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A Study of the Interplay between Sharia and Law in Iran's Criminal Policy

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Abstract:

The present article seeks to answer questions on the main challenges in how Shariah and law interact in shaping and transforming Iran's criminal policy and also which of the judicial penal policy governing Islamic penal law is more in line with the global or Islamic standards. To achieve the aim, the most important factors of tension between changeable Sharia punishments and human rights norms in Iranian criminal policy must be recognized. Thus, a study was conducted on recent major changes of Legislative Criminal Policy (The Islamic Penal Code, the Code of Criminal Procedure, and several recent major criminal laws) by measuring the dominant discourse on punishment. Moreover, the article explains the translationalism of jurisprudence and the crude injection of jurisprudence into Iranian criminal law, and the confusion about how to adopt from Western's law of advanced trade, and the lack

of support for the implementation of new criminal facilities, are the most significant challenges. As the jurisdictional penal policy of Islamic penal law is based on the doctrines of Islamic teachings, and to the extent acceptable and not favorable. It complies with some of the universal criteria of criminal law for the protection of human rights. Furthermore, the persistence of implementation of corporal punishment and ineffective execution and imprisonment, the continuation of criminal retributivism disproportionate to the individualization of the criminal and the bottlenecks of the offender and society, and the slow transition from virtuous retributivism to effective retributivism are of the most common causes of tension in the changing Sharia punishments with human rights norms.
Keywords: Criminal Policy, Islamic Justice, Criminal Jurisprudence, Reason and Sharia

1. Introduction:

The legislator, after the glorious Islamic Revolution, has not yet been able to draw a picture of the relationship between the Shari'a and the jurisprudence, the legal and the government with acceptable clarity and reduce the intensity of ambiguity and confusion in the basic concepts of criminal policy. The Islamic Penal Code of 1392 is the latest achievement of the Islamic-Iranian legislative criminal policy which considers the marriage of men to be effective in punishing sodomy. It offers the broadest conceivable definition of corruption on earth and in violating the foundations of criminal law and the principle of innocence. They are so diligent and coercive that they have not set instances of limits only in eleven cases،and it has moved away from the axis of progress in understanding and implementing religion in Iranian-Islamic criminal-legislative policy that the most of the motivation from these lines has been dedicated to research and critique and how the sharia and law interact in Iran's criminal policy.

To analyze and critique the traditional approach in the field of Islamic criminal policy, it is first necessary to investigate the nature, purpose, and characteristics of jurisprudence (in measuring the functions of jurisprudence) and then to assess the power of religious knowledge in the output of policy-making methods, because Islamic criminal policy in this regard revolves around jurisprudence. Therefore, it is necessary to know whether jurisprudence, which is the core of the existing discourse on criminal-Islamic politics, has the power to implement the goals and the power of macro-social policy-making. Is it possible to replace the old methods in jurisprudential issues to solve the problems of modern politics? Despite the dominance of jurisprudence over a large part of the content of Iranian law, now in the growing course, parts of our legal rules have moved away from jurisprudence and have taken on a European flavor. On the other hand, there are principles in the constitution that have obscured the scope of application of jurisprudence in the subject law. In the constitution, the interpretation and explanation of incomplete or ambiguous provisions are assigned to valid Islamic sources and judicial decree. While the scope of application of jurisprudence in the case of laws derived from other legal regimes is questionable.[1] This makes it necessary to review the realm of jurisprudence on the subject law and the realm of laws derived from the West in the subject law of Iran.

[1] Yazdanian, Alireza (2010), The Realm of Jurisprudence in Subject Law of Iran, Critical Research Journal of Humanities Texts and Programs, Tenth Year, No. 2.

Our contemporary jurisprudential system is a set of beliefs, the experience of presence in the systems of the caliphate and monarchy, the constitution, and the Islamic Republic that it has inherited. After the Islamic Revolution, with the emergence of Islamism and modernism, in principle 4, 72, 91, and 167 of the constitution, Islamic law was again involved in law-making after the interregnum of the two Pahlavi regimes, but unfortunately, in this way, the jurisprudence was directly injected into the body of the law. The direct injection of jurisprudence into law was unfortunately repeated in the Law of limits, the Law of Retribution, the Law of Diyat, the Law of Punishments (from 1982 to 1991), the Islamic Penal Code in 1991 and 1996, and even the Islamic Penal Code in 2013.

