



## Deprivation of Social Rights in Islamic Criminal Policy

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<http://dx.doi.org/10.18415/ijmmu.v12i5.6813>

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### **Abstract**

Considering the ever-increasing of social relations complexity, the necessity of its proper organization and especially the multitude of motivations to violate the rules governing it, preventing disorder and managing the crime phenomenon require effective and fair measures. "Deprivation of social rights" is one of those measures by which, with the aim of reforming and incapacitating from committing a crime, the criminal and any person with a dangerous condition are deprived of the rights and privileges that in a law-abiding society and in Interaction with the community, people benefit from it. The question that is raised here is the place of responding to crime by deprivation of social rights in the criminal policy of Islam. The present research has investigated the issue in a library manner and using inductive and citation methods (in the realm of Islamic jurisprudence) in order to explain the nature, jurisprudential foundations, examples and effects of deprivation of social rights as one of the appropriate answer to crime and to help in achieving a healthy society free from disorder and injustice. The results of the research show that the criminal policy of Islam, in dealing effectively with delinquency, has paid attention to the punishment of deprivation of social rights in relatively wide cases, in order to prevent the occurrence of delinquency through incapacitating and reforming people with a dangerous state.

**Keywords:** *Deprivation; Rights; Social Rights; Deprivation of Social Rights; Islamic Criminal Policy*

### **Introduction**

Deprivation of social rights is one of the examples of society's reaction to crime, and in Islamic criminal jurisprudence, it is one of the examples of ta'zir, and it is a person's lack of rights and privileges that individuals enjoy in a law-abiding society and interacting with society. The lack of social benefits may have a coercive or situational and credit origin. What is being discussed here is the ineligibility and deprivation of the criminal person from the privileges that Sharia has made available to all citizens, but the guilty person has been deprived of it as a result of committing a crime and for the purpose of incapacitating him from repeating the crime. So here, deprivation of social rights is meant as a kind of social reaction against crime.

Given that the degree of importance of the discussion in any issue depends, firstly, on the location of the disease and its impact on the axis defined for it, and secondly, it depends on the amount of research

done in that field. The criminal strategy of "deprivation of social rights", despite its effect in disabling the criminal from committing a crime and reducing the crime on the one hand and its strong context in the first-hand sources of Islamic jurisprudence on the other hand, discussing it in traditional jurisprudence and the works of jurists seems weak

The main goal of this research is to examine social exclusions as a social reaction and criminal strategy against delinquency, in terms of foundations, examples and works and in the realm of Islamic sources and using inductive, reference and comparative methods. Therefore, the content of this research is organized in five sections, under the headings of lexicology, foundations of social deprivation, jurisprudential nature, examples and its effects.

## 1) Lexicology

The most key words used in the title of the discussion are: deprivation, rights, social, social rights, deprivation of social rights, which are defined and explained here, although briefly and to the extent necessary.

### 1-1) Deprivation

Deprivation in the word means uselessness, deprivation, hindrance, refusal, despair, unwillingness, loss, need and disadvantage (Dakhkhoda, n. d., the word deprivation) and it may be according to its effects and use in Different fields take on a more precise meaning. For example, someone who is deprived of something is called "deprived" (Farahidi, 1410 AH, vol. 3, p. 223). If someone is prohibited from something, the word "prohibition" is used for it. Sanction is anti-analysis; It means that it is not permissible for him to use that thing (Ibn Manzoor, 1414 AH, vol. 12, p. 125). So, the literal meaning of the word "deprivation" is clear and no further explanation is needed, and what needs to be explained is the range of examples and the scope of its application and effects that should be discussed.

### 1-1) Rights

Rights, originally, is the Arabic word and the plural form of the word right. Regardless of the literal meaning of right, this word has several meanings in the term: (1) right in the sense of social regulations; It means that the system has a guarantee of implementation and governs the individual and social behavior of the citizens of a society, (2) Rights means wages and financial rewards. In this sense, which is always used in the plural, this word is synonymous with "Ajar" in Arabic and "salary" in English and (3) Right means a credit matter that has specific meaning and effects in each case. In this sense, the addition of the right expresses its specific credit concept in each case (Gharavi, 1425 AH, p. 10). Haq in this sense is equivalent to "right" in English. In this article, this is the concept of right. Therefore, a right is a valid thing by which the owner of the right deserves to benefit from something and appropriate it, and it is necessary for others to comply with it (Mousavi and Haqirat, 2006, p. 129).

