



RESPONSE TO CRIMINAL PHENOMENON IN AUTHORITARIAN CRIMINAL POLICY THROUGH COMPARATIVE STUDY OF ISLAMIC SYSTEM

Seyyed Ali TAGHINASAB¹, Seyyed Sajjad KAZEMI^{2*}

¹Department of Criminal Law Faculty of Humanities, Hamedan Branch, Islamic Azad University Hamedan Iran, Hamedan, Iran.

²PhD of Criminal Law and Criminology, Faculty Member of Malayer University, Malayer, Iran.

***Corresponding Author**

ABSTRACT

The governmental response to crime and deviation, weakening the principle of lawfulness, the supremacy of the executive branch over other powers, criminal inflation, zero tolerance, etc. are among the most important features of Authoritarian criminal policy model. Due to its perfection in criminal policy, Islam also has some rules and principles which in some respects have a significant adaptation to the authoritarian model, including the principles set forth above achievable in the model of the criminal policy of Islam. However, it must be said that the criminal policy of Islam differs in different essential aspects from the authoritarian model. Including the fact that in Islam there are some principles such as personalization of punishment and the distinction of crime and deviation in deterrence; it eliminates the aspect of its illegality, converts it into a unique principle. Ultimately, the existence of principles such as guiltlessness, obscenity for unstated punishment, and institutions such as repentance, crime-ignorance and pardon has given to the criminal policy of Islam a different character of authoritarianism.

Keywords: *Criminal Policy, Authoritarianism, Principle of Lawfulness, Decriminalization, Criminal Phenomenon*

INTRODUCTION

Nowadays, governments are divided into different types; according to the participation of the citizens the government is classified into two kinds of Totalitarianism and democracy: in totalitarian one all aspects of citizens' life are under the control of the government, it is guided in accordance with the will of the government and the party; this is referred to as authoritarianism.

In the present research, we first seek to find the answer to the question: how authoritarian criminal policy responds to the criminal phenomenon? What is the reaction of this kind of criminal policy against crime? Of course, we plan to consider this issue in conjunction with the criminal policy of the Islamic system. Perhaps the reason for this, namely, the comparative study of the two systems, is that in the Islamic system there are also principles that bring it closer to an authoritarian criminal policy, and even many critics have regarded these two to be the same. But the truth is that the principles of authoritarian criminal policy and Islamic system are very different. These differences are quite evident in the legislative and executive criminal policy and, of course, proving these differences is one of the subjects that will be addressed in this study.

Principles of authoritarian criminal policy in Islam

Islam is not seeking authoritarianism, nor is it inferable from its practical and theoretical principles. But because of some of the strict rules and principles that exist in the school, this doubt has arisen, and as a result many authors have made this comparison. The practical reality of Islam also confirms this theory (Islamic authoritarianism) in its periods of history, especially in the Islamic Middle Ages which were related to the period of Abbasid caliphs and their sovereign states, and now also some other contemporary governments that they are governed by Islamic law and cover this concept in various aspects, including criminal policy, even in some cases far worse than authoritarianism. In recent years, the rise of Islamic governments such as Daish and Other parties and groups like those who are struggling with principles that, in their own words, express the fundamentalism to establish a school and a method of government, legislation, justice, etc., which introduces authoritarianism in a dangerous sense. However, various interpretations of Islam have led these Islamic states to be completely outside the religion and the holy Islamic law; but it should be noted that these various interpretations are based on the principles contained in the text and the foundation of religion and sharia, and the same principles express authoritarianism in the criminal law of Islam.

Documentation of the compatibility of Islamic teachings with the model of the comprehensive authoritarian state, from one author's point of view, is as follows: (Nobahar, 2006, 1177)

- Being extralegal the charismatic Leader in the Islamic State.
- Impossibility of separating the powers and the authority of the charismatic Leader on the judicial institutions in the Islamic state model.
- Weak position of "civil society" in Islamic perspective.
- Lack of the principle of the legality of crimes and punishments in Islam.
- Failure to distinguish crime from deviation.