However, the legislature has paid increasing attention to Western legal institutions since the Islamic Revolution. Unfortunately, it must be said that in the process of avoiding the abolition of rights in Islamic jurisprudence. They also pay little attention to the collective wisdom and opinion of legal thinkers and mystics of the time and social values compatible with the concepts and purposes of Sharia. Literary translation and blind translation from the West and Sharia is the enemy of rationality and the enemy of the purposes of Sharia and the enemy of religious democracy. We must abandon the ability of jurisprudential methodology from the former framework, namely the monarchical system, in the field of inference of political rulings and use this knowledge to explain new issues in Muslim life. It is in such circumstances that we are freed from the danger of revivalist and Salafism, and on the other hand, the influence of the mirage system of secularism on the jurisprudential system will be avoided to prevent false apostasy. However, recent developments in Iran's criminal-legislative policy indicate the introduction of criminological and criminal doctrines based on the model of relative criminal-libertarian policy into the substantive and formal criminal law of the subject which is rooted in the increasing alignment of Iran's criminal policy with the theoretical and strategic achievements of human rights.

2. A review of the major harms regarding Iran's criminal policy

Iran's criminal policy approach can be classified by two auditing criteria:

1- The type and extent and manner of dependence on religion
2- The type and extent and manner of dependence on science and human experience

In this sense, the first approach that can be evaluated in traditional jurisprudence is the extremist-adaptation approach of criminal policy, As well as the extremist approach in adapting national criminal policy to non-Islamic-Iranian models of criminal policy, especially Western models. In addition to the two main approaches, there are two other approaches (in the criminal policy) in the legal-religious environment of non-Western countries such as Iran and Muslim countries.

I. integrated approach:
   i. Based on the combination of jurisprudential teachings with Western achievements (in the criminal policy).
   ii. Based on the construction of the criminal policy, these two realms have been established together and giving a share to each other.

II. Indigenous theorizing approach:

One of the major challenges and dilemmas in the traditional jurisprudential approach (considering the criminal policy in Islamic Iran and other Islamic countries) is due to the similarity of the policies governing criminal jurisprudence with the Islamic criminal policy, In this prevailing approach, there is a reduction of rights to jurisprudence, which has very dangerous consequences, such as violation of the principle of legality of crimes and punishments, and widespread criminality of the jurisprudent, which is contrary to the obvious principles of criminal law. To the extent that even some authors of books on Islamic criminal policy in Iran have considered the principle of criminal law as unimpeded.[2]

It is a simple combination of the principle of innocence and the principle of limitation of the judge's authority in determining the punishment of the offender and the ugliness of the ugly punishment has not been declared. One of the most important conceptual and fundamental objections to some other discourses of religion is the promise of the lack of authority of reason in parallel with the Shari'a and owner's beliefs of these discourses. Others consider the legal norm to include all the cases that are subject to these rulings: obligatory, haram, makrooh, mustahab, and permissible rulings, that is, all human actions and deeds.

And indeed, it is these kinds of views that have led Delmasmarty to see Islamic criminal policy as totalitarian and in violation of legitimate human freedoms.

Some Islamologists in the field of criminal policy have also considered the social norm to be inspired by the legal norm in the Islamic system; Others have not clarified the political-criminal relationship between Islam and the criminal policy of the Islamic Republic of Iran, and it is not clear whether their domain is limited to jurisprudence or all Islamic sciences, and if for example, it is limited to jurisprudence, the realm of this jurisprudence includes which jurists or which jurisprudential scholars. Ambiguity, in the sense of "ruler" - only the guardian of the Muslims.

Another challenge in this approach is the traditional jurisprudential discourse on criminal politics. Some other cogitative thinkers in this field have also considered scientific criminal policy as the opposite of criminal-ideological policy, and have considered ideology as synonymous with religion, and science is derived exclusively from field research and criminal statistics.[3]

Translations and weakness in the application of rationality and community-centeredness and scientific theorizing and scientific modeling, unfortunately, because traditional approaches to the discourse of Islamic criminal policy to be challenged،even in the most basic issues related to how jurisprudence works in law. The old study and interpretation of the traditional-Islamic subject have a look at perception, belief, and inner identity. That is, by focusing on a particular interpretation of metaphysical beliefs [here: a particular interpretation of Islamic criminal policy] and marginalizing countless other interpretations and denying the multiplicity and potential semantic difference, it seeks to establish a complete identity that implies a final meaning; a meaning that is independent of interpretations. As we know, to obtain a realistic judicial decree that is compatible with the temporal and spatial

[2] Shakeri Golpayegani, Toobi (2001), Criminal Jurisprudence and Criminal Policy, Strategic Studies of Women, No. 11.

[3] Ghiyasi, Jalaluddin (2006), Fundamentals of Criminal Policy of the Islamic Government, Qom: Research Institute of Islamic Sciences and Culture.

requirements of human societies, the jurist must pay special attention to the taste of the Shari'a and the shari'a's motives for forging rulings, which are in the public interest. The expediencies and important affairs are the supports on which the Shari'a's comment is based. The three important factors to ensure expediency and protection of interests are the basis and purpose of the legislation, legislative criminal policy, and the scope of criminal policy. The connection between the interests of the legislator and the aims of religion became clear. It can be concluded that the purpose and goals of religion، are to discover the method of legislation and to measure judicial decree with it, which is one of the Superior principles in criminal law in particular, and other areas of penal policy in the general sense. However, Islamic penal policy requires that the jurists, in the inference of the Shari'ah and religion, do not pay attention only to the texts, even in a discrete and scattered way.

