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The Place of the Principle of Individualizing Punishment in a Fair Judicial Ruling in Iranian Jurisprudence and Law

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Abstract

The principle of individualizing punishments has always been recognized as an exception to the principle of legality of crimes and punishments. However, whether the observance of the principle of individualizing punishments can be considered a law during judicial sentencing is a matter that, given the fact that in the Iranian penal system, the judge is compelled to issue a verdict solely based on the contents of the case file, will lead to serious disagreements. This article, through a descriptive and analytical method and by exploring jurisprudential and legal texts as well as the concept of justice, concludes that justice—in the sense of fairness—along with solid jurisprudential foundations and the numerous instances of this principle in jurisprudence, necessitates that the observance of penal individualization in issuing a fair judicial verdict be considered as a binding law. Given the ongoing developments in the Iranian judicial system, it is recommended that this matter be taken into consideration by the legislature. However, the laws should be designed in such a way that they both allow judges flexibility in issuing fair judicial rulings and, through certain measures, prevent potential abuses.

Keywords: *Individualization of Punishment; Justice; Judicial Order*

1. Introduction

1.1. Statement of the Problem

The principle of individualizing punishments, essentially an offender-centered approach, can be considered a complement to the principle of proportionality between crime and punishment—a principle that ensures the punishment fits the crime while accounting for the offender's circumstances and characteristics. If the foundations of this principle can be properly articulated and its laws implemented based on jurisprudential principles, free from procedural clamor, this principle can assist judges in reaching a fair judicial ruling. In situations where existing laws and the conditions of offenders at the time of sentencing are perceived as unjust, resorting to this principle can blunt the sharp edge of justice and

guide the process toward achieving true justice, serving as a criterion for measuring fairness in adjudication.

However, it must be noted that the effective application of this principle during judicial sentencing requires its consideration by all entities involved in the litigation process. This necessitates that all judicial bodies contributing to the issuance of a ruling support this principle.

2. Background

At first glance, it appears that little has been said about the principle of individualizing punishments in the philosophy of justice. However, its concept has long been intertwined with the words of great thinkers in this field. Aristotle, in his definition of justice and fairness, considered it as treating equals equally and unequally. Similarly, Plato believed that treating unequal equally violates justice and leads to inequality. (Rasekh, 2018, p. 78) This indicates that absolute equality in punishments does not have many proponents in legal philosophy.

The attention to the principle of individualizing punishments can also be seen as aligning legal justice with substantive justice. According to legal justice, rulings are based on the law and the legality of crimes and punishments, while substantive justice considers the proportionality between the offender's circumstances and the prescribed punishment in legislation. Consequently, it can be argued that a just ruling, based on the principle of individualizing punishments, requires sentencing to account for the offender's status and personality, which may be anticipated in the law.

Despite the application of this principle in Western societies, countries such as the United States show less inclination toward it due to perceived conflicts with the principles of legality of punishments and equality before the law. For decades, they have adopted fixed sentencing systems, placing little faith in suspended sentences or parole under the notion of "just desert." In similar crimes, similar punishments are observed not only in legislation but also in adjudication and execution. This opposition to individualizing punishments likely stems from its excessive application in the U.S. and England, where adherence to this principle has been seen as discriminatory among offenders. (Yazdan Jafari, 2006, pp. 42, 45)

In reality, however, this principle—an exception imposed on the principle of legality of punishments—is the result of advancements in criminal law, emphasizing the role of personality in criminology. Though contested, it is now widely accepted by legal scholars worldwide. For instance, in unwritten penal systems like Anglo-Saxon law (which is based on judicial precedents and reasoning, with statutes being secondary), the maximum penalty is determined by the judge, but the final sentence is issued after assessing the offender's circumstances by criminology experts in prison. (Goldouzian, 1997, Vol. 1, p. 45) Thus, what may differ is the perspective on distinctions among offenders who commit similar crimes, leading to variations in punishment.

This method of determining penalties in legal circles results from various developments in penal sciences and shifts in perspectives on how punishments should be imposed to ensure judicial fairness. Considering psychological factors, individual characteristics, and contextual circumstances is fundamental to issuing just and equitable rulings. As the French scholar Raymond Saleilles stated:

> "Among those who have committed crimes, the only commonality is the crime itself, which is identical for all offenders. Beyond this specific crime, there are no other similarities. Vast differences in age, upbringing, social status, mental and physical health, intelligence, religion, etc., distinguish them from one another. In such circumstances, justice and fairness demand that distinctions be made among offenders. Judges must be allowed to consider all these factors

during trial and impose punishments proportionate to the offender's personality and individual characteristics." (Mohseni, 2003, Vol. 1, p. 204)

This shift in perspective on punishment and the focus on individualization can be attributed to the weakening of theories advocating fixed penalties as the foundation of criminal justice (two contrasting views exist: traditional justice, which insists on uniform punishments for similar crimes, and modern justice, which accounts for biological, psychological, and social differences among offenders). The inefficacy of rigid equality in punishments and their individual and social consequences has made the consideration of unique personal and social traits an unavoidable necessity in delivering fair and defensible rulings.

