline him in such a way that he would be careful forever (Tabatabai, Sunan al-Nabi, vol. 1, p. 2).

He always put a lot of emphasis on forgiveness and mediation, and in one word it was like what God said in the Qur'an describing his personality and behavior:

"Muhammad is the Messenger of God, and those who believe with him are hard on the disbelievers, and kind to themselves" (Fath: 29).

And in another place, he says: A prophet has come to you from among yourselves, who will find it difficult if you fall into suffering, he is greedy for your happiness, and he is compassionate and kind to the believers. (Tawba, 128)

And Imam Ali describes him as a doctor who knows exactly how to treat the patient and his type of illness:

And the truth is that criminals are patients who deserve treatment. In any case, there is no doubt that the Holy Prophet (S.A) had a reformative interaction when facing wrongdoers and deviants and paid attention to their training. Extracting the Prophet's educational and reforming manner about deviants and criminals is a work worthy of research, which unfortunately has not been done so far.

c) Social expediency and the necessity of reforming and educating criminals:

Social expediency is one of the basics of reforming and rehabilitating criminals. This strategy is vital and important. This issue can be analyzed and explained from various aspects.

Each member of the society is considered as one of the important assets of that society, which can play an important role in the economic, social and



cultural production and progress of the society; they also play an essential role in maintaining the social order and defending the society against the invasion of foreigners and enemies. Undoubtedly, only punishing the criminals, without any justification or persuasion from the government - where the criminals either do not accept their guilt or consider its origin to be the cultural, social, political, economic, etc. conditions governing the society, It has no fruit other than separating them from the body of society and government.

The result of such a thing is the loss of society's capital. Recommending tolerance for people's wrongs and deviations and trying hard to solve their behavioral problems is in fact in line with the preservation of this social capital. This is important in interpersonal relations as well as in the relations between the government and members of the society. pay attention to the recommendations of Imam Ali (S.A.):

“Those who cannot bear their friend's wrongs will be left alone.” (Amedi, 1410 p. 297.)

“Bear the fault of your people or your friend for the day of the enemy's attack.”

(Majlisi, 1403, J. 74, p. 166)

“Forgive your friend's wrongs for the day when your enemy attacks you.” (Kafi, 1361, Vol. 8, p. 24)

Therefore, the use of exclusionary or strict criminal responses and the lack of any attention to corrective and educational responses can result in the negative attitude of criminals and their families towards the government and little by little deprive the society of its social support capital.

It is in this case that the acceptability of the sovereignty is at risk and the ground for its vulnerability is provided from inside or outside - by the attacking and hostile governments.

On the other hand, the mere use of these types of responses - without paying attention to reformative, restorative, educational and rehabilitating measures - distorts the interpersonal relationships of social members,

especially in crimes involving victims, and instead of solving the problem, it makes it more critical;

Because the criminal does not consider himself deserving of punishment and at least expects mercy from the victim ,so with repressive responses, without any effort to solve the problem, he attributes his crime to the victim and his family.

especially in cases where the victim also plays a role in the crime (unfortunately, the law does not pay attention to this matter and it is only considered as a cause of judicial mitigating cases), this is because the conflicting relationship between the offender and the victim may be aggravated. and this gradually destroys social security, which is a prerequisite for many healthy social activities.

d- commanding good and forbidding wrong

Among the divine commands that are repeatedly recommended in the Qur'an and hadiths, is commanding what is good and forbidding what is wrong ; This issue has been the subject of various researches, however, in the field of criminal law and criminal policy, it still deserves discussion. In an independent article, the author has analyzed its place in the criminal policy of Islam. In the present discussion, the claim is that adopting corrective and educational measures towards criminals, de considered as examples and cases of enjoining good and prohibiting evil.

Explaining that commanding good and forbidding wrong has two broad and narrow meanings according to its audiences ; Sometimes it addresses both the government and the society, and sometimes it addresses is only the Islamic society; In any case, the application of the propositions of commanding good and forbidding wrong does not prevent the combination of these two, and each of these two has specific duties in commanding good and forbidding wrong.



