



## The Goals of Criminalizing Limited Crimes in the Penal Policy of Iran and Afghanistan from the Perspective of Ahlul Bayt (AS) And Hanafi Jurisprudences

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### Abstract

The goals of criminology are concerned with the results, purposes, and prospects of the matter. Results such as crime prevention, reformation and rehabilitation of the offender, and the like, so that the achievement of the desired goals will lead to positive changes in society. There is no doubt that the legislation of Islamic punishment, especially limit crimes with such severity by the All-Wise God, cannot be without a goal and intention. But the only question is whether punishment in Islam seeks to punish the offender in order to establish and implement justice, who has earned it due to transgression and violation of the boundaries set by God, or whether the philosophy and purpose of punishment in Islam is focused on the future. And does it pursue another purpose such as reforming the individual and society? What is most emphasized in Islamic jurisprudence is the two-dimensional goals of punishment and a combination of justice and teleology that wants both goals to be realized. Of course, teleology and attention to the future, starting with the reform of the individual and society and ultimately the desirable and ideal society, are more evident in the goals of limit punishment than punishment.

**Keywords:** *Goals of Criminalization; Goals of Punishment; Penal Policy; Limiti Crimes; Jurisprudence of the Ahl al-Bayt; Hanafi Jurisprudence*

### Introduction

The religion of Islam has lofty and noble goals, and the happiness of man in this world and the hereafter can be considered the most important goal. Islam is a set of beliefs, rules, and customs. The Sharia or the rules of Islam are the dos and don'ts that criminalize certain behaviors and speech. One of the important obligatory rules of Islam is the crimes known as Limiti crimes. According to the Muslim elites, using narrational and intellectual sources, Limiti crimes are those crimes whose realization will

lead to the elimination of the ugliness of crimes and will lay the foundation for all other crimes. There is no doubt that God has not created anything in vain and has not left the Sharia abandoned. Both creation and creation have wisdom and the fabrication of Sharia has an end and purpose. Now it must be said whether the end and purpose of fabricating Limiti punishment goes back to God or to God's servants. It is invalid to say that the end goes back to God himself, because God is independent of servants and their worship... or punishment. So the goals and objectives of legislating the rulings and specifically the limit crimes return to the servants; but since God only wants the interests and good for the servants, it becomes clear that the wisdom and the purpose of creation of the revelation of the Sharia is to return to the servants. In general, the discussion of the goals of the Sharia is accompanied by the discussion of the interests of the people and society. Similarly, the discussion of the goals of legislating punishments and specifically the legislating of limit crimes and punishments will be nothing but attention to the public interests and happiness of man. The countries of Afghanistan and Iran, as two Muslim countries and believers in the extreme atrocities of limit crimes, certainly have their own policies towards these crimes. Considering that Afghanistan's penal policy is based on Hanafi jurisprudence and Iran's penal policy is based on the jurisprudence of the Ahl al-Bayt (AS), examining the goals of the penal policy of these two countries towards limit crimes can be both necessary and have scientific and practical benefits.

### ***First Speech: Concepts***

To enter into the discussion, first the practical concepts related to this research need to be examined, which will be addressed in this speech.

#### **A) Criminalization**

Crime, or “bozeh” in the word means serious sin (Abdur-Rahman, Bitā, 1, 59) and the absolute sin “ننب” is used. (Farahidi, 1410, 6, 19) It has been said that crime means cutting off. (Mostafawi, 1402, 2, 76) According to Tabarsi, a sinner is called a criminal because he interrupts a righteous action. (Tabarsi, 1372, 2, 713) Criminalization can be considered a process by which the legislator, taking into account the basic norms and values of society and relying on the theoretical foundations accepted by him, prohibits an act or omission and establishes a guarantee of criminal execution for it. (Aqababai, 1384, 11) In other words, criminalization is an action in which the government, with authority, considers some specific criteria of criminalization and gives a criminal description to a part of actions and behaviors with a specific motive. (Vorarai et al., 1393, 40) Criminalization is a part of criminal policy that is responsible for determining criminal behaviors. On this basis, criminology is a posteriori and based on basic sciences such as philosophy of law, political philosophy and social sciences. (Agha Babaei, *ibid.*, 12) In criminology, in addition to the fact that the behavior in question must be considered a crime based on one of the theoretical principles regarding criminology, it must be proven that there is no other solution to prevent it than determining punishment. In short, criminology is a process in which the legislator, considering the intellectual infrastructure, values and norms accepted by a society, adds a behavior to the other criminal categories and makes its act or omission obligatory. In the Islamic legal system, the process of criminology is carried out by the sacred lawgiver. The part that is the subject of this research; namely, criminology in limit crimes; determining the type of crime, the amount of punishment and even in some cases the quality and method of punishment are determined in the sacred law, although in another part of the crimes, criminology has left the amount of punishment and its quality to the ruler. It seems that the process of customary criminalization is generally tied to prior matters such as a country's constitution and posterior matters such as the proportionality of criminalization to the state of society.

