



Deprivation of Social Rights from the Perspective of Afghanistan Criminal Law and Imamate Jurisprudence

Dr. Adel Sarikhani¹; Seyyed Anwar Mousavi²

¹ Professor and Faculty Member at Qom University, Iran

² Ph.D. Candidate in Criminal Law and Criminology of Al-Mustafa Al-Alamiya University (pbuh), Iran

<http://dx.doi.org/10.18415/ijmmu.v12i6.6879>

Abstract

Considering the ever-increasing complexity of social relations, the necessity of its proper organization and especially the multiplicity of motivations for violating the rules governing it, preventing disorder and managing the delinquency phenomenon require effective and fair measures. "Deprivation of social rights" is one of those measures by which the criminal and any person with a dangerous condition (for the purpose of reforming and incapacitating from committing a crime) 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 position of responding to crime with measures under the title of deprivation of social rights, in Afghanistan criminal law and Imamate jurisprudence. The present research has studied the issue in a library form using inductive, citation and comparative methods (in the field of Afghanistan criminal law and Imamate jurisprudence) to explain the foundations, scope and effects of this establishment as one of the appropriate responses to crime and to help achieve a society free from disorder and injustice. The results of the research show that Afghanistan criminal law and Imamate jurisprudence, both in a coordinated manner, have paid a lot of attention to numerous examples of the punishment of deprivation of social rights in order to achieve a goal and to effectively deal with crime to take advantage of the important effects and results of this plan, which is to reduce the risks and negative consequences caused by physical, financial, prison, etc. punishments.

Keywords: *Deprivation; Rights; Social Rights; Imamate Jurisprudence; Criminal Law of Afghanistan*

Introduction

Deprivation of social rights is one of the examples of society's reaction to crime, and in the Imamate 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 coercive or statutory and credit roots. What is being discussed here is the ineligibility and deprivation of the criminal person from the privileges that the Sharia and law have made available to all citizens, but the criminal 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.

Due to the emergence of new communication tools and as a result, the expansion of social relations in today's human life, crimes and ways of committing them are also increasing. For this reason, to effectively deal with it, in order to ensure social order and security, new and diverse criminal tools and measures are needed. Deprivation of social rights is one of the new punishments, which, while being compatible with human rights considerations and economic theory, is highly effective in reducing crime. Thus, the question raised here is what is the position of social deprivation as an effective criminal measure in dealing with crime in Afghanistan criminal law and Imamate jurisprudence?

Since the degree of importance of the discussion in any subject, first of all, depends on the degree of need and the degree of its influence in the axis defined for it and secondly, it depends on the amount of research done in that field. The penal strategy of "deprivation of social rights", despite its influence in reforming and incapacitating 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, the discussion of it in traditional jurisprudence and in the works of lawyers seems feeble. For this reason, its discussion and investigation in Afghanistan criminal law and Imamate jurisprudence seems worthy of attention.

The main goal of this research is to examine deprivation of social rights as a social reaction and criminal strategy against delinquency, in terms of foundations, scope and effects, and in the field of Afghanistan criminal law and Imamate jurisprudence, using inductive, citation and Comparatively method. Therefore, the contents of this research are organized in four sections, under the headings of the lexicology, the foundations of deprivation of social rights, the scope of implementation 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.

2-1) Right

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).

3-1) 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 (dehkhoda, n. d., appendix the same word).

4-1) Social Right

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.

5-1) 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 Esfahani, 1990, vol. 1, p. 473) and there are other verses, such as: "Before that (eating milk), we forbade all lactating women on him." (Qisas, 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 Deprivation from Social Right

For the word foundations, several meanings are mentioned in the dictionary, such as foundation, base, origin, etc. (Dehkhoda, 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).