### 1-1) Social

The Arabic word "Ijtemaa" means coming together, joining together, gathering (Ragheb Esfahani, 1990, appendix the word " Ijtemaa"). This word is used in Farsi and its application is about human groups that gather in the same environment. The word "social" is related to the community and has the general meaning (dekhoda, n. d., appendix the same word).

### 1-2) Social Rights

Social rights are advantages and privileges that are raised in a community and in relation to other members of society, and in a way, the application of these rights is related to the fate and social life of all members. The right to participate in the administration of the country, to choose and be chosen, membership in associations, groups, employment and education, freedom to choose the place of

residence, economic activity, prohibition of forced labor are examples of social rights (Eid Mohammad Ahmadi, n. d, p. 181). In other words, social rights refers to the right to enjoy the minimum level of social and economic welfare, which is given to individuals as the benefits of membership and participation in the life of society, so that a person can enjoy dignified living conditions in the path of his perfection and growth. The right to social security is one of its clear examples (Articles 22 and 25 of the Universal Declaration of Human Rights). The society and the government on its behalf have the duty to provide the conditions of a dignified life for people who are not able to meet their needs. So, these social rights mean the privileges that people have over the society as members of the society.

### 1-3) Deprivation of Social Rights

Deprivation of social rights is a new term that has been added to the titles of criminal law, and this title has no precedent in Islamic jurisprudence, but its examples are abundantly seen in jurisprudential sources. In general, God has given him a series of rights and privileges for the purpose of perfecting man, and he has also asked him to do some tasks in this direction. Man's movement in this direction is the divine limit that must be observed (Baqarah, verse 229). Therefore, according to Quranic teachings, God has set a series of privileges for human beings, and people may lose their worthiness or ability due to disobeying divine laws. Therefore, regarding divine deprivations, it can be said that due to non-observance of divine laws, people not only lose their property, but also may destroy their social life and even their material life Qur'anic example: "It is forbidden and impossible for a village that we have destroyed (its people) to return to the world." They will not return (Anbia, verse 95). Or God has given dignity to mankind (Isra, verse 70) and the dignity of man is to respect his physical and spiritual integrity, unless he breaks this sanctity himself (Ibid., verse 33).

Of course, some have stated these prohibitions in the name of God's forced prohibition (Ragheb Isfahani, 1990, vol. 1, p. 473) and there are other verses, such as: "Before that (eating milk), we forbade all lactating women on him." (Qasas, verse 12), It is also stated: "Whoever associates partners with God, without a doubt, God will forbid him Paradise" (Ma'idah, verse 72). Some have considered the prohibitions of the mentioned verses to be rational (Tabatabaei, Beta, vol. 16, p. 13). At first, it seems that such sanctions are included in the category of natural-coercive sanctions, because polytheists have lost the ability to go to heaven due to associating with God Almighty. And these people remain like those who have lost all their material possessions due to natural disasters such as floods, earthquakes, landslides, etc. However, such sanctions attributed to God are due to God's creative will, not because God prevents them from going to heaven by force although the Qur'anic expression is such that God forbids and sanctions them. With the explanation that sanctions and exclusion are sometimes mandatory-situational and sometimes forced-natural. Natural and forced deprivation was already mentioned, which is out of the scope of the present research, but mandatory-conditional sanction is that the criminal person is deprived of having something that he could have before committing the criminal act by means of a ruling power and authority.

The meaning of deprivation in this article is a kind of legal prohibition, as a result of which a person loses the competence and ability to exercise his rights; In fact, the prohibition and detention of persons from the above rights is based on the court order.

