

THE JURISPRUDENTIAL AND LEGAL SURVEY OF TA'ZIR (REBUKE), AS SPECIFIED AND AUTHORIZED BY RELIGIOUS LAWS

Dr.Seyed Hassan Hosseini*

GhavamKhoshvagh**

Abstract:

The term religiously specified and authorized Ta'zir (rebuke) seems to bear ambiguities from the perspective of the jurisprudential and legal statutory regulations in the amendment adhered to the article 15 and article 135 of the Islamic punishment code enacted in 2013 which is considered as somehow innovative measures taken in terms of the modern codes of law and such is the case there is a need for resorting to interpretations in order for the concepts and the examples to be identified and recognized. There are two interpretations regarding the subject put forth in here both of which are deemed as feasible and possible. The first interpretation holds that the entire rebukes and Ta'zirat (plural of Ta'zir meaning rebuke and punishment) which have been pointed out in the antecedent religious laws or somehow at the early outset of the Islam era or in the jurisprudential books are defined as the specified and authorized Ta'zirat (canonical punishment) and the other canonical punishments which have not been pointed out and made reference to in the early beginning of the Islam era or the jurisprudential books are defined as the unspecified and religiously unauthorized canonical punishments. In the second interpretation, the specified and authorized canonical punishments are limited to definite and distinct cases to which there has

*** Faculty Member Department of Law, Ramhormoz Branch, Islamic Azad University, Ramhormoz, Iran**

**** PhD candidates ,Department of Law, Ramhormoz Branch, Islamic Azad University, Ramhormoz, Iran**

been made references in some of the jurisprudential books and they are dealt with under the umbrella of Hudud (limits). In the present study, firstly we evaluated and analyzed the theories proposed regarding both of the interpretations mentioned above and finally we selected the second theory and the instances and examples of this second theory of interpretations have been provided in the sections to come.

Keywords: Hodud (limits), Ta'zirat (rebuke), specified and authorized canonical punishment of Ta'zir, unspecified and unauthorized canonical punishment of Ta'zirat

Introduction:

The holy legislator has always been taking efforts to establish a clear-cut corporeal and spiritual system under the implementation of which the human beings' this-worldly and the other-worldly felicity and welfare can be ensured. It is evident that preservation and protection of such a system and structure necessitates the use of penal code mechanisms concomitantly in parallel to the other methods and ways of educational and guidance practices. Having such an objective in mind, our Islamic penal system is laid upon the foundation of four types of punishment to achieve the aforementioned goal. They are: Hudud (Limits), Qisas (retaliation), atonement (Diyyat), ta'zirat (rebukes).

Qisas and Diyyat (retaliation and atonement, respectively) seem to be out of the scope of the current study. But, Hodud (limits) and Ta'zirat (rebukes) are among the mostly relevant concepts to the theme of the present study and authorized rebukes and ta'zirat appear to be highly linked to the subject matter lean of the two interpretations set forth in current research paper. Due to the same reason, we are incumbently propelled to deal with the discussions regarding the issue at the first place.

Brief analysis of the terms hudud and ta'zirat (limits and rebukes, respectively) in the Iranian legislative law:

According to Article 15 of the Islamic Penal Code, the punishment for which the type, amount and quality of its implementation in the holy law has been set.

Components of this type of punishment is explicitly mentioned in the law and instead has left no ambiguity. This definition has been proposed based on religious sources about cases specified in the law and shariah. But the most important topics goes back to sanctions. The legislative system of the Islamic Republic of Iran after the Islamic Revolution have different approaches to sanctions based approach in the 1370 Penal Code. 1) sentence 2 penalties) deterrent penalties in Articles 16 and 17 of the law was sent. [1] Was suspended in the definition in Article 16: "discipline and punishment, the type and amount specified in the law and the judge granted Such as imprisonment and a fine ... "The jurists also said the definition of sanctions" From taboo act and concentrations duty divinely knowingly and deliberately excuse ruling as it deems of interest." While the discipline and punish deterrent penalties referred to in Article 17 that the government in order to maintain order And observe the interests of society and the system of government for the violation of regulations determined essentially deterrent penalties Without getting in the religious and even religious books. It was as objectionable to some and some believed that all of the penalties that are subject to and some believed all the punishment that the punishment, retribution and blood money as sanctions placed out below.