But the important thing is the quality of registration of correctional and educational measures under the title of commanding good and forbidding bad.

It may be said that "considering that the forbidding wrong occurs before the occurrence of it and not after that , it is possible to choose protective and educational measures from the obvious examples of the “forbidding wrong and preventing the occurrence of acts against the Sharia and in harmony with the generality of the proofs . Because all of them are measures that lead to repelling wrong and removing it, and this matter is definitely desirable and one of the examples of duties that have been emphasized by Islamic Sharia.

however, more precision in the nature of these actions and the type of meaning that is intended by commanding good and forbidding wrong, can reveal the dual nature of correctional and educational measures. on the one hand, in the broad sense of commanding good and forbidding wrong , includes speech and behavioral strategies whose main purpose is to lead people to good deeds and prevent them from evil and ugliness, deviations and crimes.

considering that the audience of correctional and educational measures are those who are suspected of committing crimes again and the so-called , criminologically, has a “ dangerous state” , such measures are the ones that prevent people from committing crimes again.

On the other hand, considering the positive nature of such measures - which are mainly from the kind of treatment, education, awareness, vocational training and religious education, that points to the roots of committing crime and creates a kind of positive and spiritual transformation in a person. Therefore, reformation and treatment of criminals are measures with the dual nature of forbidding wrong and commanding good.

But the more important point is, is it possible to expose a person to other measures in addition to suffering punishment, and does this not contradict his rights and freedoms?

The answer to this question is clear according to the nature of these measures; Because the punishment is based on the person's past actions, and although punishment is expected to reform the person and intimidate him from committing future crimes, there is not necessarily a guarantee for this;

Therefore, there is a need for measures that are therapeutic , empowering, raising awareness, increasing will power, etc. This is more justified if, for some reason, the punishment cannot be applied to the perpetrator .

for example, if the perpetrator lacks knowledge or has committed a crime due to duress, compulsion or emergency, according to the principles of Islamic criminal law, he is excluded from criminal responsibility , but depending on his individual situation, he can be exposed to correctional and educational measures.

Even with the exemption of the punishment due to factors such as amnesty, there is still the possibility of subjecting him to corrective measures in order to prevent from committing crimes in the future, in accordance with the rule of prohibition of wrong.

E- The necessity of avoiding the bad consequences of not reforming and treating the criminals

among the proofs that reveal the necessity of reforming and treating criminals are the bad consequences of not reforming and treating criminals; Some researchers warn in this regard that "sinners should not be thrown out of the group and social sphere , and look at them as contagious patients, or treat them inhumanely, and be looked as humble and small persons.

This kind of treatment is not Islamic. Sinners, in the name of treatable patients and captives of desires, can be sympathized with, and they should not be deprived of compassionate and paternal advice and human feelings, so that this deprivation becomes a ground for them to do more wrongdoing, rebellion and disobedience. Always, those rejected from family, group and society, when they feel alone in their environment and society, and have no



shelter, they turn to crime and join criminals, to get out of loneliness and rejection.

And this is where they despair of rebuilding themselves and returning to the right path.

Except for the few people who cannot be reformed, insist on being rebellious and arrogant, do not fear anyone and do not feel ashamed of people and society.

One should avoid such insolent people, and keep young people away from them.. and of course think and act in appropriate ways to save them" (Hakimi, 1409, vol. 9, p. 678).