Of course, we will benefit from these thoughts to study and to compare the model of the criminal policy of Islam; we will try to point to other issues with different titles with a different look.

- *Weakness of civil society in Islam and non-relevance of separation of branches*

In Islam, the civil society and the institutions that justify the existence of this society and its democratic existence, as it is today in the democracies of the world, and even Islamic countries such as Iran, are not seen at all.

In other words, in fact, nothing of the separation of powers is considered in the Islamic society and state.

The principles of liberal governments are difficult to deduct from the principles of Islam, and it is the same principles that strengthen authoritarianism of the government and the criminal policy of Islam. When we say that there is no separation of powers and the existence of three powers parallel to the principles of democracy, we take into consideration that such principles cannot be seen in the basics of Islam, and thus it can be in such a way that Islam seems as an authoritarian government. However, in the critique of these concepts, we will say that these concepts are not always absolute, but there are some cases of the existence of civil society and public participation in criminal politics.

In different periods of the Islamic government, from the beginning of Islam to the Islamic governments of the contemporary era, there is no evidence of the separation of powers in such a way that exists in the contemporary world (Nobahar, 2014, 46). Although principles such as the independence of the judiciary power, the judge state that these powers and these institutions



of the government are in a way that can indicate the separation of powers; it should be said that basically there is no separation of powers in Islam, and this causes, in the criminal policy of Islam, the authorities that the legislature has in criminalization in general to be given to the judges or the legislature. On the other hand, when we qualify the ruler of the Islamic society as judge and believe that he can sit on judgement position, we have actually stated that there is no separation of powers absolutely or even relatively in Islam, and the absence of this separation leads to spreading of authoritarianism in the criminal policy of Islam.

There can be many reasons why the civil society that exists in Islam is based on the principle of authoritarianism, and as a result the criminal policy leads to authoritarianism. The existence of popular groups and institutions in the Islamic society and criminal policy of Islam to respond to the criminal phenomenon and social deviation is a factor justifying the principle of the legality of crime and punishment and the like. That some individuals can take the action of retaliation without trial and without observing the principles of justice and prosecution, is one of cases which in the Islamic government manifestly speaks of authoritarianism and oppression, and expresses that in the criminal policy of Islamic some principles such as the separation of powers, the independence of the judiciary, the right to choose a lawyer, and the legality of crime and punishment can be ignored under exceptional circumstances. Murder in the marriage bed is one instance.

- *Penal suppression in criminal policy authoritarian model*

As we said, one of the criminal policy models raised in the field of criminal law is the repressive or security-oriented model, which is usually considered to be authoritarian and dictatorial. In the authoritarian model, and subsequently in the Islamic model, one can also see these ideas that lead to criminal repression and its consequences. As a result, the authoritarian model will have similarities with the oppressive model, which will result in the model being criticized.

Penal suppressions in the authoritarian model as well as in the Islamic government model have many similarities in different aspects. In some of the criminal phenomena, there is such a form of suppression in a clear way because it can have a direct relationship with the goal of government and the foundations of Islamic government and authoritarianism.

- ✓ *Suppressive Criminal Policy and Maximum Criminality in Sex Crimes*

Perhaps Islam has criminalized the sexual crimes as much as possible more than any other schools and religious and criminological thoughts. In other words, Islam, with the rigor of sexual crimes, is considered to be sufficiently authoritarian and oppressive in general thinking and critics' view of its criminal policy. Penalties such as stoning and other forms of assassinations due to sexual crimes show that Islam is close to authoritarianism and even oppression in sexual crimes. Of course, it should not be forgotten that this rigor is formed on the basis of thoughts that express human dignity and so forth, and one can not only see at this issue the Islam as considering suppression without thought in this category of crimes.

Execution is prescribed for several groups in sexual crimes. First the incest, second the rape, third repeated fornication, fourth the non-Muslim male fornication with the Muslim woman, fifth sodomy (Najafi, 1989, 378: 41)

In the field of sexual crimes, there is observed a maximum criminalization. (Najafi Abrandabadi, Beigi, 2012, 90) It can be said that in sexual crimes of Islam's criminal policy there exists a kind of zero tolerance pattern.