Ultimately, this differing interpretation of individualizing punishments can be linked to the abstract nature of justice and its application in sentencing. Where justice means equal treatment, adherence to the legality of crimes and punishments requires uniformity, condemning any discrimination. Conversely, where justice is understood in Aristotelian terms, individualizing punishments aligns with fairness.

Islam, fundamentally, does not accept the principle of equal punishments outright. Instances such as qisas (retribution) and diyya (blood money), which may appear to impose uniform penalties, are actually forms of rectifying rights and enforcing justice as equality—approached from a legal perspective rather than mere punitive action. Diyya, often contrasted with arsh (compensation for non-fatal injuries), is derived from traditions aimed at compensating harm rather than exacting punishment. (Mar'ashi, 1997, Vol. 1, p. 189) Conversely, differing punishments for the same crime demonstrate the acceptance of this principle, compliance with which can serve as a criterion for equitable judicial rulings.

3. Jurisprudential Foundations of Individualizing Punishments

Individualization of punishments has been a focus of Islamic criminal law before it entered the world's legal debates as the main way to achieve justice in judicial decisions, so its principles have always been considered.

3.1. Legitimacy of Reduction and Remission of Punishment

The term takhfīf (discount) lexically means to lighten, alleviate, or reduce. (Moein, 2007, Vol. 1, p. 436) The foundation of mitigation in punishments—particularly ḥudūd (prescribed) penalties—and the adherence to the principle "tadarru al-ḥudud bil-shubuhat" (suspending ḥudud in cases of doubt) clearly demonstrate the inclination toward individualizing punishments in Islamic jurisprudence. When the basis of punishment is mitigation or dismissal (Najafi, 1991, Vol. 41, p. 259), it inherently necessitates considering the offender's circumstances, which itself constitutes the individualization of punishment and the abandonment of uniform penalties.

However, the authority to grant pardon, determine ta'zir (discretionary) punishments, and implement ḥudud lies wholly with the ruler (ḥakim), not the judge. Narrations also employ terms such as wali (guardian), imam (leader), and the like—referring to the governing authority, not merely a judge. In Ṣaḥifat Hammad, the primary jurisprudential evidence for ta'zir punishments, the term wali (governor) is used: "according to what the governor deems proportionate to the man's sin and his physical strength." Consequently, a judge cannot initially determine the degree of ta'zir. (Hashemi Shahroudi, 1998, p. 208)

In Iranian law, derived from Imami jurisprudence, it is similarly observed that the identification of pardon or mitigation in specific punishments for the accused is carried out upon the proposal of the head of the judiciary and the endorsement of the wali al-faqih (Supreme Leader).

3.2. The Rule of "Al-Tazir Bamaira Al-Hakim"

Despite all the differences regarding the limits and manner of determining punishment by the ruler or judge in court according to the mentioned rule (Muhaqqiq Damad, 1985, vol. 4, p. 223), what is agreed upon by jurists is the judge's discretion to individualize punishments in terms of the minimum or maximum penalty and to determine the type of punishment, of course, within the legal frameworks. This is a matter that today is also a common method in legislation in most judicial courts worldwide and is considered a customary practice. (Piyvandi, 2021, p. 290)

It seems that in Iranian criminal law, the possibility of individualizing punishments within the realm of discretionary punishments (ta'zir) has been provided, considering the rule "al-ta'zir bi-ma yara al-hakim" (discretionary punishment is according to what the ruler deems appropriate), both in the legislation stage and in the adjudication stage. (Yazdan Jafari, 2006, p. 55)

4. The Place of Individualizing Punishments in Iranian Jurisprudence and Law

Although a definition of individualizing punishments is not explicitly found in Imami jurisprudence, considering the conditions taken into account for the offender in the execution of the ruling for a single crime, as well as the broad definition given to ta'zir ("and he shall discipline anyone who neglects an obligation or commits a prohibition in the manner deemed appropriate by the ruler," Amil Jabei, 1989, p. 259), which is entrusted to the ruler, it indicates the judge's broad discretion in issuing rulings and moving toward the individualization of punishments. This is done based on the circumstances of the offender, the type of penalty, and the considerations of public interest. (Montazeri, 1988, vol. 2, p. 323)

In this regard, it can be said that from the perspective of jurisprudence, just as justice requires that the obligations of individuals in performing or abstaining from prescriptive rulings—such as fasting ("...and this is while considering the varying conditions of people in terms of weakness and strength, and it has been said that one may fast eighteen days instead of emancipation and feeding, as indicated by what has been narrated..." Tusi, 1986, vol. 4, p. 207) and prayer—differ according to their physical and spiritual conditions, the degree of criminal penalties for individuals is also assessed differently based on their circumstances and levels. ("Because the purpose of ta'zir (discretionary punishment) is deterrence, and the conditions of people in being deterred vary according to these levels." Montazeri, 1988, vol. 2, p. 323).