The meaning of this word in this article is the same as the third usage. To say that the clearest idea that anyone has about criminal rules is that they create obligations. Undoubtedly, according to the practice of the wise, every requirement is accompanied by a guarantee of implementation, and this is basically the difference between obligatory behavior and non-obligatory behavior. Therefore, the question of "why those rules should be obeyed" should be raised in the mind of every thinker; what is the basis of legal requirements (both act and omission)? And what attraction and motivation makes a person obey it?

In response to the above question, one of the views on the origin of binding legal rules and regulations is the school of natural law, according to which, in contrast to the rules that govern at a certain time and its implementation is guaranteed by the government, there are also fixed rules that are superior to the will of the government and they are desired end of man (Katouzian, 2007, p. 20). Based on its religious approach, the source of natural rights is God's will and its purpose is the implementation of His will; it means establishing justice and kindness (Ibid.). What has been discussed in the eyes of this group is to pay attention to the natural and divine roots of these rules. Here, God is mentioned as the legislator; Legislator who, on the one hand, have established laws for the entire material world (universe) and on the other hand, have provided laws to regulate human life in order to pave the ground for worldly happiness and salvation in the hereafter because according to the justice and wisdom of the lawgiver, his orders and prohibitions are based on the existence of interests and corruptions in the subject of those orders and prohibitions. As it is narrated in a sahih hadith from Jameel bin Darraj: "I asked Imam Sadiq (a.s.) about what is permissible and what is forbidden, and he said: No ruling is made without a reason" (Majlesi, 1404 A.H., vol. 60, p. 110). Also, in a hadith of Imam Reza (a.s.), it is stated: "All the things that God has permitted, it was because of the expediency and benefit in it, and everything that He forbade, it was because of the corruption and harm in it" (Hur Ameli, 1409 A.H., vol. 16, p. 165). Among Imamate jurists, this issue is agreed upon, as the first martyr stated: "Sharia is based on expediency" (Aamili, n. d., Vol. 1, p. 218).

According to the government realization school (which considers the government's will as the basis of legal rules), it should also be noted that it is true that, on the surface, this penal institution, like other penal institutions, guarantees the implementation of legal orders, which owes its binding force to the will of a competent authority (legislative authority) in the making of the law, but the reality is that all the

factors that are effective in creating the law of a nation such as the necessities of social life, human interests, moral, religious, economic, political, security, etc., beyond the will of the legislator, they have a driving role. For sure, the legislature legislates according to those factors and not regardless of it.

According to what was said, deprivation of social rights is based on social reality and essential benefits (both individual and social) and it seems that its purpose is mostly to prevent the repetition of violations of religious, moral and human values, by incapacitating and reforming people who are dangerous and prone to committing crimes. Among the factors that have played an effective role in the reason and justification of this criminal establishment, the following can be mentioned:

- (1) The requirements arising from international human rights documents to respect human dignity in imposing and applying punishments are a clear explanation of why deprivation of social right is preferable to bodily punishments.
- (2) Economic considerations in the type of response to crime also seem to be a solid basis for the deprivation of social rights as a response to crime because every year, large sums of money are spent on keeping low-risk prisoners, which deprivation of social rights, without spending those sums, is more effective in securing the goal of the criminal policy maker.
- (3) Taking inspiration from the approach of social defense in determining the criminal policy, which based on this approach, the goal of the criminal policy is to protect the rights of people in the society. In this approach, the criminal also has a special position, and it is necessary that the criminal policymaker should have a corrective opinion on the criminal and pay attention to the character of the criminal. Reforming the criminal is actually defending the society. Since the deprivation of social rights, in addition to its corrective aspects, is effective in disabling criminals and people with a dangerous condition in violating society's rights, based on this approach, the mentioned establishment has a high position.

Therefore, whether the criminal regulations are divine or human, their establishment and determination are subject to interests or corruptions that may be inherent and based on religious, moral, human values and social, economic and security realities or caused by time, place and international requirements. Deprivation of social rights, as a subset of those regulations, is rooted in the same values and realities described above and without a doubt, there will be no exception in this regard.

