



The Philosophy of Punishment in Islam and Statute

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Abstract

The philosophy of punishment, which in terms of epistemology is a kind of philosophy of / mozaf philosophy, deals with the why and the basis of punishment and serves as an answer to the question of why we punish. Regarding answering this question, the subject law has tended towards two approaches, punitive and utilitarian. The first approach is retrospective and is concerned with punishment and the implementation of justice, and the second approach is looking for benefits. In the meantime, the study and analysis of Islamic sources reveal the fact that Islam's view of the philosophy of punishment is more comprehensive and coherent, and in addition to the characteristics and strengths that originate from the revelation of its teachings, there are elements of the punitive and utilitarian approach. In this research, the author has found that the philosophy of punishment in Islam, in addition to paying attention to justice as a basic principle in all Islamic rules and regulations, pays attention to the individual and social goals of punishment.

Keywords: *Philosophy; Philosophy of Punishment; Punitive; Utilitarian, Islam, Purposes of Punishment*

Introduction

The philosophy of punishment is one of the philosophies of. These are a field of topics or a branch of science that directly studies the nature of nouns in the genitive case with a general view and rationally and critically. It has not been long since the emergence of additional philosophies as independent and coherent knowledge. This type of philosophy originated in most English-speaking or Anglo-American countries. Additional philosophy, which is opposite to absolute philosophy, is also called second-order philosophy; Because, unlike absolute philosophy, it emerged from the connection of philosophy with other sciences and matters. Sometimes the philosophy of additional credit is divided into the philosophy of creditable and real sciences and real and creditable affairs. Philosophy of/mozaf philosophy, which is opposite to absolute philosophy, is also called second-order philosophy; Because, unlike absolute philosophy, it emerged from the connection of philosophy with other sciences and matters. Sometimes the philosophy of additional credit is divided into the philosophy of creditable and real sciences and real and creditable affairs.

One of the branches of additional philosophy is the philosophy of law, which is included in the realm of the philosophy of credit sciences.

Philosophy of law is a science that examines and ponders the known presuppositions in the science of law or the general issues of this science with a rational method. In general, additional philosophies are responsible for examining the presuppositions and the totality of that science with a rational method.

In the knowledge of law, several important basic and general issues are the presupposition of this science. One of its issues is that legal rules are binding. These basics of legal science are not studied in legal science itself, and the science of legal philosophy is in charge of answering the reason for this binding. The purpose of the law is one of the basic and general problems that need more and deeper discussion. Another issue is the sources of rights, which are examined from a rational angle. (Qarbania, 2012, p. 74) One of the branches of the philosophy of law is the philosophy of criminal law. One of the important topics in the philosophy of criminal law is the philosophy of punishment. A philosophical approach to punishment seeks to answer the philosophical issues of punishment. The most important question in this approach is why do we punish? Because punishment inherently requires inflicting suffering and torment on others, this act cannot be morally acceptable except with sufficient justification.

1. Concepts Definition

In this article, we are faced with two concepts of philosophy and punishment; Before entering the main discussion, it is necessary to define and explain these two concepts.

1-1.Philosophy

Philosophy is sometimes used in an absolute manner; In the sense of science, the subject of which is the knowledge of existence and its laws, and sometimes it is used as an adjective and is added to science or matter; such as the philosophy of history, philosophy of ethics, etc. Therefore, mozaf philosophy is different from absolute philosophy; Because the subject of absolute philosophy is general existence and existence, not specific existence and existence, while in additional philosophy, something specific is desired. Additional philosophy is also called second-order philosophy. In the definition of additional philosophy, it can be said: that it is a philosophy that emerged from the connection of philosophy with other sciences and scientific trends. Based on this definition, mozaf philosophies are a field of topics or a branch of science that directly studies the nature of what that philosophy belongs to, such as the (law) in the (philosophy of law). It is not a secret that what is meant by philosophy in this article is not absolute philosophy; Rather, it is an mozaf philosophy.

1-2. Punishment

A criminal who, by committing a crime, has disturbed the order of society and violated the laws governing it, must be prosecuted and tried, and depending on the case, punishment or protective and educational measures will be implemented in his case, so that he commits Don't commit a crime and be a lesson to others. Punishment is the most important executive guarantee in law to prevent crime and is society's response to criminal phenomena.