Rather, they should evaluate the texts with the meaning of Sharia and religion and this assessment should be done according to the strong connection and the will and desirability of religion and sharia and with corresponding concepts such as wisdom, method, discipline, justice, precaution, and so on[4] and the result is that this method and evaluation should be explained and trained to the legal authorities who design and formulate Islamic-penal policy. Political jurisprudence, which is responsible for macro-jurisprudential policy-making and especially the regulation of Islamic criminal policy. It focuses on the linguistic nature, understanding of revelation, and the political history of Islam. Therefore, political jurisprudence cannot be sufficient in designing the Islamic side and the model of penal-Islamic-Iranian policy. The most important challenges of the Islamic criminal policy discourse, especially in the academic and theological research perimeter of our country, are in general:

1. Stagnation over the word and the hidden rule of journalism and negligence or indifference to the authority of reason.
2. Maximum interference and confusion of jurisprudential concepts and facilities in law.
3. Equality of policies, wisdom, and interests governing criminal jurisprudence with Islamic criminal policy.
4. The confusion of discourses in adopting the correct position on the relationship between crime and sin and the realm and the examples of the circle of punishments.
5. The reduction of legal facilities to jurisprudence, especially in the form of claims that Western theories are not innovative; criminology, criminal politics, criminal sociology, etc., and the exact existence of those Doctrines (!) In Islamic texts.
6. Totalitarianism.
7. Extravagance in the Islamic dimension and deviation in the republican aspect has led to the inability of the prevailing criminal-Islamic political discourse to harness the rich potential of "religious democracy."
8. Extravagance in the dimension of Islam and latches and negligence in the aspect of republicanism, and it has led to the inability of the current discourse of Islamic criminal policy to use the rich capacity of "religious democracy and has raised the suspicion of the integrative and totalitarian nature of Islamic criminal policy for Western scholars such as Professor Miri Delmas Marti.

[4] Alishahi, Abolfazl (2011), What and Functions of "Taste of Sharia", Islamic Studies: Jurisprudence and Principles, No. 86.

9. Misinterpretation of the relationship between government jurisprudence and reformed jurisprudence. Regardless of how they interact with each other, If divine knowledge and human sciences and technologies are still exploited. At best, we will see the emergence of a few multidisciplinary studies that are just a collection of different and irrelevant opinions. We see such a situation in the criminal-legislative policy of the country, in which the structure of the penal code is formulated from the translation of jurisprudential and Western sources without localization and standardization of penal institutions and without adopting intended goals،but if we use different sciences in a methodical way and concerning the interactive aspect of science and education, we will see interdisciplinary studies. An example of semantic confusion in the transfer of concepts and words from jurisprudence to law should be examined in Article 167 of the Constitution of our country. There are numerous and strong jurisprudential and legal reasons in the realm of criminology cannot be interpreted based on Article 167 of the Constitution.
    a. The first reason is social. Members of society must know the limits of their forbidden actions so that order and justice are not violated.
    b. The second reason is psychological. To achieve mental health and peace of mind of the citizens, the laws must be clear so that the nation is not in fear and anxiety.
    c. The third reason is judicial. The authorized judge must extract rulings from jurisprudential sources and even recognize valid judicial decree, which is a kind of jurisprudential ijtihad. Something beyond one's ability. (It is the duty of the judge, who is allowed to judge the ruler to discover the rulings in the sources of jurisprudence and even to recognize the correct fatwas, which is itself a kind of religious ijtihad.)[5]
    d. The fourth reason is jurisprudence. Due to the wide range of valid fatwas and jurisprudential sources, people can't know all of them and valid examples among them .It also violates the sanctity of Sharia and religion.
    e. The fifth reason is respect for human dignity without observing the principle of legality of crime and punishment, if we introduce the imposition of ta'zir (punishments) rulings in the penal law system of the country, The consequence is the imposition of punishment on many private and personal relationships, including lying and absenteeism and abandoning the answer of greed and hatred and avarice and jealousy.[6]
    f. The sixth reason is political. In the Covenant of the People and the Government, Punishment of criminals is accepted by law. The rule of law regulates the relations between the nation and the state and not the personal inference of the judges.[7]

[5] Tahmasebi, Javad (2013), Article 167 of the Constitution and the Rule of Law in Criminal Matters, in: Encyclopedia of Criminal Sciences, Tehran: Mizan Publishing.
[6] Fundamentals of Criminal Policy of the Islamic Government.
[7] Iftikhar Jahromi, "Legal Protection against Violation of Industrial Property in Confrontation with Gray Markets" 1999, p. 20

3. Criminal liability as well as the principles governing punishments and response to offenders

After the revolution, under the influence of jurisprudential texts, in penal legislation, the age of criminal responsibility is 9 for girls and 15 for boys (lunar years). Examples of these consequences are

1. Accepting criminal responsibility for wise criminals.
2. Difference in the amount of punishment for the offender based on gender.
3. The victim's religion.
4. Accurate and unchangeable determination of the amount of compensation for the victim in crimes against physical integrity. Legislator in the new Islamic Penal Code, on the issue of criminal responsibility, the solution to the age crisis has been expressed in several cases:
    a. The case investigation
    b. The diagnosis of immaturity and intellectual perfection of the perpetrator (offender)
    c. or the lack of understanding of the sanctity of the crime
    d. As a result the fall of the punishment of hadd and qisas, In the hope that this type of case study may be generalized and practiced.