3) The Scope of Implementation of Deprivation of Social Rights

According to the title of the discussion, the scope of implementation in the Afghanistan criminal law and Imamate jurisprudence is separated and each of them is examined separately under the title of "the scope of implementation of deprivation of social rights in Afghanistan criminal law" and "the scope of implementation of deprivation of social rights in Imamate jurisprudence".

1-3) The Scope of its Implementation in Afghan Criminal Law

In the criminal law of Afghanistan, deprivation of social rights can be used as the main punishment (alternative to imprisonment under Article 167 of the Criminal Code), secondary punishment (Article 172 of the same), supplementary punishment (paragraph 1 of Article 173 of the same) or as precautionary measures (Article 193, 197 and 203 of the same).

1-1-3) Deprivation of Social Rights as the Main Punishment

First of all, it should be mentioned that the criminal laws of this country only include crimes, the punishment of which is ta'zir, and the crimes that are punished by hudud, retribution, and bloodmoney, based on articles 130 and 131 of the constitution and article 2 of the penal code, are left to the Hanafi jurisprudence of Islamic Sharia. In Article 138 of the Penal Code, the legislator states three main punishments: "fine, imprisonment and death punishment". According to Article 147 of the same law, imprisonment is divided into 5 categories in terms of duration: (1) short imprisonment (from three months to one year), (2) medium imprisonment (more than one year to 5 years), (3) Long-term imprisonment (more than 5 years to 16 years), (4) Permanent imprisonment of the 2nd degree (more than 16 years to 20 years) and (5) Permanent imprisonment of the 1st degree (more than 20 years to 30 years). According to Article 148 of the law, "Alternatives to imprisonment are punishments that are ordered by the court in the form of conditional release instead of imprisonment". According to Article 150 of the above-mentioned law, which stipulates "Alternative punishments to imprisonment include a period of care, performing public services, deprivation of social rights, etc.", deprivation of social rights as an alternative to imprisonment has been considered by the legislator and according to Article 151 of the same law, it applies to crimes that are punishable by short imprisonment, and from the text of Article 167, it is understood that this punishment has wide branches and examples and since it is in the realm of ta'zir, determining its type and amount is at the discretion of the judge issuing the sentence.

2-1-3) Deprivation of Social Rights as a Secondary Punishment

Deprivation of social rights is proposed as a secondary punishment¹ in the Penal Code (approved in 2016). And in its article 172, the deprivation of some political (paragraphs 1) and economic (paragraphs 4 and 5) rights of the criminal has been specified. In Article 173, the legislator has specified the deprivation of economic rights of the criminal as a secondary punishment. According to these two legal texts, the criminal is deprived of the aforementioned rights if the punishment for the crime committed is more than ten years of imprisonment or if it is a type of crime against the government, public security and immunity, or against humanity.

According to Article 175 of the same law, if the guilty person in the above-mentioned assumption is required by necessity and must manage the finances or give testimony or have guardianship and if sanctions are imposed in the mentioned cases, the property is ruined and the rights are lost and the persons under his guardianship are harmed, in these cases the court can temporarily remove the effect of the deprivation of the criminal and allow him to enjoy the aforementioned rights.

3-1-3) Deprivation of Social Rights as a Supplementary Punishment

Deprivation of social rights as a supplementary penalty² is proposed in Article 178 of the Penal Code. According to its second paragraph, they are: "deprivation of the rights and privileges listed in parts 3, 4 and 5 of article 172 and parts 1, 2 and 3 of article 173 of this law". However, it is not necessary to mention all cases of deprivation as a supplementary punishment in the text of the law, because the recognizing cases of deprivation depends on the opinion of the judge issuing the sentence. He can follow the examples mentioned in the legal articles, and he can also rely on his opinion and judgment and deprive the criminal of what he considers expedient. The problem is that this seems to go against the principle of the legality of punishments. Deprivation of rights mentioned in paragraphs 3, 4, and 5 of Article 172 of the Penal Code can be applied as a supplementary punishment based on Article 179 against

¹ - Article 171: A secondary punishment is a punishment imposed on the convicted person as a consequence of the main punishment according to the law, without it being specified in the court ruling."