Punishment in the word means punishment and reward. The legal concept of punishment is not far from its literal meaning; Criminal law provides the following definition of punishment. "Imposing a social reaction in the form of suffering and fatigue on the criminal" (Goldozian; 2014, p. 291). Therefore, punishment is the punishment imposed on the perpetrator of the crime. The concept of suffering and fatigue is inseparable from the concept of punishment, and in fact, it is suffering and fatigue that are the real characteristics of punishment.

Hart, a jurist and the author of the book *Concept of Law for Punishment* enumerates five characteristics:

- 1) Punishment must involve suffering and unpleasant consequences;

- 2) The punishment must be due to the offense that happened against the legal rules;
- 3) Punishment should be applied only to the actual offender;
- 4) Punishment must be carried out with the intention and authority of a person other than the criminal;
- 5) The authority to enforce punishment is the legal system. (Haji Dehabadi, 2013, p. 146).

1-3. Types of punishment

The types of punishments can be explained in the statute criminal law and Islamic criminal law.

1-4. Statute criminal law

Customary criminal law has divided punishments into three main, subordinate, and supplementary categories. The main punishment is the punishment that is prescribed in the criminal laws after the definition of the crime.

Subordinate punishment is a punishment that is imposed in addition to the main punishment and there is no need to mention them in the sentence; Rather, according to the law, these punishments are carried out spontaneously and according to the punishment of the crime and are imposed on the criminal. Most of the subordinate punishments target the social rights of criminals.

However, the supplementary punishment is added to the main punishment and must be mentioned in the sentence by the judge, and it is never sentenced alone; Because they are sentenced to complete the original punishment. Article 19 of Iran's Islamic Penal Code deals with supplementary punishment. This article states: "The court can sentence a person who has been sentenced to ta'zir or custodial punishment due to the commission of an intentional crime, as a supplement to the sentence of ta'zir or custodial sentence, he may be deprived of social rights for some time and also be prohibited from staying in a certain place or places or force him to stay in a certain place".

Based on this article, if the court determines that the main punishment is not enough for the accused, it can determine another punishment as a supplement for the accused as a supplement to the main punishment.

In the statute criminal law, most punishments revolve around execution, imprisonment, and fines. Punishments are implemented with three goals: punishment, general and specific deterrence, correction and treatment, and incapacitation. The aforementioned triple punishments can achieve the goals mentioned earlier more than other punishments. For example, the Afghan Penal Code in Article 97 stipulates the main punishments as follows: 1) execution; 2) life imprisonment; 3) long imprisonment; 4) moderate imprisonment; 5) short imprisonment; 6) Fine.

1-5. Islamic criminal law

In the religion of Islam, punishments are divided into worldly and afterlife punishments in a macro division. Hereafter punishments, which is the most important type of punishment in the religion of Islam, refers to the Hereafter and the Day of Resurrection, where God punishes sinners based on his justice. In Islam, worldly punishments are divided into two categories: natural and mandatory. Natural punishment refers to punishments that are the natural result of sin and crime. In other words, the punishments are the actions and effects of sin; Like the side effects of drinking alcohol.

The second category of worldly punishments in Islam is divided into the following four types: hudud, qisas, deiat, and ta'zirat.

1) Hudud: Hudud is one of the most important punishments in Islamic criminal law. This punishment mainly refers to the aspect of divine right and general crimes. It is said in its definition: "Hud

is a punishment that the Sharia has specified for committing a non-criminal offense, its amount and type, and its implementation is carried out only by the government after it is proven." (Haji Dehabadi; 2014, p. 26). Many limiters are used in this definition, which are briefly explained.

Misdemeanor: Limit punishments have been prescribed for committing a misdemeanor, that is, a forbidden act. Limits are always imposed for committing a forbidden act, unlike some punishments that may not be due to the commission of a sin; Like the insane and immature Ta'zeer, which due to not having the common conditions of duty, is not obligatory and sacred for them; However, sometimes they are punished.

Non-criminal: With this limiter, retribution, and ransom are excluded from the definition. Retribution is a pledge, both personal and non-personal, for committing a crime. Crime in Islamic criminal jurisprudence refers to crimes against the physical and mental integrity of others, such as murder, mutilation, and deprivation of benefits.

Determining its type and amount in Sharia: In hudoud, unlike Ta'zir, the type and amount of Hudoud are specified; For example, the punishment of adulterers and adulteresses is 100 lashes. (verse 2 of Surah Noor) or the punishment for adultery is 80 lashes (verse 4 of Surah Noor).