#### **B) Limit Crimes**

In the dictionary, has many meanings; such as a barrier between two things (Tarihi, 1416, 3, 25), prohibition, (Hamiri, 1420, 3, 285), the end and the limit of anything, (Wasi, 1414, 4, 410), the edge and

the side, the sharpness of wine, sin and error, religious ruling, the sharpness of the sword, and the measure and quantity. (Dehkhoda, 1345, 18, 377) Others have also taken limit to mean the least, the most Some have considered more than one main meaning for it, in fact, they express the true meaning of limit as being a distance between two things and also the extreme and ultimate of everything. (Ibn Manzur, 1414, 3, 140) Some believe that limit, the plural of which is hudud, originally means prohibition; because the Sharia prevents the commission of unlawful acts by legislating hudud, and the barrier and the doorman are called limitad because they prevent entry. (Maqri al-Fayumi, Bita, 2, 24) In fact, the return of the barrier and the distance between two things and many of the literal meanings of limit go back to prohibition; Because the distance between two things prevents one thing from mixing with another, and the boundary of a house is called limit because it prevents this house from sharing with another house, and also the legal limit is called limit because this limit prevents the adulterer, the drunkard, and the like from returning to sin and prevents other people who have not yet committed it from following the path of sinners. (Isfahani, 1412, 222)

There are also different definitions of limit in terminology. Some, such as Sahib Shari'a, have highlighted the description of a crime in the term limit and have commented as follows: "Anything that has a specific punishment is called limit, and something that does not have a specific punishment is ta'zir." (Muhaqq al-Hilli, 1408, 4, 136) Several objections have been raised to the aforementioned definition. First, limit is not a description of a crime, but limit is a description of punishment. Second, the definition does not prevent others; Because some financial expiations and blood money are also specific and certain, or a man having sex with his own wife during the period of habit or during the blessed month of Ramadan also has a specific punishment; but it is not a limit, but rather a ta'zir. (Shafti, 1427, 38) Therefore, in order to correct the definition of limit, some of the criminal description has been changed to a punitive description and it has been said: "The meaning of limit is that the punishment is determined and determined for a specific sin." (Ibid.) However, the determination and predestination in this definition is still valid and evident, so this definition does not prevent changes. The author of the Masalak has tried to present a new definition to resolve the problems. In his opinion, "limit is a specific punishment that is intended to harm the body of the person responsible for committing a specific sin, and the holy lawgiver has considered and determined the amount and extent of that punishment for all perpetrators." (Ameeli, 1313, 14, 325) Although this definition has been considered by jurists, it is not without its problems. First, this definition includes prescribed punishments. Second, not every limit punishment causes suffering to the body, but some limit punishments, such as exile, only cause suffering to the human soul and are not painful. (Hajidehabadi, 1387, 26) However, it seems that the above problems have been minimized in the definition that one of the contemporaries has presented based on considering the punishment as limit. "Limit is a punishment that the legislator has specified the amount and type of for committing a non-criminal sin, and its implementation, after proof, is carried out only by the government." (Ibid.) In this definition, by including the condition of sin, an attempt has been made to separate limit punishment from ta'zir punishment, because limit punishment is carried out only for committing a sin and a forbidden act; While ta'zir is related to the ruler and is not Limiti to committing forbidden acts; but what can be done when the limitation of the punishment of the limit to committing sins is not complete; such as where the witness of adultery is less than the nisab, in this case the limit of qazf is applied to them without them having committed a sin or sin. (Hosseini, 155-156) Unless it is said that in this case too, from the perspective of the custom of the people and society, the sin and the forbidden act apply. It seems that considering them guilty can be easily established because they entered a forbidden area that the lawgiver himself, with great strictness, did not want to allow anyone to enter. In addition, in the final sentence of the last definition, "... after proof, it is carried out only by the government." The release of the prescribed atonement for the sins and sins in question is the responsibility of the sinner himself and the government has no role in its implementation.

It also seems to be one of the definitions without any defect due to the brevity and the way of expression of the late chief. He defines Limiti as special discipline. (Amil, 1410, 9, 9) Although being special can be extended and expanded; because all the punishments related to each crime can be

considered special in relation to itself. On the other hand, "special discipline." has the ability and capacity to become special and be dedicated to Limiti crimes. Regardless of the existing problems, it can be said: Limiti crimes are those crimes whose cause, type, amount and quality of execution have been determined in the holy law. The choice of the name Limiti for a specific part of the Islamic punishment is because it prevents people from doing wrong things. So Limiti means punishment, but the punishment that has been clearly determined by the law (the religion of Islam) in the book and the Sunnah, and deviation from this general principle is impermissible and incorrect. With this assumption, the legislator and the judicial authorities do not have the authority to decide on the type, quality, amount and Sharia Limiti. However, given that criminal policy is subject to the requirements of time and place; naturally, social conditions and the way the government operates in various economic, cultural, political dimensions... as well as the interactions of a government with the world, have a significant impact on decision-making, decision-making, legislation and implementation of laws; therefore, discussing criminal policy in the sense of the strategies and policies of the government (taking into account these conditions) in Limiti crimes makes sense.