- Murder in the marriage bed is killing traitorous woman and felonious man with whom she is being adulterated and watching by her husband. (Imani, 2004, 838). The condition for the truth is the occurrence of marriage and the possibility of an ejaculation, and entry is not required. (Jafari Langroudi, 2006, 496)

Because with the aggregate of the conditions for committing the sexual crime, enforce the punishment is necessary and even in cases where it is possible to go back on punishment, such as repentance and the like, it can be acted contrary to it.

Islam seems to behave in a repressive and authoritarian way in preventing, prosecuting, and executing sentences in order to crack down on sexual crimes, and the theoretical rules also confirm this. Of course, why in Islam there are such strictures in sexual relations and related crimes, the reasons can be found in the ethical, human, and sociological foundations that cannot be mentioned in this article. In fact, what has caused Islam creates this form of maximum criminalization with violent and severe punishments for sexual crimes is that Islam is aimed at maintaining the family and the healthy environment of the community, as well as bringing humanity to its human perfection without regard to Sensual, and even with suppressing it; it seems that these teachings have led to Islamic authoritarianism in sexual crimes, eventually introduced this school as a school with an authoritarian or oppressive criminal policy.

- *Weakness of principle of lawfulness of crime and punishment and development of concept of crime*

The principle of the legality of crime and punishment, as well as the principle of close interpretation of criminal laws, is one of the rules that are applied to the criminal laws of many legal systems with varying degrees of quality and quantity. As much as more analogies are used, the criminal titles are vague and interpretable, or rules such as applying retroactively of criminal rules can be applied, it can be said the principle of lawfulness has been weakened or the crime has increased significantly.

Ms. Delmas Marty, professor of criminal law in France, in a division based on the ideological principles of criminal policy, bases her criticism of Islamic criminal policy on this principle. She places the Islamic criminal policy in the form of religious fundamentalism or antegrism along with fascist movement, and in the subcategory of the intellectual and ideological stream of Totalitarianism. According to her view, given the unconditional power of the ruler on the one hand, and the existence of analogical reasoning and deterrence in Islamic law on the other, there is no place for the principle of the legality of crimes and punishments. In her view, "antegrism" has a concentrated structure. The caliph is a manifestation of divine will, and everything is summarized in his absolute power. Like Fascism, with the slogan "Everything in the state, nothing outside the state, nothing against the state", it explicitly confirms the supremacy of the state over the law. (Quoted by: Shakeri Golpaygani, 2007, 69)

One of the main criticisms on the criminal policy of Islam is related to deterrence in which the judge's authority has been increased; it can determine the type and amount of punishment according to the factors that exist in jurisprudence. This has led to the weakening of the legality of crime and punishment and the increase of state authorities in responding to the criminal phenomenon. Of course, these critiques have found many answers, some of which can explain the fact that Islam faces defects in the above mentioned criminal law, namely, the legality of crime and punishment, but some of these responses are also convincing; as it is said, the deterrence in fact is a personalization of punishment and attention to the person being



condemned. However, in authoritarian criminal policy to which Islam is similar in some of its aspects, one can find something by which the before mentioned principle has been undermined and, by analogy in criminal law, the just principles of criminal policy are violated. We said that professors such as Delmas Marty have also acknowledged it.

- *Governmental response to crime and deviation*

The government's response to crime and diversion is another subject matter that can be mentioned in the correspondence of the criminal policy of Islam and authoritarianism; but it must be said that this is also a subject that can be defensible in the criminal policy of Islam for its type of government. Of course, the governmental response or governmentality of the model of criminal policy in Islam is more compatible with the model of totalitarian or absolutist government.

These principles are, in fact, the development of the concept of criminalization and judicial inflation, which is sometimes seen in the criminal policy of Islam, and especially in the sexual crimes referred to.