Execution of Hudoud punishment after proof only by the government: with this stipulation, expiations such as atonement for intentional murder, atonement for fasting iftar, etc. are excluded from the definition. Although for some non-criminal sins, expiation is necessary and even its type and amount are stated; performing expiation is the responsibility of the perpetrator of the sin and not the government. On the other hand, the implementation of Hudud is the duty of the government, and for this reason, in the traditions, the establishment of Hudud is considered the duty of the ruler. (Haji Dehabadi; *ibid.*, p.p. 27 - 28).

2) **Qisas:** The word Qisas has been considered as following and tracking the sign and effect of something, and the punishment of life has been called Qisas because the crime of life is followed to execute the same against him. (Ibn Manzoor; 1993). According to the lexical concept of retribution, the jurists have defined it as the satisfaction of the effect of the criminal's crime, and they have considered it to be a punishment that is imposed on a person to carry out what he has done. (Najafi; 1404; 21) Retribution is divided into two types, retribution for life and retribution for members. Retribution of life is if someone has deliberately taken the life of another, in this case, the right of retribution is established for the parents of the victim and they can retaliate, take ransom, or forgive the murderer. But the retribution of the member is proved in injuries and amputation, in which case the victim will claim his right.

3) **Diyeh:** There is no agreement and unanimity of opinion on the nature of Diyeh among Islamic jurists; Some consider it a punishment, some consider it a compensation, and some consider it an institution with a dual nature. According to the theory that considers ransom as a punishment, it is a monetary ransom that is determined by the Shariah to be paid to the victim or his parents for wrongful and quasi-intentional crimes against the person, members, and interests of the members, as well as in intentional crimes for which retribution is not possible (Khoi, 2001, p. 186).

4) **Ta'zir:** One of the most important and widely used punishments in Islamic criminal law is Ta'zir. There are various definitions of Ta'zir, but only one of them is mentioned: "Tazeer is a punishment and discipline for committing sins and violations for which, in most cases, no amount has been determined by the Shariah, and the amount is left to the ruler to act according to the interest" (a group of authors; 2006, p. 73). There is less objection to this definition; Because the limiter "in most cases" includes sins for which the amount of punishment has been determined, at the same time, the main literal meaning (prohibiting and preventing the repetition of the sin) is included in this definition. In addition to these, it also includes the punishment of children and insane people except for violations. Martyr First, Mohagheg Ardabili, and some contemporary jurists have also presented a definition similar to this one (*Ibid.*).

2. *The Philosophy of Punishment*

What is meant by the philosophy of punishment is the reason and its purpose, in other words, the basis of punishment and the answer to the question of why we punish and give punishment. To answer this why, using the term philosophy of punishment may seem a bit strange and unfamiliar at first; because they usually add philosophy to science; Such as philosophy of science, philosophy of physics, philosophy of law, philosophy of religion, etc., while the punishment is not science but one of a subject of criminal law. As an answer to this doubt, it should be noted: that in the realm of additional philosophies, philosophy is sometimes added to a science and sometimes to an institution; For example, in the philosophy of law, sometimes the basis and origin of the requirement of rules are discussed in general without paying attention to a specific legal department or institution, and sometimes it is about a specific legal institution, such as the institution of punishment, and discussing the legitimacy and why of that particular institution. In the second case, we want to know why such an institution exists in law, and in other words, is such an institution legitimate or not. The difference between these two areas is clear; The first one refers to the principle of obligation and the second is about a specific type of obligation and guarantee of execution. (Hakmat Nia; n.d., p. 8). Therefore, the term philosophy of punishment is the right term; Because it is one of the institutions of criminal law, and added philosophy is not reserved for sciences and is also added to institutions and phenomena, the meaning of the philosophy of punishment is why; It means its basis, cause and purpose (Qurbania, 2001, p. 121).

The philosophy of punishment has gone through different stages in the history of human thought and action. Sometimes it is the revenge of the innocent against the criminal, sometimes it revolves around the axis of the committed crime and its purpose is to punish and punish the life, and sometimes it pursues the goals of the society and the criminal. However, the philosophy of punishment in Islam, whose origin is divine revelation and commands, is not satisfied with the goals raised in the criminal law and has set higher goals. Considering the difference between the philosophy and the reason for punishment in Islamic criminal law and Islamic criminal law, this article first examines the philosophy of punishment in the field of Islamic criminal law and then the philosophy of punishment in Islamic criminal law.

2-1. **The philosophy of punishment in statute law**

There are two major views on the philosophy of punishment among jurists and statute law philosophers. The first point of view is punitive and the second one is utilitarianism. The first one is called past-oriented and duty-oriented, while some have used the name future-oriented for the second one.

