

An introduction to analyzing criminal behavior and responsibility from point of view of the Islamic anthropology

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Abstract

Every theory of criminology is based on an intellectual framework including theoretical ideas about ontology, anthropology and epistemology. In a certain theory, anthropology plays the main role, because the subject of human sciences is about man and his capabilities. However, non-Islamic schools of criminology are still confused in understanding man and his existential dimensions due to the lack of revelation and narrative teachings.

In this article, in the light of the Holy Qur'an and Shia traditions, the existential dimensions of man have been investigated, which has an important impact on the explanation of crime and criminal responsibility. In this regard, this research has found Allameh Tabatabai's theory as a reference theory. With the recent considerations, the result of this article is that according to Islamic anthropology, man is a free-willed being whose will is the main cause of criminal behavior. However, individual or environmental factors (both material and transcendental) have an incomplete causal effect. Adherence to this theory under Islamic anthropology will leave rays in the explanation and manner of criminal responsibility, punishment, assistance and participation in the crime and exculpatory factors of the accused.

Keywords: Anthropology, Human action , crime , volition, responsibility

Introduction

Every thought comes from a diverse set of cognitions, knowledges and beliefs and relies on them . Many of these of ideas form principles and preconceptions, which researches are based on them. These principles play an important role in the formation of schools of thought and existing ways in various scientific fields and understanding about the phenomena and issues. (Salimi, ۲۰۱۱ ,p .8) This theoretical perspective consists of a set of basic preconceptions about ontology, epistemology, anthropology and methodology. Obviously, these preconceptions must be answered before theorizing in any field of knowledge. (Kafi, ۲۰۱۴, p.25)

Thus, the presuppositions of knowledge, has its own place of importance in criminology as well . Criminologists, as theorists , must derive the rules governing human behavior and produce a theory accordingly. In deed the main reason of different theories in criminology is different fundamental antological preconceptions .

the analysis of Islam from man is a profound one. Man is the caliph and successor of God on earth and the divine spirit has been breathed into him. However, in none of the paradigms of social science in the West is there such an approach to human beings. In Western systems, human and his existential realities are examined only on the orbit of his physical body. While in the Islamic system, regardless of the importance of the physical dimension of man, the metaphysical dimensions of man are effective and involved in explaining his behavior, including deviance and crimes .

This article examines Islamic anthropological principals and its reflections in the realm of criminology and criminal law. The basic question that made the author to do this anthropological research is what explanation Islam provides for the formation of criminal behavior. And another question that will follow will be how the adoption of such an approach will be effective in the field of criminal law and criminal liability?



In this regard, the contents of this article will be presented in three parts. In the first part, anthropology, its types, and the dimensions of human existence have been introduced. In the second part, relying on Allameh Tabatabai's theory of "Etebariat" (ie , reconstructive reality preceptions) , a general explanation of voluntary human behavior is provided. And then, under this theory, a comprehensive and innovative explanation regarding the cause of committing all sins and crimes has been presented. And finally, in the final part of this article, the influence of this approach in the field of criminal law and criminal responsibility has been discussed.

Section one: Anthropology and the fundamental components of human

Anthropology is a word that, despite its widespread use in scientific societies, there is still no clear view about the ways of its involvement in humanities. Researchers in this field have used this branch of science in fields such as biological sciences and anatomy, theology, ethnology, ethics and philosophy. As anthropology experts believe, in the early 16th century, this term was used for the first time in Middle Europe to refer to human anatomy and physiology and in the direction of physical or biological anthropology. In the 17th and 18th centuries, European theologians used it to refer to human characteristics similar to God. At the end of the 18th century and the beginning of the 19th century, some authors and scholars of ethnology use the term anthropology to describe ethnic traits and to study the cultural differences and common humanity of the people of the world. This term is used in the English-speaking parts of the world with the interpretation of social anthropology. Moral anthropology is another type of anthropology that does not have much history and has seemed to be a vague concept from the very beginning. Kant used this term for the first time in the book *Metaphysics of Ethics* to define the philosophy of practical ethics as the opposite of the empirical approach to ethics. (Mousavi and Hasani, 2015, pp. 159-163)

Philosophical anthropology is another type of anthropology. This anthropology has examined the general human being based on its rational nature. Because the essence of philosophical knowledge is general concepts. This anthropology is a field related to questions about metaphysics and human phenomenology and interpersonal relationships. In other words, philosophy does not study a specific person or a person in a specific place and time, but it pays attention to the nature and truth of the essence of the soul and the ability of the human essence. This type of anthropology examines the dimensions of human existence through the attention of rational analysis and not through experience and experiment (Wiki Fig).