The authoritative model of criminal policy in some respects has undeniable affinities to the model of the criminal policy of Islam. Of course, one should not forget that no model in criminal policy can be exactly the same as another model and follow all its rules. In other words, it should be noted that differences in ideas and differences in the principles and minor parts related to each school make it possible to give different interpretations of them. As a result, the model of the criminal policy of Islam can also be interpreted in isolation from the authoritarian model; in addition, the authoritarian model has two tendencies, and therefore it cannot be said that Islam is exactly applicable to which of these. Although writers such as Delmas Marty and Lazaro have brought many reasons to the adaptation, we will say that these reasons can be rejected with completely logical and rational documentation and we can introduce the criminal policy of Islam as one of the special models in this field.

Of course, the argument that the criminal policy of Islam is close to authoritarianism can be very long and there are many reasons for rejecting or accepting this theory; but in any case, this comparative thought is more based on the model of government that has been anticipated in Islam and the absence of democratic institutions in traditional jurisprudence leads to this. It would seem highly that if in the Islamic jurisprudence, the ideas of separation of powers, independence of judges, the choice of the lawyer and so on can be proved, along with the principles of guiltlessness, the rule of Dar, obscenity for unstated punishment etc., it can be concluded that not only the Islamic criminal policy is different from authoritarianism but also it is the most developed criminal policy. The reasons for this correspondence are not sufficient and convincing.

Difference between Islamic criminal policy and authoritarian model

The criminal policy of Islam is different, for reasons that will be said, from the authoritative criminal policy and they cannot be exactly the same; it can even be assumed that these two criminal policies are completely different in their foundations and goals. Of course, this attitude towards the criminal policy of Islam arises because some people see Islam and its legal principles with a very positive view and are constantly introducing a positive image of it. But our attempt is to convey this category of arguments without prejudice, and ultimately leave judgment to the readers, as we discussed in the compatibility of these two with each other, but we did not



conclude it definitively, and t we did not consider he Islamic criminal policy an authoritarian criminal policy, and only expressed the possible similarities.

The most important differences between authoritarian and Islamic criminal policy, according to one of the writers, can be the following cases: (Nobahar, 2006, 1178)

- lack of being monopolized the Islamic State to the model of charismatic and extralegal leader.
- possibility of separation of powers, especially the principle of independence of the judge in the Islamic perspective.
- possibility of civil society according to the principle of enjoining the good and forbidding the evil.
- validity of the principle of the legality of a crime in Islamic perspective.
- Compatibility of the institution deterrence with the separation of crime from deviation.

Here, we will refer to the most important principles in expressing the difference between the criminal policy of Islam and authoritarianism. These principles are in fact a moderator of the principles that lead to assumption of authoritarianism for the criminal policy of Islam. For example, when we say that in the criminal policy of Islam, the principle of the legality of crime and punishment is ruined by the existence of deterrence and is the same as authoritarianism, we will say here that the principle is moderated so that it cannot undermine the rule of lawfulness and is definable in a completely legal form and by a logical argument.

- ***Difference in approach and ways of reforming criminals***

It seems that the purpose of Islamic penalties is to reform criminals. It can even be said that purification and education is one of the basic principles of punishments and one of the most important goals of Islamic punishments. It can even be said that punishment is a kind of divine blessing and mercy that can lead to many blessings for the condemned. Even crimes such as retaliation and deprivation of life impose deterrence and can be considered as one of the key factors in the reform of society.

Referring to the Islamic texts of the Qur'an and traditions, we can find various ways of reforming the criminals. In criminology and law studies, less attention has been paid to reformist measures in Islam, and the culture that Islam seeks to implement in Islamic society has been less considered. In Qur'an's words the prayer is deterrent for indecency and disallowed things. Worship and the memory of the God and all its intellectual and spiritual effects are in fact a factor in avoiding sin, which can be a great way of reforming, re-acceptance and even preventing crime. Other worships, such as fasting and enduring hunger and thirst, and avoiding sins, are all training to prevent crime. How is it that the critics do not see these constructive and useful ways for preventing crimes?