2-2. **The punitive view**

The view of punitive, although it was officially proposed in the late 18th and early 19th centuries and attracted the attention of some philosophers and jurists, and it even emerged following the utilitarian school in protest against it, it seems that its historical roots are in the past. It has existed for a long time and some authors believe that Greek philosophers, especially Socrates, Plato, and Aristotle, can be considered as the early supporters of this school. The main purpose of punishment based on this view is to create justice and restore the disturbed moral order in society by punishing the criminal. By committing a crime, the criminal deserves to be punished and should be punished as much as he deserves. Therefore, applying punishment is the goal itself; Because it establishes justice and brings the criminal to what he deserves. This view in its most complete form includes the following principles:

- 1- The moral right to punish is based solely on the crime committed;
- 2- The moral duty to punish is also exclusively based on the crime committed;
- 3- The punishment must be proportionate to the crime;
- 4- The punishment is to eliminate the crime;
- 5- Punishment is the right of the criminal. (Qayasi and others 2006, p.p. 351- 352).

Although the origin of the view of punishment lies in the distant past, it has had supporters among the philosophers and thinkers of the last few centuries. Kant and Hegel are considered two thinkers in favor of the theory of punishment.

2-2-1. Kant's view

In Kant's point of view, which is a moral theory, punishment is its end and goal, and by applying it, we achieve this goal. He declares the basis of punishment to be conscience and absolute justice; Because behavioral crime is ugly and morally condemned, and for this reason, the perpetrator should receive his ugly punishment, but the punishment is not for the society to defend itself against the criminals or to prevent the crime by intimidating others, but its actions are He is good and has inherent goodness. He has explained the basics of the theory of absolute justice in the book "Criticism of Practical Reason" and in the metaphysical factors of the theory of rights, he believes. If justice and honesty are lost, human life will no longer have value. According to Kant's opinion, only the actions that are performed to fulfill the duty have moral value, and paying attention to the results and effects of the execution of the punishment in society, cannot be the reason for the legitimacy of the punishment or its morality.

The important role of ethics and justice in the view of Kant and his companions on the issue of violation of rights becomes more- clear. Kant believes that violation of the right is reprehensible since it leads to chaos and discomfort of others; Rather, it is ugly because it is contrary to morality and justice. The important role of ethics and justice in the view of Kant and his fellow thinkers becomes more- clear about the issue of violation of rights. Kant believes that violation of the right is reprehensible since it leads to chaos and discomfort of others; Rather, it is ugly because it is contrary to morality and justice. He believes that the moral support of individuals is not subject to any condition. (Mohvahd 2002, p. 296) Kant's view focuses on absolute justice, from his point of view, justice must be implemented whether it benefits the society or not; The example of the deserted island is proposed to explain Kant's view of absolute justice.

2-2-2. Hegel's view

Another philosopher who has dealt with the issue of punishment is Frederick Hegel. According to Hegel, the right is based on the will, which means that the right is based on freedom and choice, this freedom and choice is at the same time one of the characteristics of human nature, this freedom can appear in two ways. One way is that man is free to do whatever he wants and is not prohibited from what he likes, that is, arbitrary freedom. In the second case, freedom means real freedom, which Hegel calls absolute freedom, in this sense the will is free until it is realized as a general will, it expresses the conditions in which people can do whatever they want They can live together in a community. One way is that man is free to do whatever he wants and is not prohibited from what he likes, that is, arbitrary freedom. In the second case, freedom means real freedom, which Hegel calls absolute freedom, in this sense the will is free until it is realized as a general will, it expresses the conditions in which people can do whatever they want and can live together in a community. Then, in response, he says: Acts of force are against the right if it is a mere act of force and is imposed on someone first, but if it is done as a reaction against the acts of force that have already been done and as a secondary act of force. It is just and necessary that the second act of force destroys the first one and restores the law that the first act violated. Therefore, such coercive actions are not against the dignity of a free being. To explain this justification, Hegel takes help from the conscience of the criminal and his judgment and says: A person who has committed a crime considers it morally abhorrent to treat him as he has done, and he may come up with several reasons why he should not be treated this way. but he cannot seriously claim out of faith and belief that he does not deserve that reaction even though injustice is being applied to him. With a person based on his merit, that is, choosing the way he has dealt with others as a criterion and rule for treating him. (Qiyasi and others, *ibid.*, p.p. 353 - 354).