Consequently, it can be said that the principle of individualizing punishments is a fixed principle in discussions of penalties within the Islamic criminal justice system, to the extent that the jurisprudential rule "al-ta'zir bi-ma yara al-hakim" (discretionary punishment is as the ruler deems appropriate) (Muhaqqiq Damad, 1985, vol. 4, p. 224) can be considered part of this very principle.

In the conduct of the Infallibles, particularly Imam Ali, who was the supreme judge of his time, it is also observed that attention to the personality of the offender and their characteristics in sentencing was always taken into consideration. (Hajivand, 2017, p. 20), Examples of which will be mentioned later.

The attention to the principle of individualizing punishments in pre-revolutionary laws was derived from the customary laws of Western legal systems, which were solely based on the principle of proportionality between crime and punishment. (Yazdan Jafari, 2006, p. 53) In that system, the individualization of punishment was implemented in a restrictive manner within a specific framework. However, after the revolution, with the dominance of jurisprudential foundations in legislation, the discussion of mitigating punishments in ta'zir (discretionary) penalties and the introduction of deterrent punishments was also justified in light of the principle of individualizing punishments.

In the Islamic Penal Code of Iran, this principle has been duly considered, as evidenced by the inclusion of corrective and educational measures, the multiplicity and repetition of crimes, the aggravation and mitigation of penalties, conditional release, and suspension of sentences, which have

been part of the Islamic Penal Code since 1982. In fact, it can be said that alongside the advancement of criminal laws worldwide, this principle has also received greater attention in Iranian criminal law circles, to the point that by the late 1990s, the term for this principle had become more recognized. According to what has been written in the legal literature of that period, some criminal law writings did not mention the principle of individualizing punishments by name, while others, without explicitly defining it, only cited its instances, methods, objectives, and justifications. (Sanei, 1997, vol. 1, p. 67)

Subsequently, in the legal discussions of recent decades in Iran, various definitions of individualizing punishments have emerged, indicating the entry of this principle into penal discourse—though all these definitions complement one another in some way. For example, Sanei writes: "For each individual, punishment must be proportionate to their personality and the type of crime committed, meaning that for a single crime, one type of punishment should not be imposed on all offenders. Rather, punishment should take on an individualized character, and each person should be sentenced according to their specific characteristics and circumstances." (Sanei, 1997, vol. 1, p. 141)

In the legal terminology of Langarudi, the aforementioned principle is referred to as the "principle of personalizing punishments" (though it should be noted that the principle of personalizing punishments differs from the principle of individualizing punishments, as the former, equivalent to the jurisprudential rule of wazr (bearing responsibility), pertains to the execution stage and criminal liability, where no one else should be punished in place of the offender. In contrast, individualizing punishments relates to the adjudication stage, involving adjustments to the penalty based on the offender's condition. (Ardabili, 2019, p. 421) It is defined as follows: "A principle whereby the penalty should suit the offender’s condition, such that for a single crime committed separately by multiple individuals, the manner of applying the punishment differs, because the purpose of punishment is not retribution but the rehabilitation of the offender. Therefore, the punishment must be proportionate to the offender’s condition." (Jafari Langarudi, 1997, p. 51)

In later years, its legal aspects received even greater attention, and the enactment of laws such as the separation and classification of prisoners in 2006, followed by Article 203 (mandating the preparation of a defendant’s personality profile) and Article 286 of the 2013 Criminal Procedure Code (requiring personality profiles for juveniles), as well as Articles 57 (permitting a request for semi-release by prisoners serving fifth- to seventh-degree imprisonment under certain conditions) and Note 3 of Article 88 (allowing appellate review for juveniles based on social workers' reports), demonstrate the legislature’s incorporation of this principle in many laws, particularly criminal laws. Today, the mandatory preparation of a personality profile is among the most basic requirements in criminal proceedings. Additionally, the increasing use of alternative punishments to imprisonment and the enactment of laws reducing prison sentences in recent years can be seen, on one hand, as the legislature’s special attention to the principle of individualizing punishments and, on the other, as an emphasis on the principle of personal responsibility in punishment.

Alternative punishments for imprisonment under Article 64 of the Islamic Penal Code include probation, unpaid community service, fines, and deprivation of social rights, which are imposed based on the nature of the crime, the offender’s personality, age, skills, and other circumstances. Similarly, under Article 77, the enforcement judge may propose aggravating or mitigating the punishment to the issuing court if the defendant’s condition warrants it.