It is Islamic anthropology that claims to present a comprehensive knowledge in accordance with reality, or at least to introduce and analyze various human characteristics that other approaches are unable to do. (Rajabi ,2001, pp. 27-32) In this field, Islamic anthropology does not have the many shortcomings experienced by the theories and experimental schools of contemporary anthropology. Because full and complete knowledge of man is possible only from God, who is his creator. And as a result, it is not possible to express the truth of man except from his area . God has revealed this truth in the form of the verses of the Holy Qur'an or from the words of Imams and prophets (S.A)

God has paid attention to this exclusive feature in the Holy Quran:

“ And when your Lord said to the angels: I will appoint a caliph in the land, they said: Will you appoint in the land those who commit corruption and shed blood, while we glorify and sanctify you? God said: I know something (of the secrets of human creation) that you do not know.” (Bagharah ,30)

In this regard, this research has tried to identify and introduce the foundations of Islamic anthropology by referring to first-class Islamic sources, verses and traditions, and select from among these sources those that have the most important place in explaining human behavior, including crime. and take away the sin. These characteristics are examined below.



1-Wisdom (Reasoning)

By cogitating within ourselves, without intermediaries we realize that one of the human abilities and aptitudes is the power of measurement and choice. (Mesbah , 1985,p .64) This power of measurement and the human ability is called reasoning.

in authentic dictionaries, the words discernment, repulsion, and imprisonment are used to mean intellect (aghl) . Imprisonment is when a person measures and evaluates that, for example, some word or action is not appropriate based on some situation and circumstances.

Repulsing is also when a person evaluates and then on this evaluation, human's intellect prevents him from doing what he wants to do Also, in explaining the word imprisonment, we must keep in mind that when a person has made a comparison by which evaluated everything and then has reached the distinction between goodness and corruption, indeed he has imprisoned and suppressed his will to corrupt.

Therefore, the principle of the meaning of intellect is the power of measurement and evaluation and the meanings of discretion, repulsion, and imprisonment which is mentioned in authentic dictionaries are its requisites.

It is narrated from Imam Sadiq (S.A.);

“The intellect (Aql) is the thing by which the Beneficent God is worshiped and garden is attained.” (Kulaini, 1407 Ah, p.11)

Such an intellect is the power of distinguishing and measuring right and wrong according to Islamic teaching , and it is a criterion for evaluating human beings on their words and actions, and it's like a bright light in the path of human life to discern the right way.

2-Volition and power to change

One of the philosophical dimensions in Islam is the discussion of determinism and voluntarism. Proponents of the idea of determinism consider human behavior as subjugated and inevitable natural phenomena of internal and external causes affecting him. In contrast, there is the idea

of free will, which promotes the theme of free will, that is, a will that is not subject to the law of causality.(Motahari,1988,p.45)Therefore, two viewpoints have emerged regarding the relationship between human will and factors beyond his control and the extent of its influence on human will.

By now most philosophers consider causal necessity to be compatible with free will. They are called compatibilists. (Khazaei and Tamaddon ,2012 p. 23) In this approach, based on the definition of free will, even if the will and action are determined by the cause, still the person is free in relation to them, and the determination of one side does not harm the optionality of the action and will.

Some other philosophers believe in the incompatibility of causal necessity and free will. This group is called incompatibility. A group of incompatibility do not consider free will to be explainable in any way and deny it, they are called hard determinists. On the opposite side, a group of incompatibility emphasize human agency. They are called libertarians.

In Western criminal law, this debate is referred to as moral luck. In moral luck, we also talk about the influence of internal and external factors in the formation of behavior, and the debate is whether it is possible to still believe in maintaining free will despite the serious influence of such factorsc(Elham et al, ٢٠٢١, p. 13)

In the Islamic tradition most philosophers analyze human behavior in a comparative way. For example Mulla Sadra has tried to combine determination and free will and explain the deep free will or the optionality of the will. Although, in the end, the argument comes to the conclusion that the action and will of man are forced because they are based on a will outside of his soul, but what is really optional is the fact that the action is based on God, who is pure sovereign. From this point of view, human action is both voluntary and non-voluntary, but free will belongs only to God. (Hosseinzadeh ,2013)



Such consequences, which require the interpretation of discretion without accepting alternative possibilities, have caused Allameh Tabatabai to present an interpretation of discretion that requires the possibility of alternatives. Contrary to Mulla Sadra, who sees discretion as merely issuing an act based on awareness and its compatibility with the human nature, he emphasizes that such a thing is not really discretion due to the lack of an alternative possibility.