### **C) Criminal Policy**

Criminal policy is a set of criminal rules and regulations that are formulated by the legislator according to the requirements of time and place in dealing with crime. (Yazdani and Zahedian, 2017, 2) or a set of repressive methods that the government uses to react against crime. (Laserge, 2003, 11) Considering that in social life the dominant way is to fight crime through punishment, its precise determination is revealed in the form of criminal policy so that a punishment can be imposed that meets the goals of the society. Each society, in order to achieve its specific goals, determines a punishment that has been previously intended; because determining punishment without a goal will be null and void and useless. Therefore, criminal policy is the way to deal with the phenomenon of crime, those decisions that are made in a criminal system to deal with criminals, reform and discipline them, public and private intimidation, defend the rights of society against the danger of criminals, respect the rights of the accused and convicted, eliminate or convert punishments or predict the factors of decline, intensify or reduce punishments. From what has been said, on the one hand, the backgrounds, goals and intentions hidden in the criminal policy of a country's sovereignty in accordance with the conditions, time and place, and on the other hand, the reliance of Afghanistan's criminal policy, especially Limiti crimes, on Hanafi jurisprudence and the reliance of the criminal policy of the Islamic Republic of Iran on the jurisprudence of the Ahl al-Bayt (AS), make the examination of their criminal policies regarding Limiti crimes very important and necessary.

### **Second Speech) Limiti Punishments for Perpetrators and Victims in the Penal Policy of Iran and Afghanistan**

It has been mentioned in the previous lines that due to various reasons and the legislative procedure, it is not common to mention the goals and objectives in the context of criminalization and punishment. This is because the falsification of the law is carried out by the governing body and is issued by us above, and therefore it is incompatible with the spirit of expressing the goals. However, legislation itself is purposeful, and criminalization and determining punishment also pursue multiple goals.

### **The Goals of Criminalizing Limit Crimes Regarding the Perpetrator and the Victim in the Criminal Laws of Afghanistan and Iran**

Undoubtedly, just as the Holy Law has and continues to have specific and specific goals in mind when legislating the Hadith provisions, by examining the goals of the legislator in criminalizing Limiti crimes, the goals that are in the legislator's mind can be reached. One of the main goals of Sharia in making these crimes as prohibited behavior is a clean and pollution-free individual life. Society is made up of individuals, and the good behavior of individuals will lead to the purity of society, which is tied to

human happiness in this world and the hereafter, and without it, happiness is meaningless. The realization of an ideal society free from any kind of error and mistake requires control tools that the individual and society cannot ignore. The tools must have the power to prevent the commission of a crime and reform the offender, and must also be able to be implemented in accordance with justice. The Afghan legislator has paid attention to this and has considered goals when enacting the law. On the one hand, the goals of the Afghan legislator can be seen as a retributive approach towards the perpetrator, because it states the arrest of the suspect or accused as the first goal. (Afghanistan Criminal Procedure Code, 1392, 2). As not to prevent the criminal from being tried is considered to be the fulfillment of justice. (Ibid) Of course, the punishment and arrest of the accused and the criminal must not be contrary to human dignity, but in any case, respect for their personality must be maintained. (Ibid) On the other hand, the reform and reeducation of the criminal (Afghanistan Penal Code, 1396, 3) in the spirit of obedience to the laws of the religion of Islam and the laws in force has also been targeted, which has a look to the future and has been the focus of the Afghan legislator. (Afghanistan Criminal Procedure Code, 1392, 2). Respect for the individual rights of the victim and the perpetrator (Ibid) and in particular compensation for the damage caused by the commission of the crime (Afghanistan Penal Code, 1396, 3) which is related to the victim is also considered one of the goals of the Afghan legislator. In summary, the goals of criminalization regarding the perpetrator and the victim in Afghanistan's penal policy can be considered punishment of the perpetrator, reformation and rehabilitation of the perpetrator, and reparation or compensation for the victim.

Iran's penal policy is also retributive in relation to the victim in a significant part of Limit crimes. Retributive policy can be imagined in two ways in relation to Limit crimes. Some punishments are pure retribution. For example, with respect to crimes for which the death penalty is intended, assuming execution, there is no basis for reform and rehabilitation. However, in non-life-threatening punishments; such as flogging, imprisonment, and even amputation of the hand, the perpetrator's reform and rehabilitation is also possible, which can indicate the legislator's view of the future and the reform and rehabilitation of the perpetrator. (Iranian Islamic Penal Code, 1392, 286-224) <sup>1</sup>According to Article 225 of the Islamic Penal Code, if stoning is not possible, if the crime in question is not proven with evidence, the sentence of flogging is carried out, which has also made reform and rehabilitation possible. In addition, satisfying the victim's opinion and appeasing the victim has a place in some, but also in all, punishments, including life-threatening and non-life-threatening punishments. According to the Iranian Criminal Code, the victim's reparation and compensation for the damage caused to him/her are still relevant. In addition to the Limit crimes such as theft, the return of property is possible in cases such as crimes against chastity such as adultery, sodomy, etc. that cause moral harm and damage to the victim. According to Article 14 of the Iranian Criminal Procedure Code, moral harm is interpreted as mental injuries and damage to family honor and is considered claimable. As a result, the goals of criminalization of the perpetrator and the victim in Iran's criminal policy, like Afghanistan, can be considered punishment of the perpetrator, reformation and rehabilitation of the perpetrator, and reparation or compensation for the victim.

### **B) The Goals of Criminalizing Limit Crimes Regarding the Perpetrator and the Victim from the Perspective of Ahlul Bayt (AS) and Hanafi Jurisprudence**

One of the main goals of Sharia in forging Limit punishments as prohibited behavior is to create a clean and pollution-free society, to which human happiness in this world and the hereafter is tied, and without which happiness is meaningless. Realizing an ideal society free from all kinds of errors and mistakes requires control tools that individuals and society cannot ignore.