But, since the beginning of the Islamic Revolution, the intellectual framework of the legislature has not changed much. Other areas of knowledge of Islam and Iran that have led to chronic and painful challenges to Iranian jurisprudence and law include stagnation (stagnation) of words and disregard for the rationality and purposes of Sharia (religion) and the taste of Sharia (legislator). The jurisprudential penal policy of the legislature in creating a change in the limit (delinquency) crimes is also generally confused and suffers from a weakness in logic and rationality. Despite the elimination of stoning, the Islamic Penal Code reiterates the punishment of stoning in Article 225 of the new law. But unjustifiably, it is stated in this article that "if it is not possible to carry out stoning, the legislature both wants to keep stoning on the list of punishments and (in a very vague way) decides to determine the whip instead of stoning.

From fourteen hundred years ago (i.e. from the beginning of Islam until now), according to Article 234, the legislator has generalized spousal (which was a condition of adultery for a married man and a woman) to sodomy. That is, it considers the conditions of adultery between a man and a married woman to be the same as the conditions of the crime of sexual intercourse between a man and a man. The new law, on the other hand, has a very vague and derogatory view of the dignity of women. For example, in his definition of spousal as sodomy, he said, ".... and whenever he wants, he can have sexual intercourse with his wife in the same way." And immediately, as soon as the man did not satisfy his need to quench his lust, the man, if he had sodomy, Is entitled to a reduced penalty. At the same time, marriage has been considered as a condition for the execution of the perpetrator in sodomy, and this has not set a discount condition for the object. An overview of the Islamic Penal Code shows that a specific logic does not govern the generality of the law and the criteria for selecting different fatwas on different issues is not clear. In other words, the legislator's concern is not clear. Has he been concerned about human rights issues? Or reduce the legal death penalty or use new facilities to fill gaps or the effectiveness of traditional penalties? For example, in sodomy, is

the punishment of the perpetrator subject to marriage? It seems that the legislator's concern here has been to reduce the death penalty. However, in Articles 278 and 288, the same legislator has imposed two crimes with the death penalty: It defines corruption on earth and fornication, and corruption in a way that can increase the number of executions in the country many times over.

This is while Imam Khomeini and other Shiite jurisprudences do not consider corruption as a separate crime. The legislature also tends to provide for excess damages (on the ransom) in law, but the esteemed Guardian Council has objected, according to popular opinion. Now the question arises, why is it not followed in connection with corruption (according to popular opinion)? The legislature has also passed several useless articles, including Article 246, and only wants to make itself aware of emerging issues such as the possibility of committing a crime through cyber. Corporal punishments such as amputation, stoning, and flogging were not applicable in the spirit of society, and the death penalty was carried out in special and necessary cases.

The use of jurisprudential rules such as mulct and punishments that depend on the judge's opinion" and the rule "and ta'zir punishments that are less than severe punishments" can help us to change corporal punishments and turn them into new punishments and mulct. The determination of the sentence by the judge indicates that the legislator can play a major, direct, and immediate role in determining the sentence result the legislature can apply various and proper punishments by taking appropriate and condign criminological investigations and lead the society to excellence based on scientific methods.

The use of the rule "the amount of ta'zir punishment is less than the limit punishment" ("ta'zir below the limit") is also a reflection of the fact that the legislature should use punishments that do not have the severity of the punishment of flogging, and not in the sense that only the number of lashes is less than the limit. On the other hand, in the UN General Assembly, by issuing several resolutions against the Islamic Republic of Iran, it justifies the need to review corporal punishment. In the last century, the legislature, bypassing experimental and temporary criminal laws has shown that they are indifferent to modern criminological research. However, the Islamic Penal Code of 1392 was an important step forward and therefore deserves analysis from the perspective of criminal criteria. Apparently, in some cases of the principles of the constitution (such as the twentieth principle of this law), "observance of Islamic norms" has been proposed as a condition for the different enjoyment of members of society (of fundamental rights). But with more study and reflection, more accurate results can be achieved (albeit in a different way and with the twentieth principle of this law). What is certain is theorizing in the field of criminal policies of the country is very much needed and is one of the certain principles.