² - According to paragraph (1) of Article 178: "A supplementary punishment is a punishment that is specified in the court order in addition to the main punishment."

those sentenced to long and medium imprisonment³. At first, this statement of the legislator seems a bit pointless because prison itself is complete deprivation and to deprive him again is to get something available to him, but if you look carefully, the legislator's work is very smart and in today's conditions, he can prevent the circumvention of laws, including criminal laws because in current societies with the advancements of communication tools, the physical presence of people in relationships and managing affairs is not so necessary and non-attendance activities have become common and thus evasion of the law has become common among criminals. So, the reason for depriving criminals of the aforementioned rights even in prison is to make the criminal incapable of their possible abuse because if a criminal sentenced to prison is not deprived of those rights, he can use them in absentia and indirectly through the virtual space, his lawyer and legal representative, become a member of the companies and indirectly bypass the prison sentence and punishment and make it ineffective and even engage in social activities and the management of economic and political affairs without any legal obstacle. Therefore, with this legal clause, the legislator wants to prevent evasion of conviction and abuses of those sentenced to long and medium imprisonment.

4-1-3) Deprivation of Social Rights as Precautionary Measures

Among the examples of deprivation of social rights are precautionary measures. According to Article 184 of the Criminal Code, "Precautionary measures are measures which is adopted by the competent court for the purpose of training or reforming the accused or convicted person, re-adapting him to social life or preventing the occurrence and repetition of the crime, taking into account the dangerous state of the accused or convicted person, and it is mentioned in the decision".

Precautionary measures can be classified into several categories according to the subject matter. The subject means something on which the decree of the law is borne, which may be an action about freedom, social rights or property and economic rights. According to Article 186 of the Penal Code, in this regard, the types of security measures are as follows: (1) measures of deprivation of liberty, (2) measures restricting freedom, (3) measures of deprivation of rights, (4) financial and economic measures. In this category, if we consider measures of deprivation of liberty (which are usually applied to insane and emotionally disturbed criminals, habitual criminals and unemployed and vagrant criminals) out of the realm of "social deprivation" subject of discussion, undoubtedly, there are three other categories in this collection, which will be described briefly.

- Precautionary measures that limit freedom are: (1) Prohibition of engaging in a specific business or job or profession, (2) Prohibition of movement in a certain place. Based on Article 193 of the same law, if the court determines that the convict's visit to a certain place is highly likely to cause him to repeat the crime, it can order to ban his movement in that place. Likewise, the court can, considering the personal and social situation of a person convicted of a misdemeanor or crime, in addition to the main punishment, prohibit him from staying in certain areas (Article 194 of the same law).
- Precautionary measures that deprive criminal of rights such as the prohibition of dominating the affairs of others and the prohibition of employment in a profession are these types of precautionary measures. According to Article 197 of the Penal Code, "measures depriving rights are: 1- Falling of supervision, will and guardianship. 2- Deprivation of employment in a certain profession. The meaning of the prohibition of supervision, will and guardianship is that the convicted person under the aforementioned titles cannot exercise dominion over someone's financial and non-financial affairs (Article 198 of the same law). This deprivation is in cases where the supervisor, executor or guardian commits a crime that impairs the undertaking and

3 - Article 179: (1) When sentencing to long imprisonment up to ten years or medium imprisonment, in addition to the main punishment of the crime, the court can also deprive the convict of the rights and privileges listed in parts 3, 4 and 5 of Article 172 of this law.

trustworthiness in the performance of the assigned duty or their efficiency and ability to perform it (Article 199 of the same law) and the meaning of exclusion from employment in a profession is the prohibition of any industrial, commercial or technical activity that, according to the law, is subject to the official permission of a competent authority (Article 200 of the same law) and depriving a person who has been convicted of a traffic crime and has been punished, from the right to drive and to renew a driving license from three months to three years (Article 202 of the same), is also in the same framework. The purpose of this type of measures is to prevent the gathering of crime-generating factors that the aforementioned profession or occupation provides.