3 -Instinct (fit rah)

Instinct (Fitrat) is not only the characteristic of man, but all beings are able to achieve a degree of intuitive and innate cognition based on the nature in which they are formed. Therefore, all beings, including human beings, have innate and intuitive cognitions. But man manages it by relying on revelatory knowledge and rational reasoning. If this cognition is not managed by revelation, the probability of deviation of innate cognitions increases. Instinctive cognitions in other beings do not need guidance a, and they act on the basis of this common and fixed guidance. But due to the power of authority and conquest in man, there is a possibility that he will deviate from the path of guidance. Thus, innate cognitions or tendencies can lead man to an unrealistic path that is considered a deviation. (Iman,2015, pp542,543)

Instinct should be considered as a device and organism in the human body that is automatic and works without the need for choice or other force and moves humans. Instinct is not something imposed on humans, but it is placed in their essence and it is not changeable and cannot be eliminated by imposition and pressure. In addition, it is all-encompassing and universal, and every human being has it. (Javadi Amoli,1991, p.26)

There are different instincts in the human essence. Human nature has tendencies , some of which tend to be good or evil and many of which have no orientation towards good or evil. Thus, the natural elements will be actualized as potential forces in the human personality. In each person, depending on the extent to which the divine and revelatory dimensions are

strengthened, innate inclinations are guided in a direct way. And in case of strengthening the carnal and animal aspects, the negative aspects of natural tendencies will be strengthened. (salimi,Ibid,p.23)

Tendencies like right-seeking, truth-seeking, justice-seeking and benevolence, and on the other hand in some other, there are tendencies such as selfishness, benefit-seeking, ambition-seeking, wealth-seeking and fame-seeking, benefit-seeking and fame seeking (Sobhani,2004, p. 26) also the traits of being slothful and hedonist, greediness (Payandeh, 2003, p.219) are of such intuitive tendencies.

Therefore, it is possible that many of the innate tendencies that have been pledged for the perfection of man in his nature, due to deviating from the path of revelation, provides the ground for committing abnormal and criminal behaviors. An example of an innate tendency that can be mentioned is the desire to acquire and accumulate wealth in human beings, which if one pays too much attention to this innate desire and on the other hand does not follow the teachings of revelation and sharia, this desire will lead to deviation.

4- Character (Shakeleh)

The subject of character in human beings is one of the most important topics in the field of anthropology and the basis of Islamic education and training .(Semnon ,2017 ,p.98) Therefore, it is necessary to express the structure and consequences of different interpretations of it.

There is a very basic question in the discussion of Shakleh or charactor , whether it is an inherent or a developmental thing? At this point, it should be acknowledged that according to Islamic anthropology, human personality is affected by both inherent factors and acquired factors. By examining the collection of Qur'anic and narrative texts, the factors of character formation in humans can be divided into two categories: optional factors and optional factors.

Involuntary factors are those that affect the human personality in the primary nature and in a forced way. The primary nature is the one that man



carries with him from the beginning of creation. Hereditary-genetic, physiological, geographical, historical and cultural characteristics in which he was born lead to the creation of a creation in which a person has no role or will.

Allameh Tabatabai has considered the connection between innate characteristics and human actions as empirical and scientific assertions. Explaining the issue, he says :

“ some temperaments get angry very quickly and the sense of revenge ignites in them or the erotic instinct of some erupts quickly. Therefore, physical strength and temperament, moral traits that are the builders of human personality all have an effect on human actions and human beings act according to their personality.” (Tabatabia,1995 ,p.190)

Other factors such as the geographical environment ,the historical period in which man lives and the society in which man was born are also very influential in his personality. Some philosophical or sociological schools of thought believe that these factors play a key role in creating a person's personality in a way that they consider human beings to be the product of the history , society or the environment. While the truth is that regardless of the effectiveness of the aforementioned factors in human destiny and personality, the only final factor in human actions is the element of his will and choice, and the aforementioned factors are effective only as preliminary and incomplete causes in human destiny.

But the most important point regarding the place of personality and its determination in criminal intent is the influence of optional factors. In a way, it can be seen from experience and also according to the texts of the Qur'an that a person who, due to optional factors, strengthens negative behavior or form Either the sinner takes action in himself, his power of free will and choice is greatly reduced or it is basically eliminated.

As the name implies, these are the contexts in the creation of personality that the individual has voluntarily created, tried and acted upon. Researchers have named this dimension of personality, which is caused by

voluntary factors, secondary nature. Secondary nature is nature that is formed as a result of habit or method and way of life and based on the type of motivations and intentions to do something, and this nature is the result of human voluntary behavior. in several verses of the Holy Qur'an, the important fact is mentioned that action is effective in human personality.

Every soul depends on the action it has stored.(Toor ,21)

Every soul is hostage to what it has earned(Mudathir ,38)

The use of recent verses is that every human being is accompanied by his action and is imprisoned by him, in other words, through his action he creates conditions in which he is imprisoned and imprisoned in such a way that there is no separation between him and his good and bad deeds.(Makarem Shirazi,1421 a.h, p.170)

Section two : Analysis of committing crime based on the process of behavior in Islamic anthropology

Now that the fundamental characteristics of humans have been examined, this important issue must be addressed: how does sin or criminal behavior occur by humans? The answer to this anthropological question first requires examining the formation of behavior in a general way (both criminal and non-criminal behavior)

In this part of the research, the formation of behavior in humans is first examined and from the existing approaches , one is selected according to the principles of islamic practical wisdom. Then, in accordance with this choice, the factors that are directly effective in committing a crime are examined. The important point here is that the factors under study are novel in relation to the factors of crime in Western schools and no history of it , is observed in criminological works.