The lack of a coherent indigenous model for dealing with crime and deviance has led to inconsistencies in the ruling system. This result is nothing but a decrease in criminal justice indicators in Iran. On the other hand, one of the characteristics of the dominant discourses in Western criminal policy is the placement of criminal justice systems in the framework of one of the defined models of liberalism, authoritarianism, totalitarianism and the which is rooted in the theoretical and practical opposition of libertarianism and secularism. Contemporary Western criminal policy is based on the logic of modernity. Even if we are optimistic, Criminal policy in Iran is still very chaotic and if we evaluate realistically, in the author's opinion, there

is no such thing as "criminal policy" in the strict sense of the word. There is no established policy and strategy in the sense of following the formal penal justice system of the country.

To rectify the current situation in Iranian criminal policy, both the current method of inspiring Western criminological approaches must be criticized (especially epistemologically) and examined. Because the doctrines of criminology are one of the most important elements to guide managers in criminal policy. The entry of criminological pass and criminal policy strategies from the West into the ostensible research section of the legal aspects. Unfortunately, in the criminal laws of our country, these subtleties and developments of Islamic penal policy are not properly stated and sometimes the desired provisions are not properly enforced by judges. Therefore, the truth of criminal policy does not emerge well. Some authors of Islamic criminal policy considered it too simplistic. The adaptation of Islamic criminal policy to one of the models of the great system of criminal policy is one of the issues that, while removing doubts (impose on this system) provides the means for recognizing criminal responses (in the Islamic system) to crimes.

This is a manifestation of the theoretical confusion about the relationship between an academic and scientific criminal policy with criminal-jurisprudential policy and assuming that the separation of crimes (in these two systems of the criminal policy) should be based on interests such as the interests of religion, soul, nobility, reason, property, and security. And the Sharia approach should be considered according to the public or private nature for each of these crimes and the provision of participatory strategies to respond to the crime and this is enough to explain the "Islamic criminal policy model", indicating the depth of scientific weakness of research in this category. The notion that "the model of Islamic criminal policy is a composite and complementary model, which the solutions adopted to respond to the offender are a single set with the punitive, corrective and restorative measure. And with two different principles:

1. The monopoly of the criminal response authority to the crime
2. The generalizability of non-criminal responses in a participatory criminal policy and similar perceptions and analysis.

This dissertation will critique and explain the reality of the sharia law in law, which has formed the structure and context of Iran's criminal policy. It seems that the government of the Islamic Republic of Iran can have a democratic penal policy. The Government of the Islamic Republic of Iran also respects the right to sovereignty of society (Article 56) and the fundamental role of the element of freedom (Article 9).

It is allowed not to direct and control all preventive and repressive responses to the criminal phenomenon and to leave part of it to civil society. This is not very compatible with the discourse of penal jurisprudence, which is authoritarian and government-Oriented. This government can act in the field of a misdemeanor and to respond to the crime intervene in criminal, administrative, civil, and mediation methods and at the same time, accept and legalize the response of civil society to deviations. On the other hand, in the criminal policy of this type of government, the freedom of civil society is a fundamental feature to respond to deviations and this implies that responding to deviations is primarily the authority and duty of civil society. On the other hand, the Government of the Islamic Republic of Iran, in its constitution, has repeatedly stated respect for the principle of legality in all fields and also by observing this principle and respecting them in the criminal policy of democratic governments, which are considered as the main pillars of criminal policy. This is one of the reasons why we consider

the penal policy of this government as a kind of penal policy of a democratic government, but these are just lines of paper and theoretical analysis.

In the field of action, for the development and evolution of Iran's criminal policy, we have never seen a successful link between sharia (religious) and law. After the revolution, the ambiguous rule of Sharia in the field of formal Penal law (methods of review and enforcement of penal law, the scope of execution of sentences and penal laws) has more or fewer consequences for these penal laws. Elimination of the prosecutor's office, unity of the judge, the certainty of the rulings issued acceptance of the system of jurisprudential reasons such as oath And the possibility of issuing a sentence of retribution (based on it), the inequality of the validity of the testimony of men and women, the invalidity of the testimony of women in some matters, catholic mujtahids (priest). Each of these changes has, over three decades, emphasized the Islamization of formal penal law (which itself has undergone fundamental changes). Its detailed description goes beyond the scope of this treatise, but now, for example, the principle is not only the certainty of court rulings but also the principle of appeal to all judgment.

At present, women also have judicial authorities (court counsel and counsel) in some cases. In practice, the impossibility of full assignment of jurisprudential affairs and the subject of jurisprudence to comprehensive mujtahids (priest) considered and the system of proof of litigation has undergone relatively significant changes over time, especially in recent legislative developments. In general, after the Islamic Revolution, despite the legislative desire, and to create the structure and organization of the Islamic judiciary, and for the implementation of criminal justice, and due to the lack of a clear model of this structure in jurisprudential texts, we can mention the adoption of at least ten laws related to formal regulations (structure and procedure of criminal procedure) in the last three decades of the Islamic Revolution. Each of them has played a role in creating fundamental, partial, and general changes in the organization and structure of courts and tribunals, the possibility of reviewing verdicts, etc., each of them has a fundamental role in creating partial and general changes in the organization and structure of courts and tribunals, the possibility of reviewing verdicts, etc., which is still ongoing.