<sup>1</sup>Crimes such as adultery, sodomy, blasphemy, war, and corruption on earth are punishable by death if they meet the full conditions for a Limit crime.

## 1 Individual Deterrence

Deterring a person who intends to enter a prohibited area from committing a crime is one of the purposes for which verses and narrations are used. In the blessed verse: «السَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً» Cut off the hands of the thief, male or female, as a punishment from God for what they have done. (Al-Ma'idah, 38).

God Almighty's interpretation in the above verse is: «جَزَاءً بِمَا كَسَبَا نَكَالًا» This means that the punishment of cutting off the hand is a reaction to the behavior of the thief, which he himself has determined. Paying attention to the concept of "nakal" and "nakal" well expresses the purpose of the punishment of cutting off the thief's hand, which is to create a deterrent. It has been said that nakal means chain, and the chain is called nakal because it prevents the chained person from moving. nakal is also called a punishment that carries a lesson and fear for others. (Qurashi, 1412, 7, 112) Therefore, some Imamiyya commentators have emphasized the purpose of individual and collective deterrence of committing sins and crimes in the blessed verse. (Makarim Shirazi, 1421, 3, 697)

The goals of deterrence are also derived from Hanafi jurisprudence. Sarakhsi, in his commentary, after rejecting those who believe in combining the punishment of flogging and stoning for the perpetrators of adultery, both male and female, and citing the narrations of Ma'iz and Ghamdiyyah that the Holy Prophet (PBUH) only stoned them and did not flog them, argues that the purpose of implementing the limits is to deter the cause of the punishment, namely committing the act of adultery. However, deterrence by killing and destroying the perpetrator is more severe than a hundred lashes, which does not lead to death. Therefore, despite stoning, there is no need for the punishment of flogging, because the punishment of flogging is useless, and something that is useless is not a religious limit. (Al-Husseini al-Aloosi, 1415, 4, 411) A criticism of this view is that it limits the limits only to deterrence. That is, in their view, the only reason for the necessity of punishment and the implementation of the Limiti is the aspect of deterrence and benefit that prevents the repetition of the act and the reluctance of others to do it. While other views such as retribution are also considered.

## 2- Purification of the Perpetrator from Sin and Freedom from the Punishment of the Hereafter

One of the goals of criminalizing Limiti crimes is to cleanse and purify the perpetrator from sin and pollution. Contrary to the belief and belief of Hanafi jurists that Limiti punishment does not have a purifying effect,<sup>2</sup> the jurists of the Ahl al-Bayt (a.s.) criminalize Limiti crimes based on the existing authentic narrations because they consider the implementation of Limiti punishment in this world to be the cause of the perpetrator's purification from sin. (Kulaini, 1407, 7, 188-185) Numerous narrations indicate that the sinner is purified by carrying out Limiti punishment. The first reason for the sinner's purification by carrying out divine hudud is that, according to most narrations, the request for Limiti punishment by the perpetrator was made with the phrase "purification" to be purified from sin<sup>3</sup>. (Qummi, 1378, 4, 34-31.- Kulani, ibid.) The assumption is that if the execution of the punishment had no effect on their purity from pollution, the Holy Prophet (PBUH) and the Imams (AS) would certainly deny the realization of purity and cleanliness by carrying out the Limiti punishment; while such a thing is not seen in the sayings of those noble ones. One of the most famous narrations is the execution of the Limiti punishment of the Sharia on a person named Ma'iz, which is mentioned in the existing narrational sources of both sects. After the stoning of Ma'iz, when people mocked Ma'iz, the Prophet said a sentence that indicates that he was cleansed of sin. «أَمْأَ عَلِمْتُمَا أَنَّهُ يَسْبُحُ فِي أَنْهَارِ الْجَنَّةِ.» Don't you two know that the goats are now swimming in the rivers of Paradise? (Noori, 1408, 9, 120) In another narration, the Commander

<sup>2</sup>Of course, in the exegetical sources and Hanafi jurisprudential books, the assumption of purification has been clarified by many jurists. Alusi, distinguishing between the prohibition of sodomy and adultery, says that the severity of the prohibition of sodomy is greater than that of adultery, because, according to many jurists, the punishment for adultery is a means of purification from sin. «لأنه مطهر على قول كثير من العلماء وإن كان خلاف مذهبن».

<sup>3</sup>Due to the length of the narrations, text or translation is avoided.