### 2) Foundations of Punishment of Social Deprivation

For the word foundations, several meanings are mentioned in the dictionary, such as foundation, base, origin, etc. (Dehkoda, 1998, the word Mabna). In the term, sometimes it means "argument and evidence of proof", sometimes it is used in the sense of "general principles" and in some cases, it also means thematic principles that tell about the origin of a matter (Qiyasi, 2015). , p. 38); As in the legal literature, the hidden force and attraction that causes the obligation to obey the rules of law is called its basis (Katouzian, 2007, p. 19); In general, the foundations of the legal rule (including social exclusion) are the same veins, roots and forces that are behind the legal rules; As the sources of law are the threads

from which the tapestry of legal rules is woven (Saket, 1991, p. 17), but this term in this article refers to the first use or sources as opposed to foundations in legal literature. Therefore, the foundations of social deprivation in Islamic jurisprudence are the same jurisprudential evidence; That is, the self-evident understandings of reason and narration (verses of the Qur'an and traditions of the innocents, peace be upon them).

According to Islamic teachings, in general, the purpose of human caliphate is to obey God's regulations (positive and negative requirements) (Dharyat, verse 56) because spiritual perfection, worldly happiness and salvation in the afterlife of man is in observing God's limits and piety, which belongs to the most severe requirements (Al-Imran, verse 200); As disobedience to divine regulations is considered a source of misery (Nisa', verse 14). In order to preserve the necessities (Aamili, Shahid 1, n. d., vol. 1, p. 38) and the purposes of the Sharia (Ghazali, n. d., vol. 1, p. 174), behavioral models have been legislated, which are accompanied by certain performance guarantees. Social deprivations are one of those performance guarantees that are mostly aimed at disabling people with a dangerous condition from violating the mentioned values.

What should be considered here is what the source of the legitimacy of this deprivation is. Of course, here for the introduction, first of all, the question of what the basic principle in using social privileges is, must be answered. Is the principle permission? It means that the members of the society are free to use all these privileges, except for cases where their prohibition has been proven with a valid reason? Or is the principle prohibition that members of the society do not have the right to use the existing privileges, except for those cases that have allowed them to use them?

According to the rational and religious evidences that the scholars of the principles of jurisprudence have cited to prove the primary permission (Akhund Khorasani, 1409, p. 339; Ansari, n. d., p. 315), the basic principle regarding the use of social privileges is also permission the primary principle regarding the use of social privileges is also obscurity. Therefore, what can be said about the legitimacy of social exclusion is as follows:

- 1) According to what will be said about the jurisprudential nature of social exclusion, the jurisprudential nature of these deprivations is Ta'zir. And the criterion of Ta'zir is committing a sin, and according to the rule of "for every haram act, there is Ta'zir", whoever commits a forbidden act, the Muslim ruler has the right to determine and implement the appropriate Ta'zir in his case (Najafi, 1981, vol. 41, p. 448; Imam Khomeini, n. d., p. 477; Mohagheq Damad, 1379, vol. 3, p. 238).
- 2) The generalities of the evidence of the Islamic government require that the Islamic government reform the society and establish order and security in it, refrain from any kind of behavior that causes disruption of order and corruption in the society. Restrictions on social rights and privileges for people who commit crimes are due to the need to prioritize public interests over individual interests (Mantaziri, 1411, p. 343).
- 3) In the principles of Islamic jurisprudence, there is an institution called "Sad Zari'i". It is meant to prevent an action that leads to corruption according to habit (Makarem Shirazi, 1414 AH, Vol. 2, p. 541), that is, any action that is a forbidden means and leads to the commission of a crime is prohibited. Based on this, if the use of a social privilege leads to committing a crime, it should be prohibited.

This argument is closer to the views of the social defense school. In fact, social deprivation aims to provide the defense of the society and disable dangerous and harmful people to the society and prevent possible risks in the future. The experts of the school of realism have also provided reasons for the implementation of security measures, which include social deprivation, and the above argument is one of the most important.