The recent Judicial Transformation Document also references considerations such as the defendant’s personality and family situation in the section on protecting defendants' rights, which can be interpreted as an emphasis on the individualization of punishments.

However, generally speaking, what is initially understood from Article 15 of the Islamic Penal Code ("Hadd punishments are those whose cause, type, extent, and method of execution are determined by Sharia") is that individualization in hadd punishments is applied without regard to the offender’s

current situation and solely based on divine decree. Similarly, in other Sharia-prescribed penalties such as qisas (retribution) and diyya (blood money), the ruling is issued without considering the offender's personal circumstances, solely upon establishing the legal conditions, meaning the offender's personality and situation do not influence the ruling itself. Consequently, if we are to consider individualization in these laws, it must be done strictly within the bounds of what Sharia permits. It must be said that the purpose of fixed punishments is to protect societal rights and ensure moral and economic security, necessitating strict enforcement.

In contrast, for ta'zir punishments, where judges have broader discretion, the application of this principle is more evident. In recent decades, when the principle of prevention was heavily emphasized, long-term imprisonment of offenders deemed likely to commit severe crimes was seen as a preventive measure aimed at maintaining public order. Concepts such as rehabilitation, deterrence, prevention, and retribution were considered in sentencing, though these concepts share overlaps and distinctions. (Rahmdel, 2010, p. 8)

In Iran's legal system, as a civil law jurisdiction, judges play a fundamental role in determining penalties within the legally prescribed range, from maximum to minimum. Furthermore, there is room for mitigating or aggravating punishments based on the offender's conduct and circumstances. This discretion extends not only to adjusting penalties but also to granting pardons, suspending prosecution, and deferring sentences. This authority stems from the rule "al-ta'zir bi-ma yara al-hakim" (discretionary punishment is as the ruler deems appropriate), for reasons that will be elaborated.

5. Tools for Individualizing Punishments in Jurisprudence

If we examine Islamic criminal jurisprudence carefully, there are always manifestations of the individuality of punishments in it, which indicates attention to the principle of individualization of punishments in the progressive penal system of Islam. This is clear proof of the legitimacy of the principle of individualization of punishments and the use of various tools to implement this principle.

In short, it can be said that paying attention to differences in the situation, personality, and circumstances of the crime and punishment can be tools for individualizing punishment, to name just a few examples.

5.1. Considering Physical Condition

The physical condition of the offender is taken into account in the application of the punishment. For example, the Prophet, instead of imposing the punishment for adultery, which is 100 lashes, on an old man who was afraid of dying due to old age and illness, ordered one whip containing the same number of lashes, referring to the verse: "And take a whip with a whip and strike it without any insult." (Kulaini, 1986, Vol. 7, p. 244) There are even differing opinions about the quality of the blow to the patient's body, which does not have to be as severe as the blow to a healthy body. (Najafi, 1991, Vol. 41, p. 342)

5.2. Considering Mental State

It is observed that in punishments such as those for muharibah (waging war against God), the circumstances and personality of the offender—such as whether they are of dubious character, whether they carried a weapon, and other personal traits, even their appearance and physique—affect the severity of the punishment. The judge may impose different penalties based on the offender's individual characteristics. (Kulayni, 1986, vol. 7, pp. 246-249; Majlisi, 1983, p. 43) Furthermore, the fact that Sheikh Ansari and many other jurists advocate discretionary choice (takhayyur) in the punishment for muharabah can also be seen as rooted in the principle of individualizing punishments, where the judge has the discretion to impose one or more of the prescribed penalties based on the offender's personality and situation. (Najafi, 1991, vol. 41, p. 564)

Similarly, in the hadd punishment for theft (Kulayni, 1986, vol. 7, p. 250), if the theft is committed by breaking into a secured place (hiraz), indicating excessive boldness on the part of the thief, a harsher penalty is imposed. The determination of the extent of amputation (as the hadd punishment for theft from a secured place) is also influenced by these considerations.

In the language of narrations (Sadouq, 1992, vol. 4, p. 72) and the rulings of eminent jurists (Ibn Idris al-Hilli, 1989, vol. 3, p. 442; Shahid al-Awwal, n.d., vol. 2, p. 7), the term "Ashab al-Kaba'ir" (perpetrators of major sins) is often applied to offenders who, due to their spiritual condition, are deemed deserving of intensified punishment. This reflects attention to the principle of individualizing punishments within the framework of the strictest penalties in Islamic jurisprudence.