of the Faithful says that sins are of three types: a forgiven sin, a sin that has not been forgiven, and a sin for which there is hope of forgiveness. The Imam was asked to explain further, and the Imam said: But a forgiven sin is the sin of a servant whom God has punished for his sin in this world. God is wiser and more generous than to punish His servant twice for committing the same sin. «إِنَّ الدُّنْيَا ثَلَاثَةٌ... فَذَنْبٌ مَغْفُورٌ وَ ذَنْبٌ غَيْرُ مَغْفُورٍ وَ ذَنْبٌ تَرْجُو لِصَاحِبِهِ وَ نَخَافُ عَلَيْهِ قِيلَ يَا أَمِيرَ الْمُؤْمِنِينَ فَبَيَّنَّا لَنَا قَالَ نَعَمْ أَمَّا الذَّنْبُ الْمَغْفُورُ فَعَذَابُ عَاقِبَتِهِ اللَّهُ عَلَى ذَنْبِهِ فِي الدُّنْيَا فَاللَّهُ أَحْكَمُ وَ أَكْرَمُ أَنْ يُعَاقِبَ عَبْدَهُ مَرَّتَيْنِ.» (Kulaini, 1407, 2, 243) In a clear narration, Imam Sadiq (AS) is asked about the punishment in the hereafter of a man who was sentenced to stoning in this world? The Imam replied: God is too generous to punish him again. «سَأَلْتُ أَبَا جَعْفَرٍ ع عَنْ رَجُلٍ أُقِيمَ عَلَيْهِ الْحَدُّ فِي الرَّجْمِ أَيْعَاقِبُ (Ibid.) As a result of the narrations, the criminal who has tasted the bitter taste of pain and suffering for his sin in this world is considered immune from God's punishment in the hereafter. Although Hanafi jurists deny the purity of the perpetrator as the goal of the hadd punishment; because they believe that the purity and purity of the perpetrator of hadd acts is achieved only through repentance and not the execution of hadd punishment, only some have addressed the goal of purifying the perpetrator by executing hadd punishment. With the difference that deterrence is the main goal and the purity of the criminal from sin is a secondary goal. (Sivasi, 2010, 5, 211) However, there are narrations in Hanafi jurisprudential sources that prove the purity and purity of the sinner after the hadd punishment of stoning. The explanation of the narration is that a Muslim man asked the Prophet (PBUH) for punishment in order to be cleansed of the sin of adultery. After several questions and answers, the Prophet ordered stoning. Then the Prophet (peace be upon him) heard two companions saying to each other: «أَنْظُرْ إِلَى هَذَا الَّذِي سَتَرَ اللَّهُ عَلَيْهِ فَلَمْ تَدْعُهُ نَفْسُهُ حَتَّى رَجِمَ الرَّجْمَ الْكَلْبَ، فَسَكَتَ عَنْهُمَا، ثُمَّ سَارَ سَاعَةً حَتَّى مَرَّ بِجِيفَةِ جِمَارٍ شَابِلٍ بِرَجُلِهِ فَقَالَ: ابْنُ فُلَانٍ وَفُلَانٌ، فَقَالَا: نَحْنُ ذَلِكَ يَا رَسُولَ اللَّهِ، فَقَالَ: انْزِلَا فَكُلَا مِنْ جِيفَةِ هَذَا الْجِمَارِ، فَقَالَا: وَمَنْ يَأْكُلُ مِنْ هَذَا يَا رَسُولَ اللَّهِ؟ قَالَ: فَمَا بَلَّغْتُمَا مِنْ عَرْضِ أَخِيكُمَا أَنْفَا أَشَدُّ مِنْ الْأَكْلِ مِنْهُ، وَالَّذِي نَفْسِي بِيَدِهِ إِنَّهُ الْآنَ لَفِي أَنْهَارِ الْجَنَّةِ يَتَغَمَّسُ فِيهَا.» (Sivasi, ibid., 215) Look at this man, he whose sin God had covered, so his soul did not let him keep this sin hidden. Until he was stoned like a dog. The Prophet (PBUH) remained silent regarding the obscene words of the two. An hour passed until they reached the carcass of a donkey whose leg was still raised after death. The Prophet (PBUH) inquired about the two and when the two introduced themselves, the Prophet (PBUH) said: Get down and eat from the carcass of this donkey! The two companions replied: Who would eat from this carcass, O Messenger of Allah? The merciful Prophet replied: You ate from the honor of your religious brother a moment ago, while his sin was more serious. By the One in Whose hand is my soul, this person is now busy floating in the rivers of Paradise. This last statement of the Prophet has no meaning other than the purification of the adulterer from sin by the punishment of stoning.

### 3- Correction and Rehabilitation of the Criminal

Some, referring to the strictness of proof of hadd crimes, believe that the strict approach of covering up crimes in Islamic penal policy was intended by the Islamic legislator for the purpose of reforming and educating the criminal. (Collection of Authors, 2013, 51, 129) As will be seen, the jurisprudence of the Ahl al-Bayt (AS) and the Hanafi jurisprudence have been extremely strict in relation to the proof of many hadd crimes, so that it makes it impossible to prove many crimes, especially sexual crimes, subject to hadd. Also, the existing narrations about covering up crimes and mistakes can also indicate the purpose of reform and rehabilitation in Islamic jurisprudence. It seems that reform and rehabilitation are clear and obvious in the type of existing narrations and the specific interactions of religious leaders with sinners to hide between themselves and God and encourage them to repent with the aim of reforming and rehabilitating the criminal.

### Third Speech) the Goals of Society-Based Criminalization in the Penal Policy of Iran and Afghanistan from the Perspective of Ahlul Bayt (AS) and Hanafi Jurisprudence

One of the main goals of the Holy Sharia and the Iranian and Afghan legislators in framing these crimes as prohibited behavior is a clean and pollution-free society, which is tied to human happiness in this world and the hereafter, and without which happiness is meaningless. The realization of an ideal society free from errors and mistakes requires control tools that the individual and society cannot ignore.