It is clear that the consequence of not paying attention to the rehabilitation and reformation and treatment of criminals is not limited to their more delinquency and criminality, but this imposes huge costs on the society. In other words, the consequence of not paying attention to the correction and treatment of criminals is not only their more and more corruption and corruption, but this causes more damage and casualties to the society and huge expenses of the judicial and penal system;

In addition, a lot of money should be spent to prevent their crimes in the society. After all, these crimes and spending the society's facilities for non-criminal and criminal prevention of repeated crimes deprives the necessary opportunities for the progress and excellence of the society;

Now, even if we didn't have any Shariah text or tradition from our imams on the necessity of correction and treatment, wouldn't this rational reason be enough to prove this? Certainly, common sense dictates the necessity of reforming and treating criminals as the only way to prevent these expenses and corruptions. And it is natural that according to the principle of " conjunction of the ruling of reason and Sharia", adopting corrective and therapeutic measures is also a Sharia obligation.

The costs of punitive criminal responses, regardless of correctional and educational responses, are sometimes so high for the society that it is never in the interest of the society;

Especially in today's world, when the image of religion and the religious government is exposed to the most severe attacks, and even the emergence of violent groups such as ISIS or the Taliban, and the implementation of the penal punishments of Islam by them and the efforts to reflect them at the global level, while not explaining the exact conditions The implementation of Islamic rulings by jurists and the deep differences of opinion that exist in this field, on the one hand, and the promotion of the humanitarian face of Western criminal law and alternative punishments of prison and the elimination of execution and harsh punishments, on the other hand, cost a lot to Islamic societies as a result.

This proves the need for a serious revision of the penal system - in practical terms - and a precise understanding of Islamic penal rules - in theory - especially with the Shiite approach, which unfortunately has less aspect of governmental penal jurisprudence due to the lack of governmental experience of Shiites for many years.

In any case, there is no doubt for those who are familiar with the exact principles of Islamic penal rulings that firstly, "If the implementation of the hadd at a certain time or place has negative consequences for the individual or the society, it should be temporarily abandoned" (Muntazeri, 1429, p. 35).

In addition, the reformative, educational, and therapeutic aspects of alternative punishments are completely consistent with the Islamic penal code, apart from providing social expediency, it is also completely consistent with the goals of Islamic Sharia regarding punishment.

In particular, these goals, according to jurists and experts, are not something that cannot be inferred and understood. In any case, "Considering that the main purpose of legislating Qisas and Diyat and similar laws is to protect the lives, reputation, property and rights of individuals and society from the violation of criminals and to punish , reform and guide them, as well as to prevent the damage caused by them . The method of achieving such a goal will not be the same due to the ever-



increasing change and transformation of various human societies in cultural, economic and social dimensions.

Therefore, it is possible that some punishments cause skepticism towards the Shari'ah itself due to the lack of proper explanation of its goals or lack of proper implementation. In such an assumption, its implementation should be avoided, albeit temporarily, until the philosophy of the ruling is explained and the environment is prepared.

It is important to pay attention to the point that only the negative aspects of repressive criminal sentences have been considered in this argument, while what was presented under the heading of "social expediency" and "the necessity of correctional and educational responses", and there were other cases such as : the corruptions of merely Islamic punitive criminal responses and the positive effects and consequences of correctional and educational punishments for society as an alternative punishment or possible action of criminal responses.

In any case, Islamic jurisprudence is based on expediency and corruption, and despite the many merits of corrective and educational responses and the corruption of punitive responses, there is no doubt about the temporary elimination of some criminal responses and the necessity of adopting corrective and educational penal responses which even their implementation as one of the government's responses can neutralize the effects and consequences of correctional and educational punishments.

Conclusion

reformation and treatment of criminals in Islamic thought means a deep and comprehensive change in the personality of the criminal, which is also interpreted as repentance.

Although one of the goals of punishments in Islam is to reform and treat criminals, the adoption of measures other than punishments in order to improve the criminal's personality has not been investigated as an independent jurisprudential issue despite strong proofs in Islamic sources.

According to the contents that were presented in this article, there are many proofs from the Quran , the Sunnah of the Imams(S.A.) that indicate the acceptance of these measures. Also, these measures can be an example of the prohibition of evil.

And finally, even if such proofs cannot be used, the social interests justify the acceptance of such measures, but the nature of this acceptance and the degree of its necessity, as well as its scope, require other discussions.



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