5.3. Considering Sexual Status

In punishments such as those for zina (adultery/fornication), we observe significant variations in sentencing. For instance, whether the offender is muhsan (a married person) or not, along with surrounding circumstances like the existence or absence of a marriage contract, plays a decisive role in determining the severity of punishment. Thus, the penalty of stoning is prescribed for the muhsan, while flogging is assigned to the non-muhsan. (Kulayni, 1986, vol. 7, p. 198) Similarly, regarding the crime of muharabah (waging war against God), it has been stated that a woman cannot be considered a muharib. (Majlisi, 1983, p. 43)

5.4. Considering Family Situation

Another manifestation of individualized punishment can be observed in the case of paternity (ubuwiya), where the father-son relationship prevents qisas (retribution) for the killing of one's child. (Ṭusi, 1986, vol. 9, p. 378) This represents a clear example of attention to the principle of individualized punishment, as it is evident that no father would normally kill his own child unless suffering from severe psychological damage. This consideration aligns with modern psychological understandings.

On the other hand, for someone who has committed adultery with his sister and has gone beyond the limits of rape, the punishment is a blow with a sword instead of a whip. "Regarding a man who has intercourse with his sister, it is said: he should be struck once with a sword, regardless of the consequences. If he survives, he should be imprisoned for life until death." (Najafi, 1991, vol. 41, p. 310)

5.5. Considering Age Status

In Islamic jurisprudence, puberty itself is a distinctive criterion in determining punishment, as reaching a specific age is a condition for many punishments. According to the Hadith of Raf', a person who has reached legal puberty is considered criminally responsible, as the Hadith of Raf' lists minority—meaning lack of puberty—as one of the factors negating criminal responsibility. Even from a criminological perspective, disciplining someone incapable of comprehension and discernment is futile and irrational. If discipline is to be administered, it should be limited to a form of reprimand proportionate to their condition. (A group of authors, n.d., vol. 53, p. 106)

In cases where some narrations appear to permit the physical disciplining of children, differing interpretations have emerged ("I asked Abi Abdillah about disciplining a child or a slave, and he said: 'Five or six [strokes], and be gentle.'" Kulayni, 1986, vol. 7, p. 268). Moreover, there has been more emphasis on treating children with kindness, and such narrations have been considered weak. (Makarem Shirazi, 1999, p. 147)

Even among jurists who permit the disciplining of children, they have allowed it only to the extent that does not entail the payment of the minimum amount of diyah (blood money), meaning it should not cause the skin to redden. (Peyvandi, 2022, p. 355)

5.6. Considering Religion and Belief

The divine perspective on all matters, including punishment, means that even the Muslim identity of the offender can influence the severity of the penalty. For example, in cases such as homicide, a Muslim and a non-Muslim offender—or even a man and a woman who commit the same crime—may not receive the same punishment. This is evident in the crime of apostasy, where the principle of individualized justice is observed based on gender differences in temperament. (In apostasy, if a woman does not repent, she is sentenced to life imprisonment, whereas a man is executed. "Regarding the apostate, he is called to repent; if he repents, well and good, otherwise he is killed. As for the woman, if she apostatizes from Islam, she is called to repent; if she repents and returns [to Islam], well and good, otherwise she is imprisoned indefinitely and subjected to harsh confinement." Kulayni, 1986, vol. 7, p. 256.)

However, this same divine perspective ensures equality in the execution of justice in certain cases. For instance, if two different individuals murder two Muslim men, they will be subject to equal retribution (qisas) or blood money (diyah) under identical circumstances. (Sane'i, 1997, Introduction)

Other factors, such as family status and social standing, can also play a role in the individualization of punishments, as indicated in some narrations.

6. Tools for Individualizing Punishments in Iranian Law

Based on the preceding discussions, the law can utilize the criterion of individualized sentencing to achieve judicial justice by considering the circumstances and conditions of offenders through two approaches: mitigation and aggravation. Mitigation applies to offenders who, for certain reasons, deserve leniency, while aggravation applies to those who exploit their position or for whom the proportional punishment proves ineffective—prompting justice to demand a more severe penalty.

6.1. Mitigation of Punishment

6.1.1. Reduction and Conversion

The provision for mitigation and commutation of punishment is included in Article 37 of the Islamic Penal Code, along with clauses for Ta'ziri punishment. If there are factors, the court can act in a way that is appropriate for the accused. Mitigating factors include consideration of the individual, social, family situation, and background and circumstances that led to the commission of the crime, which is also included in Article 40 of the Islamic Penal Code.

Of course, the aforementioned article also stipulates conditions for this reduction, which include correction or the absence of an effective criminal record, etc.

6.1.2. Suspension of Prosecution and Suspension of Execution of Sentence

The Islamic Penal Code has also foreseen other forms of penalty mitigation under the headings of postponement of sentencing, suspension of prosecution, and suspension of punishment execution.