### **A. The Goals of Criminalizing Limit Crimes Regarding Morality... in the Penal Policy of Iran and Afghanistan**

The concern of the legislators of Afghanistan and Iran for morality, spirituality and security has been more than the individual goals of the perpetrator and the victim. Attention to public affairs; such as morality, security, etc. is more tangible in the legislative goals of these two countries. The reason why the legislators of these two countries pay attention to matters regarding morality, spirituality and security is due to the importance of the position of society and the people. In Islam, although legislation regarding the perpetrator and the victim has been considered; there is no doubt that attention to general social issues has a higher priority.

Security is one of the most important components of the legislative goal in this country. According to Article 2 of the Criminal Procedure Code of Afghanistan, ensuring public order and security has been stated as one of the important and fundamental goals of legislation in the country. Respect for Islamic and religious beliefs and convictions is also another goal that has been specified by the legislators of the criminal sector of this country. It has also been specified that observing public morality and customs is the goal of criminal legislation in Afghanistan. (Afghanistan Criminal Procedure Code, 2013, 2) In general, respecting the rights of society is considered one of the important and fundamental goals of Afghanistan's criminal policy.

According to the Iranian Constitution, all laws and regulations, including criminal regulations, must be based on Islamic principles, and it is emphasized that this principle governs other principles. (Constitution of the Islamic Republic of Iran, 4) Considering that morality and spirituality are among the most important components of Islamic society, no regulation can be contrary to morality and spirituality based on the principle in question. The Iranian Constitution also emphasizes the protection of the sanctity and stability of family relations based on Islamic law and ethics. (Ibid.) There is no doubt that preserving fundamental values and strengthening the foundations of the family is one of the goals for which the fabrication and legislation of crimes and severe punishments play a fundamental role. Falling into the trap of sexual pollution, as well as becoming a source of slander against others and not paying attention to the views and property of others can shake the fundamental foundations. For this reason, the legislators of Afghanistan and Iran have paid some attention to this issue. However, it seems that considering the type of legislation in Iran, due to the criminalization of hadd crimes and the determination of punishment for each of those crimes in the country's statutory law, it is more appropriate for preserving morality, spirituality, and security than the type of criminal policy approach to hadd crimes in Afghanistan.

### **B) The Goals of Criminalizing Hadd Crimes Regarding Morality... from the Perspective of the Jurisprudence of the Ahl al-Bayt (a.s.) and Hanafi Jurisprudence**

From the examination of the verses and narrations on the subject of hadith punishments, it is concluded that the penal goals of Islam are neither solely retributive nor merely reformatory. Rather, they are multidimensional and consist of retributive and consequentialist; they are to discipline the perpetrator, reform and rehabilitate the offender, respond to the feelings and emotions of the victim, and generally seek to deter crime in society. In other words, individual justice and the realization of social justice, with regard to preserving the worldly and hereafter interests of the people, have been the concern of the Islamic legislator and the holy lawgiver, which will be briefly discussed below.

#### **1. Maintaining Divine Limits - Moral Boundaries**

From the perspective of some jurists of the Ahl al-Bayt (AS) school of jurisprudence, the complete and timely implementation of the limits is used to preserve the divine limits. The divine limits are the red lines of morality and value boundaries that, according to the law, the perpetrators of hadd crimes have crossed these boundaries and limits. The owners of this view deny the consequentialist goals that some have expressed as deterrence and correction; rather, they believe that the corrective and



preventive aspect of hadd punishment is the effects that the implementation of hadd punishment has, not that it is the goal of hadd punishment. (Gholami and Meybodi, 2013, 197) This view places the goals of collective deterrence and the survival of the result of punishment as secondary goals, and things such as the destruction and torture of the offender in the ranks of primary and intermediate goals. (Collection of Authors, 2013, 51, 199-210) However, it seems that the emphasis on preserving divine limits for timely implementation of the limits is nothing more than the corrective aspect and consequentialist approach considered by other jurists; because if the purpose is to preserve divine limits in the past, which was violated by committing this crime of divine protection, and if the purpose of preserving divine limits by implementing the hadid punishment is to look to the future, no other concept can be imagined for it.

## 2- Collective Deterrence

Collective deterrence and teaching a lesson can be considered as important goals of criminalizing hadd crimes. The command to observe the punishment of adultery by a group of people in the Holy Quran (Noor, 2) cannot be anything other than the purpose of teaching a lesson and taking admonition. (Gholami and Meybodi, 2013, 197) Suppose if the group means a small number of people; even one person, the minimum teaching of a lesson still applies to that one person, and this person, by recounting the implementation of the hadd among the people, causes other people to learn a lesson. Especially since the person in question is someone who enjoys a special position in the eyes of the people and in their eyes, such that his words are acceptable and accepted among them. (Muntaziri Najafabadi, Beta, 2, 512) Nevertheless, although the presence of people in adultery is not considered desirable by some; However, the purpose of collective deterrence in the implementation of the Shariah limits has been clarified. (Muntaziri Najafabadi, 1429, 109) In a recent survey conducted by one of the contemporary jurists, deterrence was also stated as the main purpose. "From the perspective of Islam, is punishment the goal or the means? Answer: In no case is punishment the main purpose; rather, it is a deterrent for the punished person or other people. For this reason, it has been ordered that punishment be overt in some cases, so that it can have its deterrent effect on society, and also in punitive punishments, whenever the offender refrains from sin and repents in another way, the punishment is eliminated." (Makarim Shirazi, 1425, 177) It seems that considering the purposefulness of divine laws, teaching a lesson and ultimately deterring from committing crimes are among the certain purposes of God. Isn't it that God seeks the happiness of people in this world and the hereafter by forging religious laws? In addition to acquiring knowledge, worship, and gaining divine piety, there are many people who also need the lever of external pressure. Therefore, the grandeur and majesty of hadd punishments can be one of the best tools necessary for this purpose.

