

The character of the offender, due process and sentencing of Iranian criminal law

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Abstract: Since there are numerous factors involved in the human personality formation and evolution among which one can point to the genetic, inheritance and environmental factors, as well as, the discrepancies which have been long existing between the philosophers and the thinkers regarding the human beings' free will and predestination in areas such as criminology, the principle of free will and freedom in committing a crime and also the theory of determinism in perpetrating a crime each have their own proponents, and it has to be mentioned that the gender cannot be considered as a factor in the differences in the punishment, but in Islam's legal system and subsequently the current regulations adopted by the Islamic Republic of Iran, there are differences seen in this respect. Such distinctions and differences can be summarized in three sets: the differences in the type and the intensity of the punishment, the differences in the exemptions from the punishments and the differences in the execution of the punishment. Some of the courts base their trials and judgments on the personality of the perpetrator and special conditions the convict has gone through. The clergymen-specific courts try the clergymen, the military courts I and II try the military men, the children's courts try the children and the penal court in Tehran Province which is qualified to try the individuals based on their occupations and their vocational positions according to the article 4 of the Administrative Justice Courts Formation Law. The legislator should be more attentive in indicting, investigating and trying them.

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Introduction:

Responsibility literally means being obliged to perform something and the responsible is the person who is committed to fulfill a promise which has been made to another person and if the individual withdraws from fulfilling his or her responsibility s/he will be reproached. Therefore, responsibility has always been accompanied with some sort of liability and obligation and in the penal law realm the content of such an obligation is accepting the effects and the consequences of the criminal act that is suffering a punishment which is incurred as a result of reproachable acts conducted by the perpetrator.

Punishing an individual who cannot be reproached does not have the corrective and dismaying effect and the absence of liability in the individuals who have somehow endangered the society through committing crime of any sort is not a good reason that they should be always submitted to, rather the society has the right and can take a series of proactive measures in respect to the threats posed by the irresponsible criminals.

Study background:

Ja'afari in his treatise, "the position of gender in Iran's penal law", in 2001, expresses that "the prevalent thought governing the today's communities which is reflected in the human rights documents such as the United Nation's charter, the universal declaration of the human rights, convention of elimination of all forms of discrimination against women and other documents of the like, calls for observing a parity between the men and women and considering no difference by gender".

Moradi, in his dissertation, "the effect of the criminal personality on the punishment", in 1996, concluded that "there is no doubt that there are differences in the natural structure of the men and women creation and it is the same difference that brings about a diversion in the natural responsibilities and the social obligations and benefits".

Miyandeh in a research called "the survey of the convicts personalities stance", in 2000, states that "criminal procedure is not solely verifying the occurrence or the nonoccurrence of a crime, rather it is, in addition, taking appropriate legal policies and proper legal punishments into consideration for the criminal to, meanwhile preserving the public order, be

corrected and discouraged from recommitting the crime”.

Mosaddegh, in his article “applied and scientific attitude towards the qualifications for trying the special crimes committed by the government employees”, in 2009, “asserts that “some of the individuals have special vocational conditions and social positions or specific mental, psychological and physical conditions”.

Study hypothesis:

1. The criminal personality and personality traits are effective in exempting him or her from punishment and/or mitigating the intensity thereof, the criminal personality characteristics and special conditions such as insanity, reluctance, social and economical situations and other factors of the like, can be used to mitigate the intensity of the punishment or exempt the criminal from penalty.

2. Generally, gender cannot be considered as a factor to differentiate punishment for the men and women, but it seems that in jurisprudence and the current criminal law such differences are observed.

3. If the personality and the gender of the criminal is disregarded in determining the punishment enforcement mandates in criminal procedures, a just and fair criminal procedure cannot be achieved and the sentences issued in respect to the convicts are devoid of the necessary discretion and awareness.

Study method:

The study methodology of the present research is a library and documentary one. Therefore, in this regard, the domestic and the foreign books and articles, internet sites and all of the documents of relevance to the current theme of the study project which are envisaged to assist us in advancing our study goals, are applied.