It seems that in order to show the position of anthropology in Islamic humanities, the most important step is to refer to the works of Allameh Mohammad Hossein Tabatabaee. he aims to explain human behaviors and relationships in the material world in an anthropological way by "Etebariat"



or “reconstructive reality preceptions” theory. ¹(Mousavi, Hasani, ibid., p. 160)

A) Explanation of the formation of behavior in human

Anthropologists often compare their actions with other types of actions in nature to understand and explain the mechanism of human action. And they try to find out the degree of similarity and difference between them. There are two common classifications among the philosophers of the past and present. Based on this classification, actions are divided into natural actions and voluntary actions. The first is a purely physical action and has no cognitive component, and the second has a cognitive component. This division and separation is agreed upon by Islamic and Western philosophers. In a general classification, the views related to cognitive and non-cognitive actions can be limited to three approaches. (Kiashemashaki, 2017, pp. 108-111)

The reductionist viewpoint is one according to which cognitive actions such as human`s actions ultimately have no intrinsic and inter - cognitive difference with physical actions and chemical changes. Theories of positivist criminology in the field of deviation and criminal phenomenon are clear examples of this view. In this approach, human beings act based on external and objective causes. In such a way that the same causes leave similar effects in him. In this approach, a mechanical model of man and his behaviors is presented. (Iman,Ibid ,p.84)

It is in contrast non-reductionist approaches. In this view, human actions are fundamentally different from natural and physical actions, and they

1 . In some of his works, such as the book "human before the world, in the world, and after the world" and Tafsir al-Mizan, he has discussed rational and narrative issues about the nature of man. These topics are basically in the category of philosophical anthropology topics and philosophical methods are used in them. The theory of “Etebariat ” is examined in the sixth article of the book “Principles of Philosophy and Method of Realism”

cannot be described or explained based on the laws governing non-human actions. (Kiashemshaki,Ibid)

This point of view, while defending free will, believes that human consciousness has a greater impact compared to other social factors. In this view, human being with the power of will and creativity has the ability to make changes . Although man is in material, cultural and economic bottlenecks, it is possible for him to get rid of the limitations. (Iman,Ibid. p. 89)

Among these, we can point to the third approach, which is the view of Islam regarding the explanation of human actions. Muslim scholars in the field of “ action” have referred to this approach as the "hierarchal view" according to which human cognitive actions are an improved form of natural and objective actions. Thus, cognitive actions are not exactly the same as Psycho -chemical actions, nor are they completely different, separate, or unrelated to the physical relationships . (Kyashemshaki Ibid ,pp.110 &111)

In addition, the emphasis on the hierarchal nature of the process of behavior , means that human behaviors, regardless of the underlying objective causes of those behaviors, are in fact related to the factors of the unseen worlds and hidden layers of existence, and are affected by them. By examining the works related to the field of philosophy of action in Shiite wisdom, it is possible to see in the works of Allameh Tabatabai an explanation of the manner of human behavior, which is completely consistent with this view.

Allameh believes that every voluntary action in man is based on this proces , and in such a way that individual and social life is impossible without it. The spirit of his theory is the transformation of the possibility of a behavior into determination, and such a transformation is present in every human action . It should be said that determination of the will is based on the end and goal of that behavior. And in fact, behavior is a means to achieve that goal. Acknowledging the benefit and the desire to achieve it



will make a conscious subject to be in the position of subjectivity. (Divani, 2015, p. 26)

But how human turns the possibilities of action into the necessity of action is a matter that requires many studies in different branches of epistemology, psychology, neuroscience and other related fields. Nevertheless, from a phenomenological philosophy point of view, some of the components influencing the creation of voluntary necessities can be understood. (Kiashemshaki, Ibid, p. 114) Below, from the existing works of Allameh Tabatabai, the principles and stages of how voluntary necessity is formed are explained:

Man has various sources of cognition, such as imagination, illusion and intellect, which can be used to obtain very diverse and wide-ranging ideas and affirmations. But man chooses from among these multitudes of perceptions, and this is based on his attention to a particular subject or situation out of countless subjects.

We can refer to this feature as the "principle of attention" along with the principle of practical necessity. In other words, the degree of attention of the human agent in terms of intensity and weakness in the formation of the necessity of action and causes more or less concern in voluntary action. (Tabatabaee, 1983, pp174-175)

Today, the principle of attention has a special place in issues related to education, learning and philosophy of practice. What makes a person pay attention to the necessity of doing something can be a natural need, such as a person's need for property and food, or the needs of a sexual instinct that draws his attention to the opposite sex. It can also be based on his education and social environment. Such as human attention to many values, customs and laws related to social relations.