- 4) It seems that referring to some verses and traditions is another basis for social deprivations, such as the deprivation of the perpetrator of the crime of blasphemy from testifying (Maideh, verse 4) or depriving people of social and family rights, due to the violation of the Prophet's orders in the battle of Tabuk (Tawba, verse 118); By saying that Muslims were ordered to refrain from sitting and standing and communicating with people who had conspired (Tabatabaei, 2015, p. 424; Ibn Hisham, n. d., p. 175; Tabarsi, 1408 AH, p. 118). It has been narrated from Amir al-Mu'minin that the Imam of the Muslims should prevent immoral scholars and novice doctors from working (Muntzari, 1411, p. 325; Horr Ameli, n. d., p. 221). Anyway, such anecdotal evidence can be a suitable basis for the legitimacy of social deprivations.

### 3) Jurisprudential Nature of Social Deprivations

Islamic jurists, in discussions related to criminal law, divide Islamic punishments into four types; That is, they have categorized Hudud<sup>1</sup>, Qisas<sup>2</sup>, Diyat<sup>3</sup> and Ta'zirat<sup>4</sup> (Mohaqq Helli, 2010, p. 147). Since the deprivation of social rights cannot be one of the examples of the first three categories, it can be said that this penal institution is located in Ta'zir district. Of course, this is conditional on the fact that punishment is not limited to whipping, but it is in the absolute sense of discipline, correction and education; As a number of jurists have given this meaning (Muntazari, 1411, p. 323; Ma'refat, 1989, p. 8; Abdurrahman Al-Jaziri, 2013, p. 400). According to Imam Khomeini's (RA) opinion on the difference between Sultaniyya rulings and Shariah punishments, which led to the emergence of "dissuasive punishments" (Mehrpour, 1993, p. 124), it is more appropriate to include social deprivations as examples of this title. Due to the fact that deterrence is an attribute of all punishments and not a specific punishment, it seems that there is no essential difference between dissuasive punishments and Ta'zir. By defining Ta'zir as any kind of disciplinary, educational and correctional measures outside the limits of Qisas and Diat, Ta'zir includes restraining punishments as well, but dissuasive punishments do not include Shari'a Ta'zirat.

### 4) Cases of Social Deprivations

From the induction and search in jurisprudence, it is found that one of the most important examples of exclusion is the disqualification for social positions such as judgment, attorney, guardianship, guardianship, imam, etc. From the induction and search in jurisprudence, it is found that one of the most important examples of exclusion is the disqualification for social positions such as judgment, attorney, guardianship, guardianship, imam, etc. For this reason, it is forbidden to accept the rulings issued by him, as well as to accept his other actions and words as a ruler, judge, lawyer, executor, imam, etc. This prohibition and restriction may be the effect of committing a crime and punishment, not the punishment itself. It can also be considered as the main and independent punishment. Below, the investigated cases are explained.

#### 4-1) Prohibition of Sovereignty

Sovereignty in Islam is one of the most important social issues, and it is originally from the Holy Sharia itself; It means God Almighty (An'am, verse 57) and after Him, it belongs to those who have been introduced and confirmed by Him, like the Holy Prophet (peace be upon him) and his successors and righteous believers (Ma'idah, verse 55). Now, if the ruler has been deprived of justice due to committing a

1 - Article 15- It is the limit of the punishment, which is the cause, type, amount and quality of its implementation determined in the Holy Sharia.

2 - Article 16 of the Islamic Penal Code states: "Qisas is the main punishment for intentional crimes against the self, members and interests.

3 - Article 17- Diyeh, both determined and undetermined, is the money that is prescribed in the Holy Sharia for an unintentional crime against the self, members and interests, or an intentional crime in cases where there is no retribution in any way.

4 - Article 18- Ta'zir is a punishment that is not subject to the title of Hadd, Qisas or Diyeh and is determined and applied according to the law in cases of committing Shariah prohibitions or violating government regulations.

crime or a sin, the rulings issued by him are not valid because his ruling is a tyrant ruling and the ruling of Taghut is also strictly prohibited by the law (Nisaa, verse 60). Therefore, anyone who becomes a transgressor due to some social misbehavior (usurps a right, bears false witness, or slanders, or commits other major sins and finds himself in a dangerous state, is deprived of some social rights, such as the right to rule.