## 3- Security

The goal of maintaining security, public peace and social order in criminalizing hadd crimes has been considered more than any other goal in Islamic jurisprudence. There is no doubt that the hadd punishment of the warlord, the corrupter of the land and bandits was fabricated and legislated for this purpose, so that the lives and property of the people would be protected from harm and damage by the wicked and rebels. The tone of the holy verse of the Quran in dealing with the warlords and the corrupters is such that it shows the importance of the security of the people in the sight of God Almighty. The interpretation provided by the commentators and the statements of the Imamiyyah, Hanafi and other Islamic schools of thought of this holy verse, the concept presented by the warlord and the corrupter of the land and, according to the Hanafi jurists, the concept of banditry is such that it places the protection of the lives and property of the people among the important worldly goals of establishing hadd crimes. «إِنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ» It is clear that the punishment for those who wage war against God, His Messenger, and those who seek to spread corruption on earth is either to kill them with a sword, or to crucify them, or to cut off their hands and feet on opposite sides (right hand and left foot, and vice versa). (Al-Ma'idah, 33) An important point can be seen in the blessed verse, which is that it calls those who endanger the lives and

property of people war against God and the Prophet. It may be questioned whether the verse was revealed to specific individuals during the time of the Prophet, when the Islamic government endangered the person of the Holy Prophet, so its inclusion in the current Islamic governments and Muslims is questionable. (Tusi, 1387, 8, 47) In response, it has been said that moharebeh applies to both the Islamic government and to fighting Muslims and intimidating and depriving them of their security, because the Islamic nation was also one of the achievements of the Prophet and is under his guardianship. (Shahrudi, 1419, 412) In addition, all Islamic jurists, both Shiites and Sunnis, agree on the punishment of the verse for bandits who, by taking up arms, cause the public peace and security of the people to be taken away; however, according to the famous Imamiyyah jurists, the meaning of the blessed verse is the form of intimidation and deprivation of security from the people by displaying weapons; whether it is on land or at sea, in a residential area or in the desert, it does not matter, although some Imamiyyah jurists have considered its provisions to be specific only to bandits. (Tusi, 1387, 8, 47) The author of Tafsir al-Wasit says that the punishment for a thief is only cutting off the hand; because the crime of a thief is personal; but the crime of the warring factions and the road blocker is severe because their crimes threaten the security of the community and cause the peace of all places to be taken away. (Al-Zuhaili, Bitā, 1, 453) The security of society is another goal that is seen in some views related to the goals of haddi crimes. In response to a question from Sunni jurists about the philosophy of haddi punishment, it was stated that the fact that haddi punishment is punishable does not prevent it from being reformatory; rather, if haddi is carried out correctly, the security, honor, and property of people and society are preserved; because when someone is caught up in a selfish desire to violate people's rights, he may also consider the punishment and punishment that he may suffer for this crime, and this causes him to give up what he wanted to do, and the result of this is nothing other than the security of society and people. (Janh al-Fatwa in the Islamic Network, Bitā, 16, 17) From what has been stated, the goal of maintaining the security and tranquility of society can be one of the important goals of haddi in jurisprudence.

#### 4- The Earth Being Empty of Sin

From the perspective of Hanafi jurists, the absence of sin and disobedience is stated as one of the goals of criminalizing hadd crimes. According to Hanafi jurisprudence, the existential philosophy of criminalizing hadd crimes is due to the existential multiplicity of hadd crime behavior. According to this perspective, since society's tendency towards corruption, especially sexual corruption that arises from illicit relations between the opposite sexes, is high, God has legislated the hadd law to control society from corruption and depravity. On the other hand, although some social anomalies and corruptions exist in society, but since the existence of those sins, such as acts against chastity with children, the dead, and livestock, is rare and few, sexual behavior out of lust is not seen on the other side, whether it is a child, a corpse, or animals, a specific hadd law has not been legislated and established for committing sexual behavior with them. According to the Hanafi school of jurisprudence, on the one hand, sexual activity, even if it is voluntary and voluntary, with a child or an insane person, and sexual activity with a dead person, is not a hadd crime, but is only punishable by ta'zir. The proponent of this view believes that a person with a healthy nature and a sound mind will avoid and stay away from sexual activity with them. Therefore, such behaviors are not committed by a small number of foolish and ignorant people who are overcome by sexual desire. For this reason, there is no need to legislate a severe punishment for adultery. However, crimes that have many motives and are committed instantly and instantaneously may be realized externally - although this world is not a place of punishment, but only a place of testing and causes, and the hereafter is the place of punishment and punishments - but since people do not stop committing criminal behavior just because of the promise of punishment in the hereafter, God has established some punishments in order to ward off widespread and general corruption that are highly likely to be realized in society. (Al-Barai, 1313, 3, 164) According to this view, the general goal of the lawgiver is to make the earth free from sin and disobedience. The principle of achieving purity and cleanliness is achieved through repentance, but if repentance is not achieved, Islam is forced to take the appropriate option to prevent corruption and ruin so that pollution and corruption are changed to purity