Another institution that can be considered after committing crime and deviations is repentance. This has not been well known and has remained a moral principle, while, in my opinion, if its rules are set and the conditions for its realization can be considered, it can be an important factor in preventing the use of physical and repressive punishments.

In expressing the principles of the authoritarian model, we stated that there was a zero tolerance in this model, which seems to be modifiable with the cases mentioned above, in particular repentance in extreme and severe crimes that can be used as a factor of forgiveness for the guilty or criminal. When a severe punishment can be forgiven with a practice such as repentance, so



rigor and repression will lose its relevance and a new face in the criminal policy of Islam will emerge.

- *Social reaction to crime and deviation (enjoining the good and forbidding the evil)*

One of the cases that led to the conformity of the model of authoritarianism in the criminal policy and the Islamic model was the government's response and the weakness of the civil society system that was seen in Islam and in some crimes. The severe and body punishments for crimes called "God's right" in the Islamic system express extremist authoritarianism and suppression that undermines the societal and civil institutions. However, if we take into account the layers below the jurisprudential doctrines, we will recognize that one of the most important minor parts of religion in the Shari'a of Islam is to pay attention to society through the interference of the elements of society itself and in various forms, such as the enjoining the good and forbidding of the evil.

In addition to being responsible for their avoidance of violating the rules and orders (self-control), people in the Islamic society are also in charge of respecting rules and orders by other members of the community; in other words, they cannot be indifferent against other violations of the rules by others (other-control). If the institution of enjoining the good and forbidding the evil is realized in society, due to the conceptual development of the good and the evil, the many fields and factors of deviations - including sexual deviations - are destroyed and the remaining cannot be discerned. The linguistic aspect of the enjoining the good and forbidding the evil is oriented to this kind of prevention that consists in educating, informing and justifying people who are not aware of the rules. This can be done individually or in the form of popular groups; for example, missionary activities of religious groups and Religious associations are subject to the same evaluation. (Jorkuyeh, 2011, 107)

The prayer is deterrent for indecency and disallowed things (ankabout/13).

In fact, the issues of civil society and the responses to crime and deviations in this area are not simply summarized in a simple matter like enjoining the good and forbidding the evil. This means that the development of enjoining the good in the form of micro and macro social groups will lead to forming a non-governmental and non-oppressive response to social anomalies or deviations; this indicates that in the criminal policy of Islam the social control is the basic principle, not state control and oppression. If this is created systematically and without extremism, it will reduce the need for urgent responses.

One of the most important features of the criminal policy of Islam is its principle of participation which is in contrast to the oppression and the state response seen in the authoritarian system (Najafi Tavana, 2014, 18). The participation is this fact that the people and other institutions cooperate in the control of crime and diversion in a way that does not require a governmental response. Everyone will be responsible for their actions and for those under their control, and as a result, they will control the people spontaneously.

The participatory model in Islam is superior to the authoritarian model, or rather, a state-societal model can be considered in this regard. However, for these reasons, the criminal policy of Islam has the slightest resemblance to the authoritarian model, and it cannot be emphasized on the repression and the governmental response resulting from the weakness in the separation of powers and the superiority of the executive branch. Although the absence of the separation of powers and the supremacy of the executive branch, and theories such as the absolute government of the Imam and the supreme leader raises among Islamic rulings this doubt that



Islam is also an authoritarian model, but ignoring issues such as enjoining the good and forbidding the evil, or other types of participation in dealing with crime and deviation eventually have led us to conclude that this category of jurisprudential doctrines should also be considered.

- ***Preventive teachings in the criminal policy of Islam***

In the authoritarian model, and in particular its comprehensive tendency, what is considered most importantly, is that the more there has been a serious response to the criminal phenomenon, a better result can be obtained. The prevention and its various methods have been less considered. In the criminal policy of Islam, it has been considered that the crime prevention types are considered. Islamic teachings have focused on preventing the spread of crime and diversion in different ways, and has put the principle on the prevention and the establishment of public institutions in the same direction. Perhaps there is scarcely a criminal policy model that the detailed rules can be find in this regard, but in the Islamic model there are abundant rules that can be applied in all fields and in all kinds of crimes. From the sexual crimes that Islam has considered the most severe punishments against committing them to financial crimes etc. the Islam for each of these deviations has introduced completely practical and progressive preventive ways that, if realized, it would not be necessary to impose penalties such as stoning and the like that cause disgrace in the teachings of Islam.