- Financial and economic precautionary measures: According to Article 203 of the Penal Code: "Financial and economic measures include: (1) confiscation of objects, (2) Blocking the place, (3) Stopping the activity of a real person and (4) Stopping the activity of a legal person." Therefore, financial and economic security measures include: (1) seizing and confiscating objects, (2) closing the institution and office where the crime took place, and (3) stopping the person's activity (both real and legal).

For example, the objects that were the instruments of crime or were obtained as a result of crime, and their existence is a cause of anxiety and disturbing the public order or comfort of the people, competent authorities can confiscate them (paragraph (1) of Article 128 of the same law). The confiscation of the mentioned objects is a situational measure that is carried out with the aim of preventing the re-commitment of the crime, through the lack of access of the criminal in a dangerous state to the criminal objects and his incapacitation.

Any institution that is a means of committing a crime, such as a place where contraband goods or drugs are sold, or a means of facilitating acts against chastity, will be closed by order of the court. As paragraph (1) of Article 205 stipulates: "If a place is designated for committing a crime, the court, in addition to the punishments provided in this law, orders to block it from one month to six months"

2-3) The Scope of Its Implementation in Imamate Jurisprudence

First of all, it should be mentioned that Islamic jurists, in discussions related to criminal law, have classified Islamic punishments into four types, i.e. Hudud, Qisas, Diyat and Ta'zirat (Mohgheq 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 training, as a number of jurists have given this meaning (Muntazari, 1411, p. 323; Ma'refat, 1989, p. 8; Abdurrahman Al-Jaziri, 2013, p. 400). In Imamate jurisprudence, the most important examples of exclusion are disqualification for social positions such as judgment, representation, testament, guardianship 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.

1-2-3) 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 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.

2-2-3) 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).

3-2-3) 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.

4-2-3) 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 Kolehini, 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.

5-2-3) 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).

6-2-3) Severing Family Ties

Another example mentioned in Imamate jurisprudence is the crime of apostasy, which not only imposes restrictions and deprivation on the criminal, but also destroys his family ties 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.

7-2-3) Deprivation of Inheritance

Numerous factors and examples for deprivation of inheritance have been stated in jurisprudence books. Some, like Mohagheq Helli 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).

8-2-3) 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.

1) 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.

1-4) 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); Madaah, 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.

2-4) 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"⁴.

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

The current research under the title "Deprivation of social rights from the perspective of Afghanistan criminal law and Imamate jurisprudence" has reached the following results:

- 1) Deprivation of social rights as a criminal measure and a subset of legal rules and regulations, in the fight against delinquency, has based on interests such as religious, moral and human values, social, economic and security reality, time and place requirements and International necessities. The factors that have played an effective role in the reason and justification of this criminal establishment include: greater compatibility with the requirements of international human rights documents regarding respect for human dignity, economic considerations in the type of response to crime and inspiration from the approach of social defense in determining the criminal policy based on this point of view that the purpose of the criminal policy is to protect the rights of people in the society.
- 2) The mentioned institution has a high position in the criminal law of Afghanistan; with the aim of reducing crime by reforming and incapacitating the criminal, the criminal policy maker, in the aforementioned legal system, has used it widely as the main punishment (alternative to imprisonment), secondary punishment, supplementary punishment, and precautionary measures.
- 3) Examples of punishment for deprivation of social rights in Imamate jurisprudence are much wider than what has been stated in criminal laws. Deprivation of criminals and people with a dangerous condition from governance, judgment, certification, inheritance, confiscation of property, exile, etc. are among those. What is worthy of attention is that the Shari'a and customary policymaker pursues the same goal of legislation and its implementation, which is to reduce crime and implement justice through reforming and incapacitating people with a dangerous condition.
- 4) Social reaction to the phenomenon of crime, with the punishment of deprivation of social rights, despite the negative effects such as violating the "principle of individuality of punishment" and affecting the family and relatives of the convicted person economically, it has many positive

⁴ - "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".

effects, such as economic savings, respect for human rights, and effective efficiency in reducing crime.