However, the substantive criminal laws (related to all types of crimes and punishments) have been changed only once, and formally, they have been grouped under the single title of "Islamic Penal Code". This kind of instability in the formal laws is accompanied by the granting of broad powers to the head of the judiciary to violate final rulings (from the courts at any time) which undermines the rule of law and the validity of judicial rulings. Therefore, in general, it can be said that the Iranian legislature has not yet reached a clear and precise model for the Islamization of the criminal justice process. Despite the full acceptance of the principle of legality of criminal law (including the principle of legality of crime, punishment, criminal proceedings, and the execution of criminal sentences) and its consequences in the constitution, in some cases of ordinary legislation (general or partial) has been violated. This violation was provided mainly by making it possible to cite jurisprudential sources in criminal matters, (even in cases where no law has been enacted). Also, the possibility of citing the religious sources precedes the penal law, It has been stated Under the provisions of Articles 18 and 42 of the Rules of Procedure of courts and tribunals, especially the clergy (Sharia).

Thus, the model of the process of legislating penal law in Iran had already experienced the beginning of penal legislation (and law). «The model of the parallel rule of Sharia (religion) and law». After the Islamic Revolution, Regarding the absolute rule of Sharia (religion) over

criminal law, it should also be noted that the process of Islamization of laws in 1361 (1982) was very clearly implemented. From this perspective, the most important legislative action was the revival of various crimes and religious punishments and their approval in the form of legal regulations. Among the results obtained:

1. Obligation to strictly implement jurisprudence and Sharia (religion) in the form of law.
2. Establishment of some principles in criminal law, such as the principle of legality of crimes and punishments.

Therefore, the application of Article 167 of the Constitution should not undermine the application of other principles of this law, including Article 21. Article 18 of the Islamic Penal Code of 1392 emphasizes the necessity of the legality of ta'zir punishments. Before the formalization of the current and valid law, according to Article 638 of the Law on Punishments of 1996, "pretending to commit a forbidden act without criminalization" had been subjected to general and widespread criminalization. However, Article 18 of the new law, in addition to stipulating the necessity of enacting a law for ta'zir, stipulates that ta'zir should be reduced under the law - and no longer in general and with an ambiguous reference to jurisprudence. This is a development (albeit very late) in recognizing the principle of legality of crime and punishment in the penal-legislative policy of the Islamic Republic. This is a development (albeit very late) in recognizing the principle of legality of crime and punishment in the legislative criminal policy of the Islamic Republic. The joy of understanding - albeit a very late one - is unfortunately immediately thwarted; When we see that Article 220 of the Islamic Penal Code of 1392 explicitly expands the channel of Article 167 to criminality: “As far as the limit is not mentioned in this law, it is equal to the one hundred and sixty-seventh principle of the constitution.” There is no doubt that Article 167 is one of the strategic principles in the field of the penal law.

However, it should not be disturbed in criminal thinking by inferring contrary to other principles of the constitution and the certain norms of legal knowledge. Accordingly, even though the legislature, under Article 18 of the new Islamic Penal Code and by removing Article 214 from the draft Code of Criminal Procedure, has expressed its will to implement the principle of legality of crimes and punishments better than before, however, this law is an unjustifiably regressive regression that indicates an increase in conceptual confusion in the criminal-legislative policy of the Islamic Republic In this regard. The main reason for this confusion is the weakness of the traditional discourse of Islamic criminal policy on a sheriff scale, the weakness of the traditional discourses of jurisprudence due to the rationality and public will of the nation. However, in the school of legal sociology, attention to social necessities is emphasized more than just justice whereas, in the school of pure law-reason, the reliance is on logic, argument, reasoning, and ultimately the will of the legislator. Therefore, in explaining the doctrine - and including the doctrine of the Islamic government based on the constitutional regime of the Islamic Republic of Iran - it should be noted that rational presence does not necessarily mean understanding needs just as a sociological presence does not mean the rejection of necessary orders and rationalist originalities.[8]

[8] Ebrahimi, Alireza (2008), valid fatwas (judicial decrees) and doctrines, Similarities and Differences, International Studies, No. 22.

And these two important things, namely the form of "reason and argument" along with "understanding and responding to social needs", have a direct role in the development of the rule of law. – Doctrine - means acknowledging the rule of law and seeking judgment among possible hypotheses - It will enrich these two important foundations and guide us from superficial comments to the depths of our legal beliefs. By empirical study, a man realizes at most some of the causes and conditions in objects and things, not all of them. Criminal matters are of this category.

