

Reasons the principle of the legality crimes and punishments in Islam

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Abstract: According to the principle of the legality crime and punishments, punishment without law does not exist and is not in other words imaginable. This principle is rooted in the past, including "no crime and no punishment without law courts" can see. In the first study of crime and punishment in Islam, and, of punishment has been studied; and punishments of the reasons we have discussed in the Quran and narrative. One of the basic and inalienable Islamic criminal law, the principle of legality of crimes and punishments, and the purpose from this principle is to summarize that: Firstly, nothing act in Islam is not a crime unless this trait is known already from the holy lawgiver; Secondly, the judgment may not be nothing punishment, except the lawgiver previously imposed for the same offense to be punished; Thirdly: nothing provision of a competent court against the defendant will not be issued until after the investigation and trial, even if the condition is foreseen in the law. With all the importance of the classical school of legal scholars believe, however, this principle was unknown, in ancient period In ancient states law, the law of Rome, the Middle Ages and during the Renaissance, even the salary records of this principle is not observed, it can be said that this principle is known in Islamic law.

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1. Introduction

Legislators Different the principle, or in their constitutions or criminal law or both are incorporated. Concessions that have been mentioned in this principle include: Preservation of individual freedom and social, Knowledge of orders and legal barriers and attention to the consequences of their antisocial actions that have been dumped in the form law. And On the other hand problems of this principle is a loophole for offenders who are familiar with the law contents of his criminal acts could do with Regarding the lack a legal text. The Islamic Penal Code of Iran as the principle is completely explicitly which states: "Any act or leave the current, the law be defined punished for it, is a crime." And also the principle the constitution of the Islamic Republic of Iran has been predicted. Including in Principles 22, 25, 33, 36, 37, 159, 169 constitutions is discussed.

First: Crime out in the Islam

The word "crime" is defined as: Cutting and cut the fruit from the tree and in legal terms and jurisprudential penalties for committing a crime and opposition justice and truth refers obscene works. Islamic jurists have different definitions of crime and instances of it are considered.

"Almavrdy" Sunni scholars, crime is defined as: "Statutory prohibitions prescribed in Islam and is punishable by "had" or "punishment" (Tonekaboni, 2003).

"Conference the implementation of Islamic criminal law and its impact in the fight against crime" that formed in 1977 in Saudi Arabia and Iran's representative at the conference had provided the following definition of the crime is: "crime opposition the commands of the Qur'an and tradition constraints, or committing an act which lead to the destruction of the individual or society. Every crime is penalty a lawgiver that has asserted. And authority it to the Guardian or the judge has given"(Gorgie, 1989).

The " Sahide aval" in the book "The Rules" considers five types of crime: "Against life, against intellect, against generations, against property, against religion." The leader then adds: "To protect and defend the blood money and retaliation come and to preserve the faith that has come to fight and kill apostates and to maintain intellect which is sanctions and flogging consumption of alcohol. And to preserve the generations, That prohibition of adultery and sodomy and other acts of similar diversionary come and to maintain property, that is has been sanctions theft and betrayal, and the like "(Validi, 1985).

The second: the penalty of the Islam

By careful study of the sources of Islamic criminal, as well as the goal of Islam is obtained punish the sinful and criminals teasing of their suffering and abuse next of kin not like this. By careful study of the sources of Islamic criminal, as

well as the goal of Islam is obtained punish the sinful and criminals teasing of their suffering and abuse next of kin not like this, our aim is offender discipline and edification, to create a healthy society, and generally protect people and prevent social evils of depravation. According to some elders, the purpose of punishment is Preservation of the faith, breath, generation and the intellect is wealth, that "Khums" necessities is called (Gorgie, 1978). "Islam's repentance after a crime supposedly committed to reform criminals and return to God is left open "(Maedeh 39). On the other hand, to encourage the good people, also good deed is its own reward: (Zalzal,7and 8).

Third: Types of punishments in Islam

Islamic punishments are five types: "Deal (hodod), retaliation or nemesis (Qesas), blood Money or wergilds (Diat), term (Tazirat), interceptor penalty (Wahidi, 1993).

Deal (hodod): The penalty is called, that type and quantity and its quality is determined by the Shari'a.

Nemesis (Qesas): The punishment that the convicted felon and should be a felony against him.

Blood Money (Diat): The amount of Property, which is designated Behalf of lawgiver for the felony.

Term (Tazirat): The corrections or retribution that type and amount had been set in the Shari'a, and the ruling opinion have been granted, and the ruling opinion have been granted such as fines, imprisonment and whipping that amount the whip should be less than the limit value.

Interceptor penalty: corrections or retribution that by the government, in order to maintain order and social interest the system of governance is liable for any violation of regulations; Such as imprisonment, fines, closure of Business Location, cancellation of licenses and deprived of social rights and stay at a certain point or points and the like.