#### **4-2) Prohibition of Judgment**

Judging is also one of the important positions in the Islamic society and is subject to the general ruling of God and belongs to those who have prominent features of piety and self-control. The Islamic ruler can take care of this matter himself (Surah S, verse 26) or appoint people on his behalf who have special qualities and characteristics compared to others. Shariah has taken into account the qualities and characteristics to hold this office, and one of the most important of them, in addition to ability and having knowledge, is the quality of justice (Nasa', verse 135). In jurisprudence, the attribute of justice is one of the conditions of a judge because a person without justice is unreliable and dangerous (Khoei, 2009, vol. 41, p. 14). Therefore, if a judge loses this attribute of justice for any reason, he cannot judge. For this reason, Imam Sadiq (a.s.) says: You should refer to the believers who are among you in your social issues and troubles and in the season of your enmity. That is, refer to a righteous person because I have made him a ruler and a judge among you (Saduq, 1937, vol. 3, pp. 2 and 4).

#### **4-3) Prohibition of Testifying**

It was said that committing a crime and committing a sin in Islamic Shari'a has many punishments, effects and consequences for the offender, and among those effects is the deprivation of tolerance and martyrdom (Noor, verse 4). Therefore, any crime and misdemeanor that causes the destruction of justice in a person, he is prohibited from testifying in the courts because the said person has found a dangerous state due to immorality and the possibility of committing false testimony is high. Therefore, being deprived of testifying is one of the effects of committing a crime and sin, and the Holy Sharia wants to point out one of the effective ways to reduce crime in the Islamic society by expressing the transgression of the criminal because debauchery is one of the key and specific concepts of Islamic criminal jurisprudence, through which many criminals are recognized and for this reason, internal deterrence is created in people and in addition to reducing crime and delinquency, it also leads to reform and rehabilitation.

#### **4-4) Exile**

Depriving someone of living in a certain society, which in Islamic jurisprudence is interpreted as "taghrib or negation" (Ibn Fahad Helli, 1407 AH, vol. 5, p. 32; Kasani, n. d., vol. 7, p. 39). In Islamic law, exile is a punishment that leads to expelling the criminal from the place of committing the crime or his place of residence (Zubaidi, Taj al-Aros, 1414 AH, under the word "Gharb"; Ibn Manzoor, Lasan al-Arab, 1408 AH, under the word "Nafi") This meaning has been expressed in jurisprudence books with the two expressions Taghrib (turning away from the people) (Mohaqq Helli, 1408 AH, vol. 4, p. 142) and Nafi Balad (throwing a person to another city) (Mousavi Golpayegani, Al-Dar al-Manzoud, 1412 AH, vol. 1, p. 295). There are cases that the Holy Lawmaker has specified in the Holy Quran, such as the punishment and exile of criminals who rise up to war with God and His Messenger and create corruption on earth (Ma'idah, verse 33).

Exile of criminals may be one of the consequences of conviction, and it can be ordered independently as the main punishment. In any case, the result is one thing, and that is the deprivation of the criminal from living in a certain society, and it can directly cause the reduction of social crimes.

For some crimes, jurists have stated exile as one of the Hudud punishments; zenaye ghear mohsenah (adultery by singular person) (Allameh Helli, Varif al-Shi'a, 1413 AH, vol. 9, p. 150; Sheikh

Koleini, Al-Kafi, 1407 AH, vol. 7, p. 177), Intermediary for an illicit sexual act or solicitation (Sheikh Mofid, Al-Moqanaa, 1413 AH, p. 791; Sheikh Tusi, Al-Nehayah, 1400 AH), and Moharebeh (Mosavi Ardabili, Fiqh al-Hudud wa Ta'azirat, 1427 AH, Vol. 3, p. 609.) are among these crimes. Ibn Sa'id Hali (Ibn Sa'id, 1405 AH, p. 576) and Khoui (Khoei, 1422 AH, vol. 2, p. 72.) have ordered exile in the case of the murder of the child by the father and determining the period of exile is considered one of the powers of the ruler (Tabasi, 1416 AH, vol. 1, p. 52).

Intercourse with an animal is also one of the crimes for which the sentence of exile is stated. Some, like Sahib Javaher (Najafi, 1983, vol. 36, p. 289) and Khoei (Khoei, 2009, vol. 1, p. 344-345), have ordered exile in addition to the punishment for this sin.