2-2-3. Criticism of the punitive view

The most important criticisms of this view are as follows:

- 1- This point of view is only concerned with the committed crime and seeks to compensate for the injustice resulting from it, while in the punishment process, factors such as the characteristics of the criminal, attention to his reformation and rehabilitation, and attention to the effect of punishment in creating order and security Social should be considered;
- 2- - The criterion of placing the crime committed to determining the type and amount of the punishment is not possible in all cases and the punishment cannot be determined and executed exactly like the crime, so it is simply not possible to recognize the need for justice in such cases and other factors must be considered. considered the nature of the crime committed to determine the type and amount of punishment;
- 3- - According to this view, justice is an angel who has no eyes and has a victorious sword in his hand, who must descend as soon as a crime occurs and restore the disturbance in the moral order of the society and re-establish justice, without the slightest to be flexible, then pardon and non-implementation of punishment for any reason is considered cruelty and injustice, while punishment, benevolence should be considered along with justice.

2-3. Utilitarian opinion

Based on this opinion, the legislator should enact the law by taking into account the public interests and calculating benefits and corruptions, and the criterion of the correctness or incorrectness of the law is nothing but the results that follow from it; This theory is a general moral theory regarding the subject of moral principles of punishment according to this point of view, some many effects and results must be imposed on the punishment so that its application is justified, each of which is imposed on a specific type of punishment, and the legislator must be punished for each specific type of crime according to the purpose he has. Make it appropriate. Some punishments can be applied as compensation for damages, and some are applied as a way to empty the victim's sense of revenge against him and his relatives, but according to the followers of this school, these effects are of secondary importance and the most important effects of punishment are the effects of its deterrence and its effect on reducing the number of crimes in the society. The most completely organized form of this theory is Bentham's view of crime, "According to him, the effects and results of punishment on the person who is punished are annoying and undesirable; Therefore, based on the principle of "profit", if it should be accepted, it should be accepted there, which seems to prevent more evil (Golduzian, *ibid.*, p. 55).

According to view, the results that result from the punishment and ensure its legitimacy are as follows:

- 1) Deterrence: The most important goal that has been stated for applying punishment is the goal of preventing crime in society. A crime that has happened is an act related to the past and the evil resulting from it often cannot be eliminated, while future crimes can be prevented, and for this reason, crime prevention is the main purpose of punishment and its main justification. It is considered that although punishment is a form of evil if it can prevent future evils, it can be justified and it is compatible with the originality of benefit, one of which is to prevent more pain.
- 2) Compensation: Another purpose mentioned for punishment is compensation for the damage caused by the crime against the victim, which is possible in two ways: one way; Material compensation is compensation for material damages caused by the occurrence of a crime, and the other form is criminal compensation that results from inflicting suffering and pain on the criminal, since the crime is an obvious violation of rights, one of the functions of punishment should be compensation for such damages.
- 3) Reform and transformation: in this view, punishment with its constructive and reforming effect destroys criminal tendencies in an individual and thereby reduces the amount of crime in society.

The emphasis of this theory is on the constructive aspect of punishment, not its threatening aspect.

- 4) Education: According to this theory, punishment shows the moral error and the unacceptability of the crime by society, and it stimulates and strengthens the moral tendencies that lead to the control of criminal desires and desires, and as a result, it acts as a means of moral education for the society. Just as not dealing with the criminal creates the impression that his action is approved by the society or at least the society is not highly sensitive towards it. Punishment makes the criminal aware of the immorality of his actions and tries to harmonize with the values and beliefs accepted by society.

2-3-1. Criticism of the utilitarian view

Although the utilitarian view has been widely welcomed and influenced the criminal laws of many countries; however, it also faces problems and shortcomings, the most important of which are mentioned below.

- 1- According to utilitarianism, the most important goal of punishment is deterrence. Punishment is useful and acceptable because it prevents more suffering and evil in the future; While in many countries the trend towards crime is on the rise and the effect of punishment in deterrence has been severely doubted and instead social reactions have gained strength as an alternative. Therefore, this theory, which considered the most important benefit of punishment as deterrence, has not been very successful in achieving its goal.
- 2- This view is contrary to the punitive view that focuses on man as a free and responsible being, not as a free and responsible being; Rather, it is considered a tool to achieve a specific social goal.
- 3- The utilitarian view considers punishment in any form and any amount as fair if it has social benefits. Therefore, in some cases, it considers the punishment of innocent people and people who have diminished responsibility due to mental illness or provocation against the victim as legitimate and justified because of the beneficial results that result from these punishments. On the other hand, if the punishment does not bring useful results, it is considered unjust and illegitimate (Qayasi and others, *ibid.*, P. 362).