In the previous law, the suspension of punishment and the postponement of sentencing were presented under a single topic, to the extent that some writers considered the suspension of punishment execution and conditional release as part of the postponement of sentencing. (Baheri, 2015, p. 482)

The suspension of punishment execution is typically aimed at preventing the incarceration of first-time offenders convicted of crimes punishable by imprisonment, where, based on the offender's character, it is determined that their sentence should be suspended.

The suspension of punishment in the 2013 law has undergone significant changes compared to previous regulations. According to Article 48 of the Islamic Penal Code, suspension is envisaged in two forms: simple suspension and supervised suspension, where the offender is required to pledge not to repeat the crime, taking into account their social status and criminal record. Additionally, Article 46 of the same law allows the court, in cases of discretionary (ta'zir) crimes of grades 3 to 8, to postpone sentencing if the necessary conditions are met. In some cases, after one-third of the punishment has been served, either the sentencing judge or the convict may request the suspension of the sentence.

6.1.3. Postponement of the Issuance of the Verdict

The institution of postponement of sentencing can be defined as "the non-issuance of a conviction judgment against an offender when legal conditions are met within a specified timeframe, or a ruling that results in an exemption from punishment." (Khaleqi, 2018, p. 213) Postponement of sentencing is typically applied in discretionary (ta'zir) crimes, contingent upon compensation for damages and the offender's rehabilitation.

It has been argued that this form of penalty mitigation—which is essentially a lenient tool for individualizing judicial sentencing—aims to protect non-dangerous offenders. However, it has no historical precedent in Iranian legal texts and was incorporated into the Iranian judicial system by drawing inspiration from the laws of other countries, particularly France and Germany, rooted in the neoclassical school. (Khaleqi, 2018, p. 213) Nevertheless, given that the primary condition for postponement is remorse and reparations, and considering that the Islamic Penal Code is derived from jurisprudential (fiqh) sources, it can be aligned with the concept of repentance (tawba)—a mechanism for individualizing punishment in Islamic jurisprudence—rather than conventional legal doctrines.

Indeed, as observed, repentance can even prevent the execution of hudud (fixed) punishments in certain cases. For instance, if a judge discerns signs of remorse in an offender such as a thief, they may refrain from imposing the penalty. ("Or if the Imam sees repentance and reform in him, he may release him." Sallar al-Daylami, 1983, p. 259) Similarly, according to narrations, even in cases like muharibah (waging war against God), if the offender expresses remorse and conditions are met, the punishment may be mitigated. ("...unless he repents, for if he repents, his hand is not cut off." Kulayni, 1986, vol. 7, p. 247)

The postponement of sentencing is addressed in Article 40, which references individual and social circumstances and adopts a reformative perspective by allowing a deferral of sentencing for 2 to 6 years. This reflects the legislator's attention to the individualization of punishments.

6.1.4. Pardon

According to Article 39 of the Islamic Penal Code, in crimes of the 7th and 8th degree, if the court determines that the offender will reform by not enforcing the punishment, of course, if he can satisfy the plaintiff and compensate for the damage, a verdict of exemption from punishment will be issued.

Pardoning and releasing prisoners before the prescribed period has elapsed can also be considered under the same heading, in accordance with the principle of individualizing punishments, the purpose of which is to reform and prepare the offender for his return to society. (Golduzian, 1997, Vol. 1, p. 367)

6.2. Intensification of Punishment

The aggravating approach to punishment in-laws applies to individuals who, for certain reasons, are deemed deserving of more severe penalties. This increase in punishment stems from the ineffectiveness of previous proportional penalties, where consideration of the individual's disposition and

circumstances necessitates individualized sentencing to ensure judicial fairness for such offenders. Consequently, a heavier punishment is prescribed for them.

6.2.1. Considering the Maximum Penalty

It can be seen that in Article 130 of the Islamic Penal Code, one of the factors of aggravation of punishment is the leader of a criminal group, whose punishment is stated to be the most severe crime that the group is intended to form. Of course, in crimes that result in hadd, qisas, or blood money, the maximum punishment of aiding and abetting that crime is sentenced. Of course, the causes of aggravation of punishments can vary based on the type of crime, and the maximum punishment can also vary.

6.2.2. Considering Supplementary Penalties

The supplementary punishments stipulated in Article 23 of the Islamic Penal Code can also be seen as another manifestation of utilizing individualized sentencing as a criterion for fair judicial rulings. This article explicitly considers the characteristics of the offender and the nature of the committed crime.

The article states that the court may while observing conditions proportionate to the offense and the offender's circumstances, sentence individuals convicted of hudud (fixed punishments), qisas (retribution), or ta'zir (discretionary punishments) of grades 1 to 6 to one or more supplementary punishments.