and cleanliness, and that solution is divine limits. (Ibid., 165) It seems that the role of reducing public corruption as a result of implementing the punishment of hadd crimes is clear. However, it is necessary to state two points. First, if an ideal society free from public corruption is intended, the grounds for all crimes must be eliminated. In addition, linking the legislation of punishment for Hadith crimes with the abundance of behavior leading to corruption and depravity in society on the one hand, and sexual behaviors with multiple cases for which the motive of general corruption and plurality and existence is unimaginable is not very logical, because when society is free and liberated from human constraints and standards, then there will be no difference for them between an adult, a sane, a crazy person, even a human and an animal. This issue can be clearly seen in today's societies. A person freed from God and believing in an afterlife punishment will show up to enjoy anything, especially since the desire for variety is an instinct that is always with humans.

## 5- Realization of Social Justice

One of the important goals of criminalizing hadd crimes in Islam is to achieve social justice. The implementation of hadd punishment can also be a realization of a lost part of justice, because someone who has harmed his or her own and others' dignity and reputation by committing serious crimes such as hadd sins is deserving of punishment. On the other hand, it provides future social justice so that no one will allow himself to encroach on the property, life, dignity, and honor of another in the future. For this reason, some commentators consider the meaning of "qost" in the blessed verse 25 of Surah Al-Hadid to be the reason for achieving justice in all matters. (Tusi, Bita, 9, 534) The greater importance of justice and its realization by establishing divine limits is illustrated by a narration from Imam Kazim (AS) in the interpretation of this blessed verse: «يُخَيُّ الْأَرْضَ بَعْدَ مَوْتِهَا» It is more clear. (Rum, 19 and 24) The Prophet says: «لَيْسَ يُحْيِيهَا بِالْقَطْرِ وَ لَكِنْ يَبْعَثُ اللَّهُ رَجَالًا فَيُحْيُونَ الْعَدْلَ فَتُحْيَا الْأَرْضُ لِإِحْيَاءِ الْعَدْلِ وَ لِقَامَةِ الْحَدِّ لِيُفْعَلَ فِي الْأَرْضِ مِنَ الْقَطْرِ» «أَرْبَعِينَ صَبَاحًا». The meaning is not to revive with rain, but the earth is revived by some by reviving justice and establishing divine limits in it. (Kaliini, ibid., 7, 174) Therefore, it seems that the division of the goals of hadith punishment by some (a group of authors, 2013, 75-76, 199-21) into main, secondary, and organic goals, and finally, counting the survival of the result of the punishment as a secondary goal, and the destruction and torture of the offender as organic goals, is not an appropriate division. This is because simply naming the goals as secondary, intermediate, and organic does not change anything. Rather, the mentioned cases are not as goals, but are among the effects of implementing limits and realizing social justice, nor are they the goal and purpose. There is no doubt that torture and pain, as well as the persistence of some effects, are among the necessities of implementing hadith punishment, which was created with the aim of implementing justice and condemning behavior that has brought social blame.

## 6- Maintaining Affection and Friendship among People

One of the clear goals of criminalizing hadd crimes is to prevent the ground for enmity between people and to create divisions between friends. Such a goal is seen in the prohibition of drinking alcohol and the punishment of the drunkard. Normally, drinking alcohol is done with friends for the purpose of talking and gatherings and ultimately creating greater intimacy; while drinking wine does the opposite and causes hatred and enmity between friends. (Jaziri, 1419, 5, 25) The reason for this is that drinking wine causes mental decline and the destruction of the power of reasoning and thinking. There is no doubt that during times of drunkenness and lack of reason, there is more ground for conflict within the community and perhaps, where reason does not exist, it can cause wars and severe group killings. Hence, it is clear and obvious that drinking wine is a clear cause of creating enmity between people and the disintegration of affection and friendships.

## Research Findings

From what was researched and examined, it can be seen that the criminalization of haddi crimes in Islam has very important and fundamental goals, as the spirit of Sharia and the legislation of punishment are proof of its purposefulness. The penal policy of Afghanistan and Iran regarding the criminalization of haddi crimes, in accordance with the jurisprudence related to and Sharia, is a multifaceted policy that focuses on both the punitive aspect and the preventive and corrective aspects. With the difference that although the criminalization of haddi crimes also focuses on the goal of punishing and punishing the offender; the findings show that the goals of the criminalization of haddi crimes are more result-oriented and future-oriented. This issue can be easily used from both the jurisprudence of the Ahl al-Bayt (AS) and the Hanafi jurisprudence. Also, the penal policy of both Afghanistan and Iran regarding haddi crimes can be seen as future-oriented and result-oriented, considering their reliance on the relevant jurisprudence. In addition, concern for general matters related to the welfare of the public and society plays a more prominent role than goals that include an individual aspect and only consider the offender or victim. Of course, the material and moral losses of the victim must also be covered, and the offender must pay the penalty for his behavior in proportion to the crime committed.

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