Among these, another factor or principle can be expressed in a more accurate explanation of human behavior. The "ease of a behavior principle" by which the person who willed a necessity choose among the behaviors one that bring the him closer to his goal. When a person is faced

with two actions that are similar in terms of type, but one is more difficult and painful than the other, he prefers the easy action. Based on the principle that man constantly wants to make more profit with less capital and do more hard work with less effort (Diwani, Ibid, p. ۳۶)

Studies show that after drawing human attention to action in a situation, if the actor feels satisfied, he shows a tendency to repeat the aforementioned action. The tendency to repeat the behavior is a function of his satisfaction in achieving the goals . This is how the “structure of behavior” is formed as a result of the process of intensifying attention, satisfaction and repetition of action . This in itself causes the actor to pay more attention to the aforementioned behavior and, as a result, to achieve greater satisfaction, it leads to the process of intensifying attention and repeating the action. (Tabatabaiee, ibid., P.181-187).

B) Analysis of the factors of committing crime

In this section, the etiology of the crime has been investigated by emphasizing and reflecting on the dimensions of the human essence and the process of formation of his choice and action . Relying on the anthropology of Allameh Tabatabai, the author has explained the factors of committing crime and sin from a novel perspective, which is rare in academic criminology literature.

Today, despite the progress of science and awareness of people and the possibility of reaching them as much as possible, deviations and crimes in different societies, still is in a high rate . This is while many efforts have been made to promote moral values at different levels. This is despite the fact that many crimes have a long history and people will find out that it is criminal based on their conscience, intellect and nature .So one of the questions that have occupied the minds of moral philosophers and criminologists is why does a person, despite knowing the good and bad and the consequences of actions, sometimes act against his natural and intellectual knowledge and does not stick to his knowledge?



In this research, focusing on the spiritual characteristics of man, the author is trying to find a central theory to apply it somehow to all crimes and sins, regardless of the crime, criminal or the victim, and use it as a general explanation about the reason for the deviation and crime.

Reflecting on Allameh's words, it should be said that he considers violation of natural, self-evident or rational knowledge as a result of a kind of voluntary ignorance:

“ A person who is aware of the evil of sin but commits an ugly act with the motivation of the ego and the invitation of lust and anger. In truth, the attack of lust and anger closes the eyes of reason, which was the discriminator between good and bad. An ignorant person knows that doing something is ugly and forbidden, but his desires overcome him and lead him to sin, and he does not allow himself to be exposed to this opposition and rebellion and its dire consequences, and as a result, he commits forbidden acts.”
(Tabatabaei , 1995 ,p.529)

This willful ignorance can be seen as the reason of gap between knowledge and practice. By accepting this fact, we can somehow consider the starting point of all sins and crimes as the result of this willful ignorance. In the following, levels of delinquency based on the works of Allameh Tabatabai, have been drawn . Under each level, it has discussed how the delinquent commits or re-commits the crime. These levels will include a range of random criminals, habitual criminals, repeat offenders and leaders of criminal gangs.

First level:

Human actions are affected by his attention and is also affected by his biological and psychological needs. When a person is faced with a need (intellectual, lust, anger), the active forces motivate a person to perform an appropriate action and fulfill the need. it gives him, material , physical or intellectual pleasures . These pleasures adorn the action and the accessories of the action in his eyes. (Ibid , p. 168)

Sometimes a person loves something that is his real perfection and sometimes he loves something according to the power of lust or anger and imagines that it is his perfection. so material person who sees his existence in the distance between death and birth does not see happiness for himself except material happiness and a goal other than achieving material benefits and pleasures limited to material things. The logic of these people is feeling, as a result, wherever there was a material interest in the middle. And the material man felt that the fire of desire was burning in his heart and he was motivated and forced towards that action.

But the logic of a believer is the logic of his intellect, he is motivated towards an action that he sees the truth in, whether it has material benefits or not, because he believes that what is with God is better and more lasting. (Ibid, p. 177)

On the other hand , Excessive attention and desire for some needs and abilities causes lack of attention or disregard for other needs and abilities and takes a person out of a state of personality balance. A phenomenon that can cause personality deviation.

One of the signs of this ignorance in this level, is that when the fire of lust or anger is extinguished, or there is an obstacle that prevents him from doing that ugly act, or due to the weakening of his physical powers and temperament, he notices it. The ugly deeds of the past will disappear and he will become enlightened, that is, he will return to his original knowledge, and the result of becoming enlightened is that he will regret what he did or intended to do. (Ibid, pp378-380)

Second level :

Another important factor is the presence of transcendental variables in human relationships and the causal link between them is the devil. It can be said that by choosing the pleasures of lust and anger and when the eyes of reason, nature and conscience are closed on man, obsessions and satanic seductions come , weak man and subordinates his will.



In this regard, we can take the example of verse 82 of Surah saad ¹, which refers to the existence of a kind of such a relationship and interaction , referring to Satan's promise to mislead human beings, by his invitation to them and their response to this invitation:

“He said, ‘By Your might, I will surely pervert them....”