2-4. The philosophy of punishment in Islam

Punishment has a prominent place in Islam. This is because it is connected with the characteristic of being independent; when we accept that man is a free-willed being, he will be responsible for any choice, and on the other hand, being responsible without reward and punishment is meaningless. Explaining the philosophy of punishment in Islam requires deep investigations and extensive efforts. This effort and review will be based on two assumptions; The first is a theological presupposition, which is the belief that divine decrees and regulations are purposeful, and the second presupposition is that there are ways to discover the goals and purposes hidden in divine legislation (Qayasi et al., p. 366). I will start the discussion about the philosophy of punishment in Islam after explaining the views of the schools of law regarding the philosophy of punishment with the question of whether according to Islam, punishment is only for establishing justice and punishing the criminal and its criterion is the merit of the criminal and the amount of evil resulting from Is it his act? Or is it that Islam's view of punishment is a functional and ultimatum view and it is only to achieve individual and social effects and results that has considered the punishment of criminals as legitimate? Or is the philosophy of punishment in Islam a mixed and dual philosophy? If so; Is it possible to pay attention to both the merits of the criminal and the usefulness of the punishment and its effects on the criminal and the society in all types of punishments, including punishments, retribution, and punishment?

In response, it should be said: According to the general outlines of Islamic teachings and the characteristics of the Islamic penal system, which we will discuss, it seems that Islam's view on the rational and moral justification of punishment is dual and mixed. The point of view governs the entire

penal system of Islam and all punishments can be justified in this theory, although the recognition and proof of this theory is not the same for all punishments. In this view, paying attention to the justice and merit of the criminal on the one hand and achieving desired individual and social effects and results has caused a comprehensive legislative system to be produced. Therefore, Islam has a combination of the philosophy of punishment; So that the features of the two views of punishment and utilitarianism are well visible in Islam. The philosophy and why of punishment in Islam can be categorized as follows:

2-4-1. Paying attention to the justice and merit of the criminal

Criminal by committing a crime; He has broken the sanctity and sanctity of God's commandments and violated the religious law, and this action rationally and religiously makes him deserving of punishment. Also, in some crimes, in addition to violating the sanctity, the criminal obtains interests and desires that are illegitimate and illegal. Reaching them in this way causes others to be deprived of their legitimate rights.

After committing a crime, the criminal injures the emotions and feelings of the victim against his relatives and other members of society and destroys the feeling of security and comfort, and all this means cruelty and injustice in the individual and social dimension.

In the Islamic legal system, which is based on justice, all regulations especially criminal laws have been explained to achieve justice, and as far as possible, injustices resulting from crimes must be eliminated.

2-4-1-1. The characteristics of seeking justice in the Islamic penal system

2-4-1-1-1. The reality of criminal justice in Islam

Compliance with criminal justice in punishment requires knowing the extent of the criminal's deservingness. Without this knowledge, a fair punishment cannot be imposed on him, and this knowledge is very difficult due to the limited and incomplete knowledge of man, which has a lot of excesses, and the evidence of this claim is the extreme fluctuations of punishments throughout human history. Therefore, criminal laws should be established by an authority that can observe the true proportion between crime and punishment by taking into account all the effective factors in this issue and realizing criminal justice in the literal sense of the justice intended in the laws. Due to the direct or indirect connection of these laws with the legislative will of God the Wise, the punishment of Islam is a real justice free from any excesses and limitations and it originates from the absolute justice of God Almighty.

2-4-1-1-2. The flexibility of justice in the Islamic criminal system

In the Islamic penal system, besides justice, two other institutions have made criminal justice flexible in Islam, and they are: "repentance and pardon". In this penal system, the commission of a crime will not necessarily lead to the punishment of the criminal, and the criminal may be freed from punishment due to repentance or amnesty, which are two alternatives to punishment, and this is another point of difference between the Islamic view and the view of punishment, which imposes punishment. He considers it necessary in any situation. This is the principle of the necessity of punishments in the Islamic penal system.

2-4-1-1-3. Justice is different in the stages of legislation and implementation

Another feature of the Islamic penal system is the difference between justice in the legislative phase and its implementation phase. In the legislative phase, pure justice is considered to the extent that it is feasible and desirable in this world. But in the implementation stage for reasons such as; The difference between the special conditions of criminals and those who apply punishment and the fallibility of the ways of proving crimes, the realization of real or pure justice is very little. severe punishments such as stoning and cutting off iodine should be implemented easily, although there is no doubt about their

fairness in terms of legislation. According to one of the researchers, the area of punishment is much narrower than the law in the four stages of prosecution, proof of crime, sentencing, and execution of punishment (Hosseini 2011, p. 166).