This belief in the Penal Code in 1392 opened his own place and legislators in recent legislation eliminating deterrent penalties and its integration in jail sentences long skirts to talk about the differences and deterrent prison sentences ended. [2] Thus, as punishment for a "preventive" In general, the categories were eliminated, but the definition of deterrent penalties in the form of mandatory penalties in Article 18 of the new law took place. Article 18 of the lyrics are:

"As much punishment be subject to punishment, retribution or compensation payments and law about committing religious prohibitions or violation of government regulations determine and apply. The type, quantity and quality of applications and provisions for discounts, suspension and other sanctions provisions to be determined by law. "Despite the openness and transparency that exists in this definition, but the two terms in Article 115 and suspended sanctions authoritative Shari'a Islamic law in Article 135 and Clause 2, Article 14 Code of Criminal Procedure and confusion that was created Rajah instances of the same terminology was suspended again ambiguity in the concept. The importance of a clear concept of religious and traditional segregation of a person and that of the general concept of Sanctions there is a simple

rule in article 115 note traditional religious Sanctions of the many supportive institutions and called on criminal law such as discounts, suspension, delay, taking into account the time of arrest, etc. have been denied. The important point is that in spite of the disposition of this type of punishment in the law and make it the exception of supportive institutions, legal cases and examples of it are not mentioned, and the principle of legality of offences and penalties in a way experiencing nervousness. About this so-called two interpretation and the view that exists on the trail to talk about each of these two perspectives Opinions and interpretations of the lawyers of the so-called traditional religious Sanctions and specify the first viewpoints based on

(1) First viewpoint

all actions are perceived in the sources of juridical and also in Islam somehow sacred legislator of criminal's reaction to it and sometimes Islamic rulers have been used for traditional religious Sanctions and Deputy Minister and in front of all the actions are perceived in religious history and has been a new way And the purpose of its criminalization and the interests of the community were observed maintaining the is non-religious and traditional Sanctions. The result of this vision will be receiving the same Division of the Act, and the PK of 1370 to two types of preventive punishment has divided Sanctions. This view is distorted and corrupt lot sequence by virtue of a legal and judicial structure casts. And what is that based on the comments of all offences that are non-religious history of theft like partially-mjaol document forgery, the use of another of the many crimes and many called on institutions and supportive of the rights of the General Penal Code, especially taking into account the time of arrest, suspension, delay time, mhadom etc. Obviously, such an aim and a purpose is not the result of legislators.

(2)The second view

According to this view and sanctions authorized by Islamic law is limited to a few cases that have been mentioned in religious books and use them "in shades of" referred. There are several reasons to accept these terms.

1) The limitations in Amendment 115 article about this type of penalty is there it is unlikely that includes all religious msbugh to Sanctions. For example, the conquest of, non-stealing, the extent of fraud (mhatal) has a history of all the religious and always in the legislature after the revolution during a previous detention about the calculation. 2) Misappropriation that have been explicitly has a history of legal note 3 article 5 of the law and the punishment be aggravated embezzlement artasha earned the suspension.

3). in accordance with paragraph (h) of the law) the aggravation of economic crimes with the theme "Islamic Penal Code the crime of suspense over one billion rials available." so, if the subject of the mass is less than one billion rials, artasha and even if substantial fraud embezzlement is the suspension. While all of these crimes are a significant suspension has a history of religious and traditional and religious items outside of the modal. The legal Office of the judiciary in

4) Advisory 71921164 number theory in the case of the crime of treason in the trustee have to say: «the crime of malversation of crimes and offences in 109 material issue note relating to the Islamic Penal Code, article 36 are not religious and traditional 2013 was not possible and therefore subject to review. [3]

So according to the above issues can be deduced given traditional religious Sanctions and according to the definition which is one of the legal of it, is simply: " Sanctions is a sacred religious Islam for a given action, the type and value of the Almighty is specified and, of course, this value is usually in the form of an almighty at least used and Max. Despite the various topics concerning this term exists and, unfortunately, been referred to examples of this kind of Sanctions is not specified in the law, and some believe that recognition of this type, see Sanctions resources existed. While the legality of such a measure does not give permission to refer to books and resources, especially jurisprudence, if there was such Article 220 allows the legislator himself can see that while such permission is not given. The answer is that the definition listed your search criteria in the current law that the results of this search can be suspended for 222 and 237 and 244 are considered authoritative Shari'a.