According to the verses of the Holy Qur'an, Satan has explicitly declared that: “ I am in ambush” and it is very important for man to believe that there is a dangerous, deceitful and skilled bandit on his way. Therefore, he must suppress and reject him with caution and awareness. So there are significant epistemological points in explaining how evil temptations work in criminological analysis, which the Western moral and social systems lack. The devil and his soldiers, in order to mislead man from the path of guidance, always enter man through illusory perception and deceive man by it.

In short, the commission of many crimes and sins is the result of the wrongfully matching the illusions of man in the realm of worldly possessions with the general truths of eternal bliss. As a result of Satan's successive misguidance and temptations, man suffers a great error and destruction, which considers happiness as only worldly and material happiness, and denies any eternal and otherworldly happiness. (Khani ,2016 ,pp. 267-270)

Third level:

In examining the anthropological dimensions of Islam, it became clear that the personality structure is a truth that is formed from the repetition of human perceptions and actions, although it is affected by a group of external and internal factors, and its causality is incomplete . As stated, human action is based on his character. And on the other hand, his character

¹ -Verse 22 of Surah Ibrahim, verse 5 of Surah Yusuf, verse 64 of Surah Isra, verse 21 of Surah Noor also refer to devil relationship with human

is mostly the product of human action. The same is true in the matter of committing a crime.

Actions, when repeated, become habitual in the human soul. These spritual attributes , occur and penetrate in a person as a result of man's insistence and repetition on an action. Because it was stated that the shape before repeating the action and intention is a potential thing that has the capacity of any form, but by repeating the actions, it acquires a quality according to which the subsequent actions are performed and it does not violate it.(Semnon,Ibid,p.109)

After the formation of personality although changing is possible, but is so rare . It decreases and sometimes reaches zero. In this regard, there are narrations that consider the possibility of human change after forty years unlikely. This confirms the view that with the formation of personality, the possibility of changing and leaving some behaviors becomes difficult or impossible.

Accordingly, in finding the cause of committing crimes, especially in repetitive crimes and habitually through the lens of Islamic explanations of crime, it can be said that a person who commits a crime , in fact displays the dimensions of his existence that have been formed during his life. In other words , the criminal act of a person represents the structure established in his soul. In analyzing the cause of crime,it can be said the perpetrator, as a result of committing many voilations, sins, and in general moraly forbidden acts, ultimately behaves in the form of a crime, which in many cases has a higher obscenity than some sins and perversions.

Forth level :

Among Allameh's statements, one can find detailed explanations about the behavior and etiology of habitual criminals, repeat criminals, and crime leaders. Allamah says: There is another type of sin that is caused by obstinacy with the truth, not ignorance. that is, the reason for issuing an ugly act is as a result of rebellion, and obstinacy with the divine truth that sets a seal on the heart. It is true that in the stage of moral ignorance, the



devil tempts and seduces a person and calls him a helper in sins, but here the devil is his friend.

He has come out of the rule of God and has been placed under the rule of the devil, so the devil has influence in all the sciences and actions of such a person. And whatever he be explained to him, he does not understand and thinks that he is right and does not understand that he is going the wrong way. This is the state that God has sealed on the heart of such a person and blinds his heart. (Tabatabaei ,Ibid , p. 151-152)

Regardless of the gap between knowledge and practice, which is the most common reason for delinquency and sin, it is impossible to deny the limitations and obstacles that may hinder the way to achieve worldly and hereafter happiness. Islamic teachings have considered man as a creature with two different and independent realms of existence. These two realms, while being independent of each other, have a strong and close relationship with each other. The material realm is the field of activity of the spiritual realm (Jafari, 1983, pp. 186-189)Therefore , the spiritual development of man can not be achieved except by satisfying physical needs.

On the other hand , in the social system of Islam, man is a creature that even the way he eats and drinks can be effective in his behavior. One of the factors that definitely affects the issue of committing a crime is forbidden food. There are many examples in verses and hadiths that emphasize this undeniable fact.(Mirkhalili,2018 ,p.67)

Holy Quran says: “ O prophets, eat clean and pure food and do righteous deeds, for I am aware of what you do.” (Surah MO Menon,51)

In the narrations, the forbidden foods increases man's tendency to sin and idolatry.(Majlesi,1403 AH ,vol 93, p.321)¹

1 . A clear example of this doctrine of Islamic criminology is the day of Ashura, when Imam Hussein told the followers of Yazid that the reason why my advice does not affect you is that your bellies are full of haram

Despite the impact of the environment , economic and social factors on the crime , in the eyes of Islam, human beings have high capabilities in changing conditions. There is a belief that man has authority in his behavior, and while he can determine his own destiny, he can also be influential in the world around him and conquer it. (Salimi ,Ibid,p.17) The power of human influence and intervention in the environment is so great that he can change the history and society. It is stated in a verse of the Holy Quran:

God will not change any nation until the people themselves change their condition (Raad,11)

The human can affect not only the material system but also the superior and metaphysical worlds and cause changes in it, and this is the highest form of human domination over destiny and the environment around him. In explaining this matter, it should be said that according to Shiite teachings, one of the dimensions of determining human destiny is paying attention to uncertain degrees and the possibility of changing destiny . The human will and action can affect such destiny within the framework of the same principle of causality, and thus shake the metaphysical world and the commands in it. (Motahari, Ibid, pp. 55-67)

One of the factors with such power , is prayer. God says in verse 62 of naml surah :

“ Who is the one who responds to the helpless when he calls on him and removes the affliction and makes you the successors of the earth?”