3. Purposefulness in Punishment

Paying attention to the individual and social effects of punishment is another aspect of Islam's perspective on punishment. In all punishments, one of the important goals of explaining and implementing punishment is to achieve desirable effects in the material and spiritual life of humans. Establishing current regulations and considering acts that threaten the most important individual and social interests and interests as crimes, and emphasizing the punishment in this world and not postponing it to the other world, shows the importance of the effects and results of punishment in social life and it is the material of humans (Zofari 1998, p. 40). If the purpose of punishment is only to punish the criminal, this purpose can be realized more precisely in the other world, it must be said that besides the realization of this purpose, other purposes related to the material life of humans were also intended. And punishment has a function other than the realization of criminal justice.

4. Attention to the Effects and Results of the Execution of the Punishment

The premise of examining the philosophy of punishment in Islam is to accept the fact that the rules of Islam are subject to real interests and corruption and have been legislated to achieve goals in the individual and social lives of people. Therefore, paying attention to the individual social, material, and spiritual results of the implementation of punishment is another aspect of Islam's perspective on punishment. This aspect of the philosophy of punishment in Islam can be seen in the following paragraphs:

4-1. The mundane nature of punishment for crimes

To realize the effects and results of punishment in the individual and society, Islam has not only postponed the punishment to the hereafter. Rather, he emphasized its implementation in this world so that its effects include the individual and the society.

4-2. Attention to social interests in criminalization

In addition to individual interests, the Islamic criminal system pays special attention to social norms and supports them against norm breakers. One of the protection methods of Islam is criminal protection. Islam's attention to social norms and interests can be seen in the field of extreme punishments and retribution.

4-3. Irrespective of the execution of the punishment

The existence of two institutions of pardon and repentance in the Islamic penal system shows that the execution of the punishment is not objective, and if its goals are met by other means, there will be no insistence on the execution of the punishment.

4-4. Prohibition of execution of punishment in case of mischief

Another thing that affects the effects and results of punishments is the prohibition of punishment in case of mischief. From the point of view of Islam, if the mischief caused by the execution of the punishment affects its interests, the execution of the punishment lacks legitimacy. For example, from a jurisprudential point of view, it is forbidden to punish Muslim criminals in a non-Islamic land. The reason for this mischief prohibition is the possibility of a Muslim criminal joining non-Muslim groups.

5. Public Execution of Punishment

In some cases, Islam has recommended the public execution of punishment. The purpose of public punishment is to teach others a lesson. In other words, the aspect of intimidation and general deterrence has been emphasized. Although the jurists have suggested that the punishment should be public in the crime of adultery, its criteria can be found in other crimes as well (Qiyasi and others, *ibid.*, p.p. 371 -372).

5-1. Purposes of punishment in Islam

It has already been mentioned that Islam's view of the philosophy of punishment is a combined view; It is both punitive and retrospective and utilitarian and forward-looking, and it considers the implementation of justice and the effects and results of punishment. In this essay, we are looking at the goals of Islamic criminal law by punishing and punishing. By studying Islamic sources, the following goals can be derived from punishment:

5-2. Protection of divine privacy

Divine sanctuary is a forbidden area whose limits and boundaries are determined by God's commands and prohibitions. This feature can be obtained from the definition of words such as unlawful and necessary. For example, it has been said about haram: asking to leave the current situation that would cause an eagle. The Holy Qur'an also calls us to protect the sacredness of God. Verse 30 of Surah haj says: "Whoever venerates the privacy of Allah, that is better for him". privacy is anything that is not allowed to be ignored but must be adhered to. and not ignoring them (Tabatabaei 1996, p. 372). Verse 32 of the same Surah says: "Whoever venerates the sacraments of Allah—indeed that arises from the God wariness of hearts". Divine rites are signs that God has determined for His servants. piety, which means self-restraint from God's prohibitions and avoiding His wrath, is a spiritual thing that originates from the inner and soul of human beings, not connected to the appearance and shell of behavior. According to the Qur'an, achieving this goal is possible in the practice of divine rituals. In addition to the order to encourage people to celebrate divine prohibitions and not trample on them, which formed the approach of the mentioned verses, other verses called to do this more seriously, and even in some of them for the violators, eternal punishment in hell is promised (verse 14 of Surah Nesa).