The crime-ignorance, decriminalization and all preventive mechanisms have been predicted in the penal system of Islam and in fact a unique criminal policy have been defined. Thus, it can be claimed that Islam has a particular criminal policy. Also, to prove that this set of specific measures is a policy, the proof of coordination in this set is not necessary at the operational stage, and it is beyond this discussion to check that these measures have reached their predetermined target. All of this relate the stage of policy evaluation. Evidence of this is the cases that after evaluating it becomes clear that the cultural, economic, social policies are not successful in any country. But this does not preclude the application of politics. Therefore, the criterion of the truth of politics is the announcement of the goal in the collection (Qiasi, 2007, 58).

- ***Islamic Revolution versus Absolute Authoritarianism***

In the authoritarian model, we spoken of zero tolerance, and stated that there is a lowest amount of reduction for punishment in this model of criminal policy, and, of course, in its inclusive tendency it was most evident. Some prescribed punishments are from this kind, and because the Islamic judge cannot reduce or increase its amount and quality, it has led to the idea that this absolutism exists in the model of the criminal policy of Islam. However, in the discussion of deterrence, we mentioned the most important flexibility in this regard, and stated that there is a quality of personalizing punishment in this area that needs to be considered. In the prescribed penalties, there is one important jurisprudential rule called the rule Dar' that discourages zero tolerance in this field and thus adds to the flexibility that exists in this field.

Based on the criminal policy of Islam, in cases of doubt, the judge must repel punishment of the accused according to the rule of Dar'.

We said that the confrontation of Islam with sexual crimes is one of the issues that lead to the creation of a repressive criminal policy; this makes Islam to be introduced as an authoritarian and punitive model, due to punishments like the stoning and the like. But it should be noted that in the criminal policy of Islam, the Imam has the authority, in some cases, to exempt whom to commit sexual crime from punishment if it is best for the individual and the community.



Regarding this rule and the mentioned contents, the general working procedure we obtain is based on the fact that in the Islamic rules, the principle is to overlook the implementation of the punishment, and in particular the severe penalties including physical punishments.

These are:

Adultery: If a person commits adultery and is proven guilty of a crime by his confession, if he repents of the crime, the Imam can exempt him from the punished (Najafi 1989: 293: 41).

The crime of sodomy: In the crime of sodomy, if the crime is proved by a confession and the criminal repents after proof, the Imam has the power to exempt him from punishment (ibid., P. 387).

Lesbianism: If a woman confesses to the crime of lesbianism, if she repents after the confession, the Imam can order her penalty to be exempted (ibid., 390);

This rule is enough to show that Islam is not a religion of violence, because in this rule, as stated, the doubt is a barrier to implementation of prescribed penalties, and it should be noted that the criminal policy of Islam has been based on forgiveness and caution. The implementation of physical punishments, however, has to be done with great care, and this can be the basis for new developments in the implementation of physical punishments, as has been the case throughout Islamic history.

- *Acceptance of principles of decriminalization in criminal policy of Islam*

One of the features of the effective criminal policy model is that in the area of public awareness and crime awareness it can act in such a way that its audience, while being aware of criminalized acts and the like, can take action in this field. In fact, it is argued that if a criminal policy intends to prevent, reconcile and rehabilitate criminals and promote society, it is necessary first of all to provide the public with its foundations and not to punish offenders without foundations and set the suppression as the axis of consciousness, like in the authoritarian model.