Another example that can be mentioned in the possibility of human influence on the environment and conditions around him is the effect of human faith as a voluntary matter on the descent of divine blessings and openness in material life. In the verses of Holy Quran, it has been repeatedly observed that the scarcity of livelihood and the unfavorable economic and social environment, is due to human infidelity and unbelief. In verses 10 to 12 of Surah Noah, God has mentioned this voluntary possibility for human beings to change their living conditions:



So I said, "Ask forgiveness of your Lord, for He is the Most Forgiving, the Most Merciful. He sends down the sky for you." And He will help you with your wealth and your children, and will set up gardens for you, and will make streams flow for you."

This point has been considered by Muslim thinkers. Motahhari, says in this regard:

“ From the point of view of the divine worldview, which does not limit reality in the context of body , its qualities, and bodily interactions, the world of events has more and more complex structures, and the factors involved in the occurrence of events are much greater. From the material point of view, the effective factors in time and sustenance, health, happiness are exclusively material ... but from the point of view of the divine worldview, other factors called spiritual sustenance are also involved in material factors”(Motahari,Ibid,p.77-78)

Section 3 : The effects of Islamic anthropology on criminal law and the realm of criminal responsibility

Now, after the steps that have been taken in explaining the dimensions of man and the stages of his voluntary actions, the time has come to analyze Islamic anthropological foundations in the realm and dimensions of criminal law. It is clear that this impact can have wide dimensions. A few cases of this influence are mentioned below.

1- Anthropology and justification of punishment

Although the issue of imposing punishment is considered normal in different eras of mankind and we are so used to it that we have no doubt about the validity of punishing offenders and criminals, but it must be said that punishment is at least due to the intentional infliction of pain and suffering on a person. that needs justification. (Palmer, 2019,p.164)

The selection and application of punishment theories, including the justification of punishment, conditions and how to implement it, are dependent on anthropological components. Among other things, the

anthropological issue of free will has the most important position regarding the justification of punishment. (Hosseinzadeh p. 36)

The different interpretations that were expressed regarding the authority and the way criminal behavior is formed, have formed two major theories of criminal law regarding the justification of punishment. The theory of retributivism and utilitarianism.

In the theory of retributivism, the imposition of punishment is based on the concept of blameworthiness. That is, the punishment is justified because the criminal deserves it. With a retrospective view, retributivism considers the main purpose of punishment for a mistake committed in the past, not the benefits and fruits of punishment. In this view, even if the punishment has negative consequences, it should be applied. On the other hand, according to the theory of utilitarianism, punishment is not based on past mistakes, but rather on the future, and those who witness the punishment should avoid committing it. (Cottingham ,1997, p.181-0-18)As Betham said, it is the punishment of evil and it is justified only if its results can justify the resulting suffering. (Capleton ,١٣٠٠٩ p. 30)

In explaining how anthropological considerations affect punishment, it is stated that the legal theory of retributivism, should be considered as the reflection of the compatibilist interpretation of free will, and it is only by referring to this explanation of free will that we can adopt a punitive and regressive approach in the application of punishment. The blameworthiness , as the essence of the theory of retributivism , is based on the ability to praise and blame, and the ability to praise and blame is also based on discretion. In other words, the entitlement of punishment requires that the subject has the ability to perform each of the two sides of the action and can act in a different way. (alternative possibility) because it is not reasonable to blame and deserve punishment in cases where a person does not have more than one possibility for realization. (Hosseinzadeh,Ibid, p. 38)

in the tradition of Islamic philosophy, many compatibilist philosophers do not discuss free will according to their basis for punishment, because



according to their philosophical explanations, they present a compatibilist interpretation of human behavior, in which no alternative possibility is imagined, but the debates about the punishment of merit and praise and Human responsibility and guilt have been presented in such a way that the ability to choose one of the two possibilities is its default (Ibid, p. 45).

This is while according to the libertarian view of Allameh Tabatabai, criminal behavior is one that, has an alternative possibility, and therefore, a person who is blameworthy is considered a criminal. But on the other hand, it is based on the grounds that have influenced him, his blameworthiness will change.

2- Anthropology and the criminal responsibility of being an accomplice in a crime and responsibility for omission

Most of the time, the crime is committed by the intervention of two or more people. Apart from the principal, who in fact directly realized the actus reus of the crime and result, other people may have indirectly intervened in the realization of the actus reus (Haji Dehabadi, 2019, p. 108) In the criminal laws of some countries, including Iran, the responsibility of non-principal, is of the accessorial responsibility. This is despite the fact that in most of the western criminal law systems, especially common law, the principal responsibility is applied to all the people who have intervened in the actus reus in any way. This kind of responsibility is the result of a new theory, called "complicity".