#### **4-5) Restrictions on the Freedom to Form a Family**

If someone is punished for committing a specific crime (such as committing a crime), effects will also be created against him and from the point of view of Islamic jurisprudence, he will be deprived of some social rights, such as the right to freedom in forming a family and choosing a wife; Committing this crime has many consequences and effects for the criminal. One of these consequences is the prohibition of the criminal's marriage with certain women, that is, if a person has committed the crime of lasciviousness as the subject and wants to marry women who are the mother, sister, or daughter of the object, according to the statement of the Holy Law, such a marriage is permanently forbidden (Aamili, 2012, Vol. 3, p. 289).

#### **4-6) Severing Family Ties**

Another example mentioned in Islamic jurisprudence is the crime of apostasy, which not only imposes restrictions and deprivation on the criminal, but also destroys his family ties and adultery that existed before committing the crime (Khoei, 2009, vol. 41, 394). That is, his life and family system will be completely disintegrated due to committing a crime; If someone commits the crime of apostasy, i.e. denies the religion of Islam or one of the essentials of the religion, he is considered an apostate. And in addition to the punishment specified in the Sharia, its effects are also charged against him (ibid., p. 391).

The change in people's beliefs and thoughts, which is mostly caused by their ignorance, and not by their understanding and awareness, has negative social effects and consequences and for this reason, the Holy Law has given attention to it in the Holy Quran (Surah Muhammad, verses 25-30) and he has determined a general punishment for those who commit it and has said: Their disbelief will result in nothing but punishment for themselves (Fatir, verse 39).

Mohagheq Helli says about some works of natural apostates: If a person who was in the nature of Islam leaves the religion, his repentance will not be accepted and his death is certain. There is a separation between him and his wife, and he must take death certificate and his property is divided among his heirs (Helli, 1413 AH, Vol. 4, p. 170). According to this statement, the natural apostate, even if he is not executed for some reasons and remains alive; But his wife is separated from him and he dies and after the end of the period he can marry another person (Halabi, 1403 AH, p. 311). The analysis of the above article is that the wife of the apostate must keep the death certificate and this can be used from the meaning of the honorable verse 217 of Surah Baqara because God has declared the apostate person to be dead in this verse, although he may survive for reasons such as running away.

However, the effects of the decree of a Melli apostate, that is, a person who is a disbeliever from the beginning and then accepts the religion of Islam and then leaves it, has almost the same ruling as a natural apostate. For example, his wife divorces him and he has to keep a divorce certificate, which means that his marriage is not completely terminated, but remains and if he repents before the end of the Idah, he can return to his wife (Tabrizi, 1417 A.H., p. 425). His property is divided among his Muslim heirs, except that the Melli apostate must repent three times and if he does not accept the true religion at the last

stage, he will be sentenced to death. It seems that the national apostate repenting three times is used in verse 137 of Surah Nisa.

#### **4-7) Deprivation of Inheritance**

Numerous factors and examples for deprivation of inheritance have been stated in jurisprudence books. Some, like Mohaghegh Hali and Sahib Javaher, have stated three cases of murder, infidelity and slavery as obstacles to inheritance (Helli, 1413 AH, vol. 2, p. 814; Najafi, 1398 AH, vol. 39, p. 15). Some five cases (Khomeini, n. d., vol.2, p. 364) and some seven cases (such as the first martyr in the description of Lomaah in the Heritage book), one of which is murder. To say that the crime of murder, in addition to punishment, also creates effects for the perpetrator, and one of the most important effects is depriving the killer of the victim's inheritance. The reason for the exclusion and prohibition of the killer from inheriting the property and assets of the victim is to preserve life and for this reason, it has been taken into consideration by the jurists to protect the bequeather from being killed because the heir may kill the legator in order to get the legator's property early, and according to some contemporary scholars, this prohibition is a religious political punishment against the heirs in order to protect the legators (Tabrizi, 1415 AH, p. 54). Of course, in the case of the murderer, it is stipulated that he must be mature, wise and intentional (Ibn Mortaza, 1368, HQ, Vol. 5, p. 367).