Therefore, the principle of legality of crimes and punishments of Islam has been approved and supported. And Islam jurisprudents also continuously this principle as "bad rule Eagle Bella said OR Without the said warrant to Eagle" accepted and are defend it. Jurists for mass, 3 the legal element, the element material, spiritual, are mentioned.

In jurisprudence as well as crime is composed of three thing:

A - The text of the legal offense, or reason verdict.

B - The foreign acts that constitute a crime;

C - General Conditions of task: means having the maturity and wisdom and authority and intention. The analogy with the common law, "A" can element of the "B"-a legal material element and spiritual element called "C".

Now look at verses and narrations against Islam, or more generally the principle of legality of crimes and punishments in the Quran and narrations is that it illustrates the principle.

The fourth: the necessity reasons principle of legality

1 - Logical directory: The human sentenced to life instinct in the community, and with living in is necessary community. That social regulations should be regarding respecting and acts against announced social order, so individuals know what has socially disruptive acts.

2 - Respect for individual liberties: As a person is forced to observe public order, the individual also must respect the rights and freedoms of the community. (Afrasiabi, 1998).

3 - To observe the benefit of the community: Because people have social and economic activities without worry and uncertainty. And this led to the development of industrial, technical and economic prosperity (Afrasiabi, 1998).

4 - Divide tasks: The legislative and the judiciary, which legislature enacted responsible for law and its interpretation. And implementation is the Judiciary (Nvrba, R., 2002).

Fifth: reasons principle of legality of crimes and punishments in the Quran

The following Quranic verses approved by principle of legality of crimes and punishments of Islam will:

1- "And we do not send messenger, never the someone will not tormented"(Surah Asra ,15). This noble verse, the clearest and most telling is reason principle of legality of crimes and punishments, says: that so people are not aware of the law and punishable offense and will not be punished (Atabaki, 1986).

2- "God does not obligate anyone, except to the extent that is in power" (suras Talagh, 7).

3- And many verses can be noted that due to the high number of them, we'll just mention the number of verses, which include: (Suras Anam, 119), (Suras Baqara, 286 (Suras Talagh, 131),(Suras Anam 145) (Suras Anfal, Verse 42).

In fact, legality principle of crimes and punishments in the verse above mentioned proof is indirect.

4- Aside from the above mentioned verse, the servants do not use God's decrees and laws and the other implemented law the infidels, considers ruthless and debauchee. Such as: (Suras Maedh, Verses 44, 45, 47). For further reading please refer to the referenced verses.

Sixth: Reasons proving of legality of crimes and punishments in the hadith and narration

There are many hadith and narrations that indicating the principle legality of crimes and punishments.

1 - More important the traditionary with slight differences, has been used by scholars, traditionary known as "Hadith Rafa" is, this Sunnis and Shi'ism hadith of the Prophet (PBUH) has been quoted, as well as' Shaykh Ansari "in the" Rasaiel "and" Sheikh Saduq "in" tawhid "and" Khesal "have.

Professor martyr "Motahari" also made it, these quotes: "Hadith Rafa" is a Prophetic traditionary and famous, that great prophet of Islam says: Of you, 9th duty has been remedied: 1 - what they do not know 2 - what the intolerable 3 -What they have had 4 - What have found emergencies 5 - Mistake 6 - oblivion 7 - Bad Omen 8 - Feelings of jealousy (so long as is not to action stage) 9 - temptation of Satan in the of creation (Motahari, M. 1980). Of what is location reasoning, "ie of what people do not know" Are in Amman and Have Not Received.

2-The Prophet says:" People are free compared to does what that they do not know it" (Kulayni, 1998). And there are many other narratives, were told that only a few of them, please refer to these sources for further study. (Njvmyan, 1988) ;(Balaghi, 1982); (Ansari, 1977); (Mohammadi, 1990); (Kulayni, 1998); (Baheri, 1971); Al-SalehOsman, 1998).

Discussion

Of Islamic sharia and laws based on justice and mercy, have been the legislativeAnd penal laws of Islam (The Qur'an) is a part of it (the hadiths and traditions, Infallibles) is a symbol of God's grace and mercy and God bale, because Islam is not a made Human imperfect, but, heavenly revelation and divine spirituality revelation.

But about the sentences (laws) by man-made naturally such claims are not accepted; In other words, it is incomplete, and this defect in intensity and weakness is human law in different societies and such laws that are contrary to human nature, obviously, with process growing corruption, therefore, our emphasis in this paper has been to prove. The principle of legality of crimes and punishments, in the ten principles of the constitution has gained credibility, which is the component of the fundamental rights and we know that no ordinary legislator and the judiciary can't act contrary to the constitution is the basic fundamental right to do. With this expression, we reach the conclusion, that the affairs of the nation and its politics must be based on justice and beneficence, and it is not easy. So should be law till be punished for the criminals, And of the

person who does not know expect law enforcement and to respect neutral place.

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