Defining personality:

The term “personality” is a coined infinitive derived from “person”. In the dictionaries, person has been defined as human being, someone who plays a role in drama or in the story and appears with his or her own characteristics.

Every individual plays a part in the society and tries to achieve his or her wishes and wants through playing such a role. The term “personality” has also been defined in the dictionary as the person-specific characteristics including all of the individual’s internal personality factors and the entire array of the individual’s dispositions.

The principle of the criminal liability individuality:

Some have named the principle under the investigation by the present research paper as the

“principle of the criminal liability individuality” and they have defined it in the following words: “as an outcome to the criminal liability individuality, every individual should be reproached for whatever the crime s/he has committed, such a principle takes effect in the trial stage, but the punishment individuality principle takes force in punishment stage”.

Defining the personality file:

Although the personality has been somewhat recognized and there are insights gained of the aspects and the states thereof, despite the extant expectations, the criminal personality cannot be recognized via applying a specific form of classification hence the issues related to the human mental and affective moods cannot be placed within a framework, so a clear-cut and perfect recognition of the individual’s personality is far from being fetched.

Personality file is the tool by which the “criminal” can be recognized and the factors contributing to a crime causing the individuals to react, at different ages as a result of various factors, to actions which results in an individual or the society suffering a loss are important in this regard. It is not tried to investigate the crime in the personality file rather the violator’s overall recognition is important and this can assist the judge to sentence the criminal with an appropriate punishment that can finally lead to the criminal’s correction or remedy and it is sometimes of a great importance in line with making punishments personal or individual and observing fairness and serving justice in criminal procedure which is generally called “the healing justice policy”.

The methods of enforcing punishments:

a) Execution of Hodud (limits):

Corresponding to the canonical resources regarding the methods that Hadd (limit) punishment should be executed there are differences between the men and the women. Such differences have been predicted within the framework of the articles 176, 100 and 102 of the Islamic Penal law civil procedure in respect to lashing and stoning penalties.

In the articles 176 and 100 of the Islamic penal law, it is stated that “lashing should be executed for the men in standing position and for the women in sitting position. Furthermore, in respect to the coverage, the men are lashed in such a manner that only their private parts are concealed. As for the women, they are lashed in such a manner that the dress has been fastened to their bodies”. In regard of stoning, the article 102 of the Islamic penal law states that “the men should be buried under the ground up to the waist and the women should be buried up to their busts before them being stoned”. But, fortunately, such a law has been eliminated from the newly revised

punishment law and the legislator uses leniency in enforcing such punishments.

b) Qisas (lex talionis) enforcement:

The difference in the method of executing lex talionis including Qisas (death penalty) and so forth turns back to paying a surplus atonement. Corresponding to the law, if a man commits a crime against a woman's life or a body organ, the woman's next of kin or the woman victim of the crime can take full advantage of their retaliation right in case that they pay half the price of the man's atonement.

If the difference in the atonement paid for the man and woman can be traced into the economical debates, why such a difference is also exerted in respect to the girls and boys and even the embryo which are not qualified for taking economical roles? Answer: by social role here the exclusively active role is not intended; rather it can be a potential role.

Conclusion:

There are numerous factors effective on the personality formation and evolution including the genetic and environmental factors. It should be pointed out here that among the genetic factors inheritance and endocrine glands are of a great importance and among the environmental factors the geographical and social surroundings are of a significant value.

The principle of the criminal liability individuality necessitates that the individual is the unique function of the penal law and this is why there is talks of the individuals in the penal law but in the other fields of the law (such as civil law and business law) there is talks of the person and the person is entitled with titles such as the real person.

One of the scales based on which the Provincial court qualification can be determined is the standard of determining the type of qualification based on the perpetrator's situation and condition. Based on the article 307 of the criminal procedure, approved in 2013, "trying the accusations against the heads of the threefold bodies of the country, legislature, judicature and executive, and their vice chancellors and their advisors, the head of the Islamic expediency council, the members of the guardians council, the representatives of the parliament and the leadership experts, the ministers and their vice presidents, the attorney general and the head of the government accountability office, the holders of the judicial