Islamic jurisprudence in general and Shia Imamia in particular agree that the effect of the crime of murder from an economic point of view is the deprivation of the killer from the inheritance of the victim and This deprivation is completely related to Shari'ah and Jurisprudence, and of course, it appears if the murder was done on purpose, and secondly, the relationship between the killer and the victim is the relationship between the heir and the legator. Therefore, the jurists say that intentional homicide absolutely causes the heir to be prohibited from inheriting the property of the legator. Scholars such as Nasir al-Din Tusi (Tusi, 1426 AH, p. 77), Majlesi I (Isfahani, 1400 AH, p. 191), Allameh Shaarani (Shaarani, 1419 AH, Vol. 2, p. 679) and in a word, all the Shia and Sunni jurists in this episode agree that one of the obstacles to inheritance is the murder of the heir by the legator (Sobhani, 1428 AH). p. 54).

#### **4-8) Forfeiture of Property**

Confiscation of property can be used as a punishment against the criminal; Confiscation can be one of the effects of punishment in economic crimes against the criminal, which appears in many cases, and it can also be used independently as a punishment, which is used in the criminal laws of countries. Of course, confiscation of property does not have much place in Islamic jurisprudence under the title of independent punishment, and it is contrary to the basic principle of the legitimacy of private property, which is respected in Islamic jurisprudence. And Islamic jurists have seriously defended it (Sadr, 1981, vol. 2, p. 62).

However, the issue of confiscation of the property that is in the possession of the criminal is raised as an exception to the principle of private ownership or as a secondary order or government order in Islamic jurisprudence and it can be justified by several reasons: among other things, prevention of criminal economic corruption, macro-social expediency and preservation of property of unknown owners are defensible from the jurisprudential point of view of some contemporary jurists.

### **5) Effects and Consequences of Social Deprivation**

Social deprivation may have positive and negative effects and consequences in different areas of social and individual life of the criminal as well as for the society. Therefore, the nature of the discussion requires that the positive and negative effects and consequences of this criminal establishment be separated and examined separately.

### 5-1) Positive Effects and Consequences

First, it is necessary to mention; As the implementation and establishment of justice is one of the goals of Islamic criminal policy (Surah Hadid, verse 25) and for this reason, the proportionality of the punishment with the crime has been emphasized (Baqarah, verse 194; Surah Nahl, verse 126) or the necessity of the punishment being equal to the damage inflicted on the victim (Sharif al-Razi, 1414 A.H., Letter 47, p. 421), Islam seeks to prevent crime and protect human values and rights related to it (Baqarah, verse 179; Amali, vol. 28, p. 12, H34096) through reform (Baqarah, verses 129 and 151; Juma, verse 2; Al Imran, verse 164), intimidation and teaching (Noor, verse 2); Maidah, verse 38) and incapacitation (Baqarah, verse 251).

The most important positive effects of the punishment of deprivation of social rights are the prevention of committing crimes, through the incapacitation of criminals and people with a state of danger; Declaring illegitimate the rule of cruel people, prohibiting the judgment of an unjust judge, removing the effect of the testimony of wicked people, removing the criminal from the city where the crime was committed, etc.; As it was mentioned in the section of social exclusions, they mostly aim to disable the criminal from committing crimes, whose effect in reducing crime seems inviolable.

In expressing the jurisprudential nature of social deprivations, it was said: this institution is a type of punishment. Ta'zir is a type of Islamic punishment, which the authority to determine the type, amount and method of its implementation is based on the jurisprudential rule that "the authority to determine Ta'zir is in the hands of the ruler" (Imam Khomeini, n. d., p. 477; Mohaghiq Damad, 2000, vol. 3, p. 238). From the point of view of some jurists, ta'zir is both physical punishment and discipline in the absolute sense (Muntzari, 1411, p. 323; Ma'refat, 1989, p. 8; Abdurrahman al-Jaziri, 2013, p. 400). Considering that one of the basic indicators for evaluating a solution against the phenomenon of crime is cost-benefit analysis, for this reason, social deprivation, which is a type of punishment, on other types of it, especially the prison sentence is preferred. This is considered a bonus for social deprivations.