These supplementary punishments may include compulsory residence in a specified location, prohibition from residing in a certain area, dismissal from government service, or bans on practicing specific professions, among others. Importantly, these supplementary penalties are applied based on the individual personality and specific circumstances of the offender, serving both as a deterrent against recidivism and as an additional punitive measure.

7. Stages of Individualizing Punishments in Iranian Law

The realization of the principle of individualizing punishments should be considered before the judgment stage, because, given the conditions that exist for the judge to issue a verdict, the judge can rule based on the existing documentation, and initially the resident will not be able to use this principle. Consequently, given the legislative conditions in Iran, this matter depends on the constructive interaction of the legislative and judicial branches and the adoption of appropriate measures in all three stages before, during, and after the trial.

7.1. Before the Trial Stage

The Consideration of Individualized Sentencing may begin even before the trial stage through the preparation of a personality dossier. In lexical terms, "personality" refers to the inherent traits unique to each individual, denoting one's distinctive temperament and character (Mo'in, 2007, vol. 2, p. 2032; Amid, 2000, vol. 2, p. 1295). Jurisprudentially, it signifies the distinct legal identity of a person concerning rights and obligations (Ja'fari Langarudi, 1997, p. 379). This clarification highlights the potential contents of a personality dossier.

The compilation of a personality dossier occurs during preliminary investigations under the directive of the investigating magistrate, carried out by the social welfare unit of the prosecutor's office. This dossier is separate from the case file detailing the accused's criminal conduct and instead focuses on the individual's characteristics.

The personality dossier can be regarded as an outcome of clinical criminology, tasked with diagnosing methods for rehabilitating offenders based on their physical and psychological traits, as well as assessing the extent of their social deviance. Its purpose is to prevent recidivism through targeted

supervision and care, utilizing interdisciplinary insights related to offender rehabilitation to determine the level of danger and prescribe necessary corrective measures (Mohammadian, 2013, p. 33).

The primary objective of the personality dossier in criminal proceedings is to better understand the accused's character and moral attributes, enabling the adoption of appropriate penal and preventive measures. Its implementation aligns with the modern principle of individualized sentencing, as emphasized in Article 203 of the Criminal Procedure Code:

"For crimes punishable by death, amputation, life imprisonment, or ta'zir (discretionary punishment) of grade four and above, and intentional bodily offenses entailing at least one-third of full diyah (blood money), the investigating magistrate must order the social welfare unit to prepare a personality dossier during investigations. This dossier, distinct from the criminal case file, includes: (a) a social welfare report on the accused's financial, familial, and social status; and (b) medical and psychiatric evaluations."

Currently, the preparation of a personality dossier is mandatory only for the crimes specified in the aforementioned article. For juveniles, however, Article 286 extends this requirement to ta'zir offenses of grades 5 and 6.

The order to compile the dossier must be issued in the initial days of the accused's apprehension, as it must accompany the indictment when submitted to the court. Per Clause 'Teh' of Article 279, the indictment must include a summary of the personality dossier (Khaleqi, n.d., vol. 2, p. 226).

Given that contemporary influences—beyond traditional environments like educational or occupational settings—now include the virtual space and its proven psychological impacts, these factors must also be examined in the personality dossier, as they may significantly affect an individual's propensity for criminal behavior.

If the alleged offense appears minor, pre-trial measures such as appropriate bail, moral commitments, mediation (sulh), or pardons may be employed to uphold justice while weighing the societal benefits and harms of proceeding to trial.

7.2. In the Legalization Phase

At the Legislative Stage, the legislature can empower judges in sentencing by prescribing minimum and maximum penalties or only maximum penalties, thereby granting judicial discretion to issue rulings proportionate to the offender's circumstances and the nature of the crime, in alignment with the principle of individualized sentencing. Judges may even suspend punishments based on the offender's personality and factors contributing to the crime. However, some scholars argue that individualized sentencing is primarily a legislative prerogative (Bekaria, 2021, p. 108).

At this stage, factors such as age, gender, health status, and even specific environmental conditions like occupation, residence, and their connection to the crime—alongside criminal history—can be codified alongside exculpatory circumstances like coercion, necessity, or duress (which are termed as criminal responsibility negators). The law may thus incorporate a spectrum of aggravating and mitigating factors to tailor penalties (Hamzeh, 2014, p. 97).

7.3. At the Trial Stage

At the trial stage, the court may utilize its legal discretion to determine the appropriate penalty by considering aggravating and mitigating circumstances. Where warranted, the convicted individual may benefit from mechanisms such as suspension of sentence execution or conditional release (Amadeh, 2010, pp. 16-17).

However, some legal scholars restrict judicial discretion in individualized sentencing solely to mitigating factors (Pradel, 2015, p. 83), while others argue that individualized sentencing falls exclusively within the judge's purview, denying such authority to the legislature (Kazemi, 2012, p. 47). This latter view is difficult to reconcile with Iranian law, given the existence of fixed penalties that limit judicial flexibility.