5-3. Establishing justice

Tendency to justice and trying to establish it in individual and social dimensions is one of the basic principles of divine legal systems. This principle has a greater expression in the criminal dimension; Because it is directly related to the restoration of injustices caused by the commission of a crime. According to Islam, committing a crime is on the one hand an injustice to oneself, and on the other hand it is an injustice to others; Because the criminal usually obtains illegitimate resources by committing a crime and depriving others of their legitimate rights. It is in such a situation that the Islamic penal system has legislated punishments to eliminate injustices so that justice can be established and implemented by implementing them (Qiyasi and others, *ibid.*, p. 376).

5-4. deterrence

Deterring from committing crimes and creating obstacles to avoid getting close to practical and moral ugliness and contaminations have taken a large part of Islamic teachings. In addition to the programs that eliminate criminal motives and reform people from the inside, Islam has also placed an external deterrent that if people, despite all the educational programs of Islam, still Go to crime and violate the laws and the rights of others, to control them from the outside and prevent them from criminal acts. This external factor is the punishments imposed by the law, and each of them prevents the occurrence of more crimes in a way; Of course, it is natural that the prevention of committing a crime should be in a way that can overcome the profit-seeking and criminal feelings of actual and potential

criminals, and for this reason, achieving the goal of prevention is usually associated with some kind of violence and creating fear. It may conflict with some other goals of punishment. Achieving this goal is more evident in the punishments that exist as "houdod" in the Islamic penal system; Since the crimes that require limits usually threaten the basic interests and interests of society and shake the foundations of social life, naturally, the main goal should be to prevent the occurrence of such crimes in the society. The occurrence of these crimes should be prevented by any means and the public interest should be secured, although some of the interests and benefits of the individual may be lost and the individual will be sacrificed to the group. Naming these punishments as "hade" was not by their nature, because it also means "prohibition" in the word, and it means obstacles. In Ta'ziri punishments, one of the important goals is to prevent the occurrence of crimes, and the Islamic ruler should set appropriate punishments for crimes according to this goal. For example, in crimes where the criminal seeks to achieve illegal material benefits, the imposition of financial penalties can play an important role as a deterrent until imprisonment or whipping is sufficient. The Islamic penal system is a deterrent for both sides; That is, general and specific deterrence is important.

5-5. Atonement for sin and purification of the guilty

One of our religious beliefs is that every action creates effects in the world and the hereafter and in the soul of a person, and we are always dependent on our actions. From here, another angle of the purpose of punishment becomes clear, that punishment is the reason for the punishment of the criminal in this world and the hereafter and to cleanse him from the evil effects of sin. As a result, although it is hard to bear the punishment, it is in line with the benefit and moral health of the criminal. A person who is punished in this world and endures temporary worldly hardships will be saved in the hereafter, where the punishment is far more severe and severe unless he has not repented of his actions.

5-6. Correction and Rehabilitation

Among the things that have been stated in the goals of punishment, is the educational role of punishment, which plays an effective role in rehabilitating the criminal and bringing him to a worthy degree of happiness, and it is a kind of honoring the criminal. The strictness in proving most sexual crimes and the emphasis on covering them up shows that enough attention has been paid to reforming the offender. The emphatic advice of the religious leaders to those who had committed adultery, fornication, and adultery, based on the fact that secret repentance is far superior to confessing the sin and bearing the punishment, shows that in these crimes, the main emphasis is on the offender to repent. In the divine system, whose goal is the happiness of man and his guidance, punishments are mainly implemented to reform criminals and rehabilitate them. Therefore, there is no insistence on harsh punishments except in cases where the society is harmed. Also, the fall of the punishment or its reduction due to the repentance and remorse of the criminal, shows that the legislator is thinking about reforming the criminal, and the implementation of mild and hidden punishments also shows that the legislator pays more attention to the rehabilitation of the criminal.

Conclusion

This article has reached the following results:

1. There are criticisms and objections to the two viewpoints of punitive and utilitarian.
2. The punitive approach, with too much emphasis on absolute justice, considers the main philosophy of punishment to be punishing and punishing the criminal and does not insist much on reforming the criminal and other individual and social goals of punishment.

3. The original school of utility and the utilitarian approach is more focused on the future and looks for the effects and results of punishment does not have much concern for the implementation of justice and is even willing to abandon the implementation of justice if the punishment is useless.
4. The philosophy of punishment in Islam, in addition to paying attention to justice as a basic and underlying principle in all Islamic rules and regulations, also pays attention to the individual and social goals of punishment and seeks to provide them.

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