Decriminalization in Islam involves in almost all stages of criminal proceedings including prosecution, investigation, sentencing and execution of punishment. With an overview of these Islamic principles, it can be said that the practice of punishment has limitation, and sometimes it takes an exceptional status. For example, the difficult circumstances in the case of proving adultery cause in many cases this crime is unproven and, as a result, no punishment is imposed. These harsh circumstances are in fact a kind of whitewashing that prevents the use of severe punishments and also prevents the destruction of people's dignity.

CONCLUSION

In the area of law and in particular criminal law, Islam has provided very clear and consistent rules and principles. These principles in the field of criminal policy are such that they can be considered as an independent criminal policy with unique characteristics, or compared to other types of criminal policy. One of the models of criminal policy that has many similarities and is compared with the Islamic model is the authoritarian model. With a study we have made and the correspondence of these two criminal policies, we have achieved these results:

- The authoritarian model in criminal policy is oriented to a method of criminalization, taking preventive and deterrent measures based on principles such as criminal repression, maximization in criminalization, zero tolerance, undermining of the principle of lawfulness, the supremacy of executive power over other powers, or in the



better words, the lack of complete separation of powers etc. We can find these cases in the study of the criminal policy of Islam. Of course, the correspondence of these principles with the criminal policy of Islam is not absolute and can take a more balanced or extreme state based on interpretations that are carried out.

- The most striking similarities between the authoritative criminal policy model and the model of the criminal policy of Islam relate to the principle of separation of powers. In both models, there is generally no separation of powers as it exists today. The executive branch, or the Islamic ruler, is superior and can even interfere in the most private areas of individual's life.
- As a result of the supremacy of the executive branch and the lack of separation of powers in these two models of criminal policy, the principle of the lawfulness of crime and punishment will also be damaged. This means that the law that is a king or ruler's will prevail over the general will that must criminalize.
- In the area of sexual crimes, the model of the criminal policy of Islam has criminalized abundantly. Penalties such as stoning, whip etc. are punishments that have been imposed and reflect the existence of a repressive feature in the model of the criminal policy of Islam, which seems to be more extreme than authoritarian model.
- The existence of punishments such as penalizations, which determining their type and amount is done by the judge, is a case that can lead to undermining the principle of the legality of a crime and punishment.
- Nevertheless, there are fundamental and incomparable differences between the model of the criminal policy of Islam and the authoritarian model; they are as follows:
- In the criminal policy of Islam, the leader of the Islamic society does not go beyond the law, although he has an absolute authority, but this authority is in execution, and not in the law. The law is God's, and God has also known the human reason to be able to rule, so people can legislate and the separation of powers is possible.
- The separation of powers, especially the independence of the judiciary and the judge, is one of the principles to which have been paid attention clearly in the rules of Islamic jurisprudence. Therefore, the supremacy of the executive branch and the lack of separation of powers in any form is not raised in the criminal policy of Islam, as in the model of authoritarianism is the case.
- The weakness of social institutions does not exist in the model of the criminal policy of authoritarianism, and the response to crime and deviation is not always governmental. Popular and societal institutions are in a way that, one can say, they have attracted more attention in response to the deviations in the model of the criminal policy of Islam. The teachings of joining the good and forbidding the evil are one of these social appearances in response to crime and deviation.
- In Quranic verses many times the principles such as the principle of legality, the principle of guiltlessness and so on have been emphasized. Therefore, the weakening of lawfulness in Islam, due to the existence of punishments such as penalizations based on the principles of individualizing punishment instead of the violation of the legality of crime and punishment cannot be defensible. Moreover, the institution of penalization is a sign



that in the criminal policy model of Islam the crime and deviation are distinguished from each other.

- It seems that in the interpretation of the rules of the criminal policy of Islam, all the principles should be mentioned in detail as well as systematically. Only the general principles and rules that are clearly in some areas of criminal law cannot complete the drawing of a model of criminal policy in Islam.
- The flexibility existing in the model of the criminal policy of Islam based on which have been created the punishments such as deterrence, or repentance and ruler's amnesty and so on, causes us to be able to revise the prescribed and disgraceful punishments which on the origin of their emergence there is no certainty and introduce a societal and participatory model of Islamic criminal policy.

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