8. The Relationship between the Principle of Individualizing Punishments and a Fair Judicial Verdict

The relationship between the principle of individualized sentencing and justice has been viewed differently across various legal schools, with perspectives closely tied to their underlying philosophies of punishment. Generally speaking, schools advocating absolute justice often resist individualized sentencing, believing that failing to punish crimes constitutes injustice. In other words, schools that define justice as equality before the law interpret this equality as treating equals equally and unequally. Consequently, they argue that failing to impose equal punishments for similar crimes violates justice.

On the other hand, criminal justice theory has demonstrated that imposing uniform hardships on individuals with differing circumstances does not, in practice, achieve justice. This is because personality, social status, financial condition, and physical and psychological states vary among individuals. Therefore, the principle of individualized sentencing is rooted in the concepts of desert, fairness, and judicial justice, necessitating that punishments differ based on the offender's personality and circumstances (Sane'i, 1997, p. 141).

Under this principle, judges can identify the root causes of crime, assess the offender's personality and behavioral traits, and select the most appropriate penalty from those prescribed by law to ensure a just ruling. In doing so, judges may refer to the offender's personality dossier to understand their psychological and situational context, issuing a ruling that accounts for their social and environmental conditions.

The principle of individualized sentencing can thus be understood as the imposition of penalties proportionate to the offender's physical, psychological, and social characteristics, as defined by law in light of the crime's nature and the victim's circumstances. The judiciary may, where appropriate, increase, reduce, suspend, or otherwise modify the punishment—provided it adheres to the principle of legality and does not deviate from the objectives of punishment.

For instance, if two individuals commit the same crime, one may receive the minimum penalty while the other faces the maximum. Similarly, one may be granted conditional release, while the other serves their full sentence—demonstrating the application of individualized sentencing. Notably, this principle can be observed at every stage of judicial proceedings.

An examination of the Islamic Penal Code reveals that while the legislature does not explicitly cite individualized sentencing as a criterion for just rulings, its provisions for mitigating and aggravating factors reflect an implicit commitment to this principle. Factors such as age, marital status, gender, health, religion, and other crime-influencing circumstances—which lead to differing penalties for the same act—are rooted in Islamic jurisprudence's emphasis on individualized justice. Adherence to this principle ultimately serves to ensure equitable judicial rulings.

In the Iranian legal system, penalties are defined within a minimum-maximum framework, granting judge’s discretion to select appropriate punishments. Thus, individualized sentencing is accounted for both legislatively and executively—an approach praised by some scholars (Ancel, 1996, p. 21).

9. *Conclusion*

From the presented materials, it becomes evident that the principle of individualized sentencing in Western criminal law is recognized as a modern institution, with ongoing debates about its implementation. In contrast, Islamic criminal jurisprudence has a long-standing tradition of this principle, and its legitimacy has been firmly established through jurisprudential reasoning.

Individualized sentencing is not about justice in the sense of equality in judicial rulings but rather about ensuring fairness, which necessitates that not all individuals receive identical punishments for the same crime. Following Islamic criminal jurisprudence, this principle has been incorporated into Iranian law.

Since criminal law is inextricably linked to criminology, it must continually integrate the latest criminological advancements to improve crime prevention methods, refine penal laws, reform judicial structures, and adjust investigative procedures. Implementing these insights can lead to a more just judicial and penal system, paving the way for new criminological theories (Soltani, 2017, vol. 1, p. 20).

In recent years, particularly following the Second Phase of the Islamic Revolution's Declaration and subsequent judicial reforms outlined in the Judicial Transformation Document, initiatives such as reducing discretionary imprisonment, introducing alternative punishments to incarceration, and employing electronic monitoring for eligible detainees reflect the legislature’s specific attention to individualized sentencing.

However, while judicial discretion in mitigating or aggravating penalties plays a crucial role in individualized sentencing, such discretion must not be unlimited. It should operate within legal boundaries to prevent abuse. Accordingly, the legislature must define penalties and preventive measures, while judges must adhere to legal frameworks, respecting prescribed minimum and maximum penalties. When modifying sentences, judges should consider appropriate alternatives, avoid exceeding statutory maximums in aggravated cases, and, where conditions permit, recommend conditional release or pardons.

Ultimately, the application of this principle begins before adjudication and continues post-sentencing.

It is important to note that varying interpretations of ta'zir (discretionary punishment) and judicial authority can either expand or restrict the scope of individualized sentencing. Defining justice as fairness in judicial rulings proves essential—it empowers judges to issue equitable rulings while preventing arbitrary decisions divorced from fairness. Excessive leniency or undue harshness in sentencing would itself be unjust, necessitating a comprehensive evaluation of all relevant factors before issuing a verdict.

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