Reviewing the Instances of Religiously Correct Authorized and Specified Penalizing in jurisprudential Books

As it is mentioned above, in this study, it is concluded that religiously correct authorized and specified Penalizing has certain and limited instances and in this study we aim to specify these instances. The problem here is the word of jurists on these cases are not the same and some instances are included in religious punishments and some penalizing in future. The problem goes back to another problem that some jurists, basically, do not consider any independent and separate chapter with the name of penalizing and studied it under the name of "miscellaneous punishments". In this study, the books of Kotob Lame, MabaniTakmalatolMinhaj (Basics of the

Continued Path), Tahrir al-Wasilah (Exegesis of the Means of Salvation), JavaherolKalam (Jewels of Speech) are used as references and sources of the study and among these books only in the book of Jewels of Speech written by late SahebJavaher (Mohammad Hasan Najafi famous to Owner of the Jewel) quoting the author of the book "Ideologies" this issue is addressed that here the text is exactly expressed. The late SahebJavahersaid regarding the discussion about the distinction between religious punishment and penalizing: " As we stated before, in religious punishment, the cases of religious punishment is specified by lawyer but the basic in the penalizing is that the punishments are not specified (and sentencing depend on the Judge's point of view) and most of the penalizing is alike. However, for five cases penalizing punishments are specified in narrations as fallow for: 1) everyone who has intercourse with his wife in the days of the holy month of Ramadan 2) everyone who marry and has intercourse with his slave without the permission of his wife, should be punished with one-eighth ofreligious punishment foradultery, which means twelve and half lashes 3) according to a quotation, two men who lie under the same quilt should be punished by Penalizing with thirty to ninety lashes. 4) Sheikh Toosi said that if a person tears the virginity of a girl with his finger, from thirty to seventy-seven lashes out at him.5) Sheikh Mofid said that if unmarried man and woman are seen under a cover or a quilt, will be punished by Penalizing with ten to ninety-nine lashes.

SahebJavaher further answered against the problem ShahidThani (Second Martyr) placed in Ideologies on difference in naming: "it is not a big problem. For these five case, whether to be religious punishment or penalizing, their situation is clear. Difference in naming does not have any effect on their verdict.

Although SahebJavaher and ShahidThani considered five above mentioned cases as specified Penalizing in Shariah but we face with other cases by studding religious books that can be classified as sub-group of specified and authoritative Penalizing in Shariah from structural point of view which means sentences for them are certain.

1) Tearing virginity of a girl with finger

Opinion of ShahidAwwal (First Martyr) in Lame:

(FromAvcsBkra Ba formula crisis Mehr its women, and if it was worth ten Meh, it should)

(No opinion has been given for Penalizing)

Opinion of Ayatollah Khoei:

(AvcsBkra of non-wife and Queen Ba Print or so excuse the months and the forms and Lada with a near eighty stripes»Opinion of Imam Khomeini at Tahrir al-Wasileh)

Question 5. If a person destroys virginity of a girl by a finger, he should pay her marriage portion base on the rate which is common among the girls and women with the same status and it is the ruler responsibility to punish him by penalizing as what he deems to be correct.

Opinion of SahebJavaher:

«Of AvcsBkra alone (Ba tinge to spit Mehr its women) Blakhlav find it was the men or woman (in a woman running her hand said the pony and hits) limit»

Sheikh further quoted Sheikh Toosi and Ibn Edris point of view regarding the religious punishment and rejected the narration regarding eighty lashes for this case and said:

«Sheikh thirty to ninety-seven and Ibn Idris nine to ninety."And it is believed that eighty lashes are well considered within these two religious punishments.