References

- 1) Holy Quran.
- 2) Nahj al-Balagha.
- 3) Afghanistan Criminal Law, approved in 1976.
- 4) Afghanistan Penal Code, approved in 2016.
- 5) Al-Zoheili, Wahba, Al-Fiqh al-Islami and Adellataho, Dar al-Fikr - Syria - Damascus, 4th. ed., n. d.
- 6) Ameli, Zain al-Din, al-Rawzah al-Bahja fi Sharh al-Lamaa al-Damashqiyya, Qom, Dar al-Tafsir, 4th. ed., 2003.
- 7) Ansari, Morteza, Faraed al-Asul (Rasayel), Qom, Nash al-Mahdi, n. d.
- 8) Dehkhoda, Ali Akbar, Dictionary of Dehkhoda, n. p., n. d.
- 9) Esfahani, 1st Majlesi, Mohammad Taqi, a complete course of Persian jurisprudence, in one volume, Farahani Institute and Publications, Tehran - Iran, 1st, 1400 AH, p. 191.
- 10) Farahidi, Khalil bin Ahmad, Kitab al-Ain, Hijrat Publishing House, Qom - Iran, 11th. ed., 1410 AH.
- 11) Farsi, Jalal al-Din, Foundations of Criminal Policy of the Islamic State, Qom, Research Institute of Islamic Sciences and Culture, first edition, 2006.
- 12) Halabi, Abu al-Salah, Taqi al-Din bin Najm al-Din, Al-Kafi fi Fiqh, in one volume, Public Library of Imam Amir al-Mu'minin, (a. s.), Isfahan - Iran, 1, 1403 A.H.
- 13) Helli, Ahmad bin Muhammad, Al-Muhazzab al-Bari fi Sharh Al-Mukhtasar al-Nafi, Islamic Publications Office depended to The Society of Teachers of Qom Theological Seminary, Chapter 1, 1407 AH.
- 14) Helli, Muhammad bin Hasan, Shar'i al-Islam fi Masayel al-Halal va Al-Haram, Ismailiyan, 1st. ed., 1413 A.H.
- 15) Hur Ameli, Muhammad bin Hasan, Vasayel al-Shia, Qom, Al-Al-Bait Institute, 1st. ed., 1409 AH.
- 16) Ibn Babouyeh (Sheikh Sadouq), Muhammad Ibn Ali, Man La Yahdoro al-Faqih, Iran - Qom, 2nd. ed., 1413 A.H.
- 17) Ibn Hisham, Al-Sirah al-Nabiyyah, vol. 4, Beirut, Dar Ihya al-Tarath al-Arabi, n. d.
- 18) Ibn Mortaza, Ahmad Ibn Yahya, Al-Bahr Al-Zukhar Al-Jamae for the Religions of Ulama Al-Amsar, Egypt, Al-Khanji School, 1989, AH.
- 19) Imam Khomeini, Ruhollah, Tahrir al-Wasila, Qom, Darul Aelm, n. d.