Regardless of how criminal law systems deal with the intervention of several people in committing a crime, lawyers have faced the problem of justifying the accomplices responsibility. From the perspective of the philosophy of criminal law and moral issues, there is always room for the question, what is the basis of the responsibility and punishment for the act of the other?

Lawyers and moral philosophers have given different answers to this problem. However, among the set of theories, two main approaches can be observed regarding the basis of the responsibility for the act of others. 1-

Causal approach and 2-ethical approach. According to the causative approach, the criminal responsibility of a person who has only indirectly intervened in the actus reus is due to the causal and effectual role he played in the realization of the crime. And the opposite approach has placed the point of relying on the criminal liability resulting from a wrongful act on the moral blameworthiness and mens rea of the person at the moment of committing the crime.

In fact, in this approach, instead of emphasizing the causality in the realm of actus reus, attention is paid to the attribution. The causality is different from the attribution. The attribution itself is based on a concept such as blameworthiness. Attribution means that a crime label can be applied to the act, and the label of criminal can be applied to the person who committed it. This judgment is done by common sense. (Ibid., pp. 114 and 132)

One of the bases that can be presented in the final solution is the degree of freedom and authority of man in his actions and accepting the results from it. In this way, if a researcher has chosen the compatibilist basis in the analysis of human behavior, he will also accept the basis of material causation in justifying the responsibility for another's act. Because one of the essentials of compatibilism is the acceptance and harmony between human will and the material determinism that the natural world imposes on him.

With a little attention, the reader will find out the invalidity of the causality point of view in justifying the responsibility for another action. Because assuming the complete will and authority of the principal in the realization of actus reus, talking about the influence of the accomplice in the form of material causation has a clear contradiction.

In defence of this view, it has been said: "libertarianism is in contradiction with the institutions of criminal law. The contradiction of this point of view with being an accomplice in a crime, if we accept that the criminal act is a product of the brain interactions of the perpetrator or the complete disability of the perpetrator himself, then the concept of accessory is



nullified. Because According to the supposition, the deputy will not have any causal effect on the perpetrator of the crime (Nobahar ,Khat Shab,2016 p. 105)

At the same time, by adopting the libertarian approach in justifying the accomplice responsibility , due to the non- adherence to natural causation, it is possible to achieve more justice by developming the criminal responsibility for all people who intervene in the crime. It is noteworthy that even in the field of criminal responsibility caused by omission, this theory will have significant effects.

3-Anthropology and mitigating or diminishing factors of criminal responsibility

The acceptance of human free will means the ability to blame and punish people who have a will completely free from internal and external coercion. The criminal law considers only those who have done actus reaus along with the necessary mens rea at the moment of committing the crime . Therefore, if a person has committed actus as a result of external coercion , such as neccecity , he will not be held criminally liable due to the impossibility to blame and assign the crime to him. Also, if the person has committed actus reus while his will is under external and internal pressures and he does not have free will in choosing the act at the moment of the crime, his blameworthy will decrease or destroy.

Criminal law has considered these cases under the cases of exemption from criminal responsibility. According to the principle of free will , the burden of proof in these cases is on the defendan.

The basis of exemption or diminishing in criminal responsibility is the principle of libertarianism in philosophical anthropology. While some accept the opposite opinion and consider only the approach of compatibilism, which believes in the influence of determinism on human will, and know it in accordance with justice and the principles of criminal law:

“Based on this way of reasoning, duress loses its function in crime as well. Because when we remove the human factor from the field of cause and effect relationships, it is as if no one can force another to commit a crime against their will.” (Ibid, p. 105)

Conclusion:

In this research, anthropological approaches in the intellectual system of Islam were investigated. The most important results of this research, which can be considered in criminology and criminal law from the point of view of Islam, are as follows:

In the Islamic worldview, human dimensions are different from all other scientific systems. This approach is free from the defects of western theories due to relying on real ontological foundations and divine metaphysics. In Islamic anthropology, man is a being that has deep dimensions such as intellect, instincts, personality and free will.

In Islamic anthropology, the main element in the formation of behavior, sin and crime is the will. Although volition is the main cause of criminal behavior, imperfect causes and other underlying factors cannot be neglected. In this view, man is not only limited to the body, but his divine soul is connected with the hidden and metaphysical layers of existence, so a number of invisible and metaphysical factors affecting human behavior such as committing sins, forbidden food, angels and devils, prayer and worship, that it cannot be neglected in the analysis of criminal behavior in Islamic society. In such a way that in investigating the environmental factors of crime, supernatural cases are of double importance compared to material factors. Finally, this research has found the influence of anthropological foundations in determining the scope of criminal liability and punishment very deep.



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Nah Albalaghah

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