2) Intercourse with beats

Opinion of ShahidAwwal:

(DiscretionaryMokol to the front and said twenty-five whip and was said was said Kamal limit and murder)

Opinion of Ayatollah Khoei:

(Of Wata beast Mokolh meat or other Vlahd him butezrh ruling as it deems of interest denies his country to the other)

Opinion of Imam Khomeini in Tahrir al-Wasilah:

No religious punishment is determined for intercourse with the beasts and the ruler should punish for that based on his discretion. The amount of Penalizing depends on his view too.

The opinion of SahebJavaher is not observed in this regards.

3) Community under the quilt or unit nuisance by two men with two women or a man with a woman.

Opinion of ShahidAwwal:

(Kissing and intercourse in the bazaar and one discretionary including without limitation and Roy hundred stripes)

Opinion of Ayatollah Khoei:

189 : (If two men were found under a quilt and one deprived of them without having to be a buffer between ValmshahurAltokhrtheythan thirty whip to nine and ninety whip andBe endorsed case in the two women found under a quilt or one man and Of two women)

Opinion of Imam in Tahrir al-Wasileh:

If two men are seen naked under quilt and they do not have intercourse and nothing necessitate this act, both should be punished by Penalizing and the amount of punishment (Penalizing) is depend on the discretion of the ruler and it is more cautious that Had is performed for them but a lash lower.

If two alien women are seen naked below quilt, the ruler should whip them two lashes less than had and it is more cautious to whip 99 lashes.

Opinion of SahebJavaher:

(The two communities under Lazar is one example, and not deprived of their womb and Adharorh eliminate such caseEzra than thirty to ninety whip whip as Sheikh and Ibn Idris and more latecomers)

SahebJavaher pointed out that there is a narration from Imam Sadegh that the punishment for this case is only thirty lashes. Opinion of SahebJavaher regarding the community under the quilt is also 30 to 99 lashes. Further it seems according to the narrative that SahebJavaherhas been some kind of doubt and said it is better even to hand minimum of this punishment to the ruler too and God knows better.

4) Mamesk and patron

Nothing is mentioned in this regards in Lame.

Opinion of the Ayatollah Khoei:

(To Lavameske and another was killed fighting the killing and imprisonment of Almssupporter until he dies after hitting his sides and resolved by both fifty years and his skin Lavameske group to murder someone and kill another)

Conclusion

Certain sanctions, including new concepts and new legal affirmed that the Islamic Penal Code in 2013 with the adoption of legal and judicial system has been entered. Although the debate over the term of the law was so broad and deep but the concept of the new law and the limitations and conditions for which plotted two views it has been rallying competing against each other. The first view holds that this concept includes all sanctions that have been in religious history and legal resources or behavior towards its periphery and a ruling is infallible and non-authorized sanctions behaviors that were entirely new and to establish order and respect the interests of society by chastising the government for its anticipated we obtain. Because of the history of the view that deterrent penalties and its related issues and the acceptance of these terms causes confusion and precariousness of the legal structures of the institutions suspension - snooze time, counting the days of custody that long history is in our court system. The second view sanctions as cases merely authorized and approved by Islamic law that the jurists of it "in the shadow of" speaks and their number is less than ten. Al-Mustazhir the opinion of legal history and theory of the Legal Department, but problems in accepting this view emerges. This is an explicit and clear examples of it are not clear and may open the door again juridical references opens and said that the law should be interpreted not undermine the principle of legality of crimes. Or the idea by looking at the material instances 222, 237, 244 have been proposed to find more examples of the Legal Department. Search this law and stated that the jurisprudence of confusion out there.

References

- 1- of the Penal Code in 1991
- 2- of the Penal Code in 2013
- 3- Mossadeq; Muhammad, described the Islamic Penal Code, published by forests; printing; 2013
- 4- Shahid Aval, brightness and commentary translated by Ali roof; the second volume, published Quds Qom Print 22
- 5 -Khoi, Syed Abul, foundations Tkmlh translated Minhaj Ali Saeed, very pleased Press; First Edition, 2011
- 6- Khomeini, Sayyid Ruhollah; Ayatollah Seyyed Mohammad Mousavi Bojnordi Tahrir translations, Scientific and Cultural Assembly again; second edition, 2011