- 20) Jeziri, Abdur Rahman, *Fiqh on Mazaheb al-Araba*, Beirut, Dar Ihya al-Trath al-Arabi, 2013.
- 21) Kasani, Ala al-Din, Abu Bakr bin Masoud bin Ahmed, *Bada'ye al-Sana'ye fi Tartib al-Sharaye*, Dar al-Kutub Al-Elamiya, 2nd. ed., 1406 A.H.
- 22) Katouzian, Nasser, *Introduction to the Science of Law*, Tehran, Publishing Company, 62nd. ed., 2017.
- 23) Khoei, Abulqasem, *Mabani of Takmeleh Minhaj*, n. p., Institute of Revival of Imam Khoei's Works, 4th. ed., 2009.
- 24) Khomeini (Imam) Ruhollah, *Tahzeeb al-Asul*, Islamic Publishing House, 1984.
- 25) Khorasani, Mohammad Kazem, *Kefayeh al-Asul*, Qom, Al-Al-Bayt for the Revival of Heritage, 1409 AH.
- 26) Ma'refat, Mohammad Hadi, a discussion on punishment, *Lawyers Association Magazine*, No. 146-147, 1368.
- 27) Makarem Shirazi, Nasser and others, *Payam Imam Amir al-Mu'minin (AS)*, Volume 2, Qom, Imam Ali Ibn Abi Talib (AS), 1st. ed., 2013.
- 28) Mehrpour, Hossein, *New Perspectives on Legal Issues*, Tehran, Information, 1993.
- 29) Mohaghegh Dadmad, Seyyed Mostafa, *Rules of Jurisprudence 4 (Criminal)*, Tehran, Islamic Sciences Publishing Center, 2000.
- 30) Montazeri, Hossein Ali, *Derasat fi Vilayah al-Faqih*, Qom, Dar al-Fikr, 1411 AH.
- 31) Mousavi Ardabili, Seyyed Abdul Karim, *Jurisprudence of Hudud and Ta'azirat*, 4 volumes, Al-Nashar Publishing House, Qom - Iran, 2nd, 1427 A.H.
- 32) Najafi, Mohammad Hassan, *Javaher Al-Kalam*, Vol. 41, Beirut, Dar Ihya Al-Tarath Al-Arabi, Vol. 7, 1981.
- 33) Qiasi, Jalaluddin, *Foundations of Criminal Policy of the Islamic government*, Qom, Research Institute of Islamic Sciences and Culture, 1st. ed., 2006.
- 34) Sadr, Seyyed Mohammad Baqir, *Our Economy*, translated by Espahbadi, Abdul Ali (Construction Jihad, Mashhad), Khordad 1981).
- 35) Saket, Mohammad Hossein, *A Historical Approach to the Philosophy of Law*, Tehran, Jahan Maaser Publications, 1st. ed., 1991.
- 36) Sharif Razi, *Nahj al-Balagha (Li Sobh Saleh)*, Qom, Hijra, 1st. ed., 1414.
- 37) Tabarsi, Abi Ali Fazl ibn al-Hassan, *Majma al-Bayan fi Tafsir al-Qur'an*, Beirut, Dar al-Ma'refa, 2nd. ed., 1408 AH.

- 38) Tabatabaei, Mohammad Hossein, *Al-Mizan fi Tafsir al-Qur'an*, Vol. 9, Tehran, Dar Al-Kitab al-Islamiya, 2nd., 2014.
- 39) Tabrizi, Jafar Sobhani, *Nizam al-Irth fi Shariah al-Islami al-Ghara*, in one volume, Institute of Imam Sadiq, (a.s.), Qom - Iran, 1, 1415 AH.
- 40) Tabrizi, Jawad bin Ali, *Osas al-Hudud and al-Tazirat*, in one volume, author's notebook, Qom - Iran, first, 1417 AH.
- 41) *The Constitution of the Islamic Republic of Afghanistan*, approved, 2003.
- 42) Tousi, Khwaja Nasir al-Din - translator: Shahroudi, Mohammad Hassan Shafiei, *Javaher al-Farayez* (Persian), Institute of Encyclopedia, Qom - Iran, 1st. ed., 1426 AH.
- 43) Zubaydi, Abu Bakr, *Al-Jawhara al-Niira*, n. p., n. d.
- 44) Zubeidi, Seyyed Mohammad Morteza, *Taj al-Arus*, Dar al-Fikr Li-Taba'ah and Al-Nashar and Al-Tawzi'ah, 1st. ed., 1414 A.H.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal.

This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).