However, this does not mean that we should block the expediency of ijtihad for the systematization of Islamic penal policy and simply translate jurisprudence and inject it into the penal code; A gross mistake committed by the legislative authorities of the Islamic Republic of Iran from the beginning of the glorious victory of the Islamic Revolution until today . Unfortunately, it has been committed in the Islamic Penal Code and has even been repeated in the Islamic Penal Code of 1392 the legal literature of the university and the legal and judicial system of our country, it seems unfortunate that every approach and theory is praised for several years upon arrival in the country through translation and gradually its disadvantages and challenges are being re-translated - And now there is a little analysis, which, of course, goes nowhere (without the right conclusion) - and this result only intensifies the confusion of criminal policy.

4. Requirements for providing a rational model of the place of religion in penal politics:

Is religious innovation necessary? And should we be looking for something new at all? Why don't we go back to the old ways and old methods for the same thoughts of the past? What are the rationale, approaches, ends, and requirements of a rational religion - or religious intellectualism? What is the relationship between religious intellectuals and religious science? Without religious intellectualism, can theorizing requirements for the production of religious science be met? And can the horizon of designing Islamic-Iranian criminal policy be drawn as a religious science? Is the purpose of religious intellectualism to introduce the element of modernity into the text of religion? Does religious intellectualism seek theological and philosophical thinking? In the end, is there any intention to introduce reason and logic into religion? Do you mean the issues that human beings face today and that human beings of yesterday did not pay attention to? The answer to these questions depends on the typological and intellectualism of religion and analysis of theoretical and practical dimensions. Intellectualism, in terms of its origins and its reliance on critical rationality, does not deal with dogma. The first challenge, then, is whether the religious intellectual is willing to pursue its project in such a critical environment. Is a legal researcher willing to dare to think and criticize? In fact, religious intellectualism at home has found a special place in tradition and modernity. The first challenge, then, is whether the religious intellectual is willing to pursue its project in such a critical environment. Logical religion is at least opposed to the two major currents of power and history:

1. The petrified.
2. Abandoned, weak, reckless, and westernized intellectuals.

These intellectuals were formerly known as radical interpreters, advocates of vote interpretation, and so on. However, the intellectual man and intellectual thought - in the positive sense, and not in the aforementioned meanings - is a category we have called "rational understanding." In this sense, on the one hand, the intellectual should be considered as an intellectual-community watchdog who, by reflecting on the conditions and characteristics of the society in which he lives, with an emphasis on correcting the negative points, tries to highlight the positive points of that community. Accordingly, an intellectual is one who, by avoiding alliance with power, devotes herself to trying to improve the socio-political situation, and as Edward Said famously, an intellectual must make "truth-telling power" the top priority. The task of the intellectual is:

- Promoting the view of world civilization with the collective behavior of the nation.
- Improving the qualitative and quantitative level of values such as effort and Jihad.
- Justice and sincerity in thought and action, and love and tolerance and devotion and self-sacrifice and devotion, and other values have been established in the Holy Qur'an that the virtues and leaders of the ummah are committed to these qualities to raise the level of practice of Islamic civilization.[9]

In general, modern thinking is a necessity that the change of the world imposes on us. That is a narration, Hazrat Sadegh (AS) says: "Whoever is a scholar in his time, is safe from doubts."[10] And that in several narrations, the theme has been introduced by Imam Ali (AS) that "it is obligatory on the wise to be a mystic in her own time"[11]

It refers to the need to know the world in which we live. If we want to fulfill the heavy responsibility contained in our religion (that is, to convey the message of religion and perform our religious duty), we have no choice but to know the world in which we live. There is always the possibility of the emergence of new understandings, interpretations, and perceptions of religious texts (in which Sharia and religion are manifested in these texts) and this does not conflict with not changing the religious texts themselves.[12]

They have said that religious texts have an external and esoteric aspect. Everyone understands something from within, according to their circumstances.[13]

Maybe that is the point. Religious thinkers, by reviewing and re-analyzing accurately and over time, receive and discover new points in the message of revelation and as a result, they correct the perception and the result. The index of taking and presenting new interpretations of religious texts also defines the border of reconstruction with the phenomenon of petrification because one of the characteristics of petrification is the insistence on keeping religious understanding constant. Intellectuals have done their part to acquaint us with the various components of the new world. The necessary and main condition is the aspect of

[9] Mosulli, Ahmad and Loui Safi (2009), The Roots of the Intellectual Crisis in Arab Society, translated by Parviz Azadi, Tehran: Publications of the Research Institute for Cultural and Social Studies.
[10] Klini, Mohammad Ibn Yaqub (1986), Sufficient Principles, Tehran: Islamic Books House.
[11] Majlisi, Mohammad Baqer (1984), translated by Bihar Al-Anwar, translated by Abolhassan Mousavi Hamedani, Tehran: Vali-e-Asr Mosque Library Publishing, Vol. 68.
[12] Qureshi, Fardin (2011), Reconstruction of Religious Thought in Iran, Second Edition, Tehran: Ode Publishing.
[13] Kalantari, Ibrahim (2003), The Noon and Heart of the Holy Quran, Qabsat, No. 29.