Another positive effect of the deprivation of social rights in the criminal's family affairs is that it makes him conscientious and hardworking because due to the embargo, new motivations are formed in him and replaced the previous motivations, and he can provide for himself and his family's expenses and continue his social life in the society with proper activity and effort more than in other ways and as a result of continuing to be deprived of the problems that have arisen due to committing a crime against him, he regrets because one of the goals of punishment in criminal laws and its implementation against criminals and sinners is to reform and repent of criminals through changing their motivation, which is referred to as "repentance" in the expression of the holy law.

### 5-2) negative Effects and Consequences

The rules of Islam are a source of comfort and moderate behavior in the Islamic society, not a source of difficulty and trouble. The Holy Qur'an has mentioned it in several verses (Ma'idah, verse 6; Baqarah, verse 185) and if in some cases, punishments and exclusions have been introduced in Islamic religion and jurisprudence, it is limited to the perpetrator because the Shariah has noticed that some punishments may not only affect the criminal but also his family and cause problems. For this reason, he has specified that only he himself should bear the guilt and punishment of the criminal (An'am, verse 164; Isra', verse 15; Fatir, verse 18). And it should not be imposed on any other person, even the members of his family (except in the case of payment of diya, a pure mistake on the part of Aqeela, who has his own separate philosophy), and his family will not bear his punishment. Therefore, one of the important principles of punishments in Islamic criminal law is that the punishment of an act should be implemented

only against the guilty person and no punishment should be spread to non-criminals. This principle is used in Islamic Sharia under the title of "Wezr Rule"<sup>5</sup>.

But it seems that the penalty of deprivation also extends to non-criminals, i.e. to his family members. Among its negative effects and limitations is affecting the living situation and livelihood of the criminal's family, and the dependents affected by this punishment will be punished indirectly. Expressing the fact that the negative effects and limitations of deprivation in the criminal's family affairs are significant because the criminal, in addition to suffering certain punishments, is deprived of some social rights, such as the ban on living in a certain place or the ban on employment in public or private positions, or the cancellation of the business or business license. This issue makes it difficult to meet the expenses of family life and this can damage the emotional and moral aspect of his family because due to some examples of social exclusion against the criminal, family disorder occurs for him and even in some cases, the criminal or some of his family members may turn to committing other crimes or moral corruption and this phenomenon has disturbed the system and social norms and its damage will be irreparable in the future.

### **Conclusion**

Deprivation of social rights is a type of legal and religious prohibition, as a result of which a person loses the competence and qualification to exercise some of his rights and freedoms. The punishment of deprivation of social rights has been considered in the penal school of Islam since the beginning of creation and is reflected in many verses of the Holy Quran. In terms of its nature, this penal institution is in the field of Ta'zir, which its type, amount and quality of execution on the criminal is determined by the ruler. And for the purpose of preventing crime, it is imposed on people who are in a dangerous state and are at risk of committing a crime by reforming and incapacitating them.

Examples of the punishment of deprivation of social rights in Islamic jurisprudence and criminal policy are much wider than what has been stated in the criminal laws and this shows the effectiveness of this type of punishment against the criminal; The punishment of deprivation of social rights is an effective punishment in reducing delinquency, which causes correction and disables the criminal from committing the crime again, but with prison punishment, the possibility of his becoming dangerous increases.

In addition, with the implementation of this type of punishment, public and government expenses are reduced and it is less expensive than other punishments, but it seems that the punishment of deprivation is contrary to the "Wezr rule", also spreads to non-criminals, especially to individuals and his family members and among its negative effects and limitations, it is affecting the life and family livelihood of the criminal that his dependents are affected by this punishment and are punished indirectly.

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<sup>5</sup> - "Wezr rule" refers to the principle of personal punishment. This means that the principle in punishment is personal, and the responsibility of the crime committed will only be towards the criminal, his accomplices and helpers. And his family members and relatives do not have any criminal responsibility, and they cannot be questioned because of their relationship with the criminal, without having a role in the crime. The title "wezr" is taken from the noble verse of Surah An'am, verse 164, which states: "And no one commits {an indecent act} except to his own detriment, and no one carries the burden of another's sin".

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