rationality; it helps to maintain and create a (thoughtful) balance between the various rational human findings. Religious intellectuals have taken note of the epistemological rift between tradition and modernity. And with diligent and honest analysis (and not out of contempt and condescension) have introduced the various components of the tradition, and they have worked on how they relate to new epistemological achievements and they have placed their reflections on this chapter in the opinion (sight) of the scholars [10/8, 08:06]. Factors that conflict with our morals, beliefs, and rational duties are:

1. Sufficient to the mere tradition
2. Engaging in local rhetoric
3. Illusion, deprivation and ignore the insights found in the new teachings of the world.[14]

Hence, the role of religious intellectuals in our society is focused both on modernity and the West, on religion and tradition, and on the intellectual movement itself. But in practice, intellectuals pursue a "local" operational strategy in Iranian society. Increasingly, they are pouring universal and universal human teachings into local formats (Islam or national teachings, or both) and pursuing a "social program" that began in the last decade. The "reform project" is now underway, after these phenomena:

1. After the implementation of the "Revolution Project" and
2. Frequent ups and downs
3. Many expenses that were incurred on the nation and
4. The ups and downs (challenges) of government in gaining experience in adapting religion and modernizing it.

Tendency to typology in the field of thought that does not merely pay attention to traditionalism and old ideas (pays no attention to the results and intellectual and cultural products of the past) and only seeks to introduce and admire intellectuals and intellectual practices And they are only trying to introduce and admire the intellectual people and the intellectual methods and its types, and as a result, they have not been able to complete their task well. The current of religious intellectualism, with all its potential and actual shortcomings, is sufficiently and sometimes deeply acquainted with the various components of our tradition - that is, Islamic philosophy, theology, mysticism, interpretation, etc. As a result, it can better pursue its epistemological endeavors at the heart of this tradition and place its intellectual ideas in the eyes of others religion can be considered both as a source of order and as a factor of change.

It is human interpretations of religion that give it a clear social role. How religion contributes to change stems from its interpretation of politics and social life. The separation of religious interpretation as a human product under certain structural conditions from the category of religion makes it clear that religious interpretations can be derived from the conditions of transformation that take place in society. In the field of religion, these

[14] Dabbagh, Soroush (2011), My song sings with sadness; Reflections on Contemporary Intellectuals, Tehran: Kavir Publications.

interpretations are called "theology", and theology is divided into "traditional theology" and "progressive theology"[15]

The issue of traditional-religious doctrines (especially in religious communities) regarding the modernization of theology has been associated with problems that include:

- Responding to new needs, especially human rights knowledge
- Lack of coordination with the new world and especially inconsistent cases.

This inconsistency has led theologians (thinkers) to think about interpretations following the modern world and new interpretations.

5. Conclusion:

Truth and legitimacy stem from the interaction of value and reality. Although the adoption of a strategy for the criminal justice (in countries based on Islamic fundamental rights - led by the Islamic Republic of Iran) is primarily influenced by the doctrines of Islam and especially "jurisprudence", But the interpretation of "Islamic criminal policy" faces several challenges (in the jurisprudential and legal literature of the country); Suffering that is not known and resolved, cannot be claimed to be ready to move in the path of transition from the "discourse(s) of Islamic criminal policy" to the destination. The purpose of the destination (goal) means:

1. Design of "Islamic criminal policy theory" and
2. Design of "Islamic-Iranian Criminal Policy Theory".

First, with the method of "discourse analysis", we analyzed and critiqued the common issues of the production of religious science; then we also assessed the status of the mentioned issues (in the field of Islamic-criminal policy as well as the effective issues in this category).

Finally, we dealt with the pathology of these two categories of discourses in the context of a critique of the situation of the production of religious science in the Islamic world and our country. In this article, we have reviewed and analyzed these cases:

1. Explain the effects and Heterogeneous and inconsistent factors.
2. Using the religious sources of Iran's criminal policy and integrating with the legal sources of this system.
3. Description and analysis of legal structures and Legal provisions and judicial practices derived from traditional jurisprudence are in the Iranian penal system and are contrary to international human rights norms.

Suggestions were also made to the legislature to strengthen the balance between the use of religious and academic resources of contemporary law in legal reform, including:

I. Research on the necessity of removing ambiguity from the relation of matter
II. Research on examples of friction between the achievements of Western penal policy and the doctrines of Islamic penal law, such as postponing the issuance of a sentence.

[15] Fallah, Rostam (2009), An Introduction to Progressive Theology, in: An Introduction to Critical Humanities, Tehran: Research Institute for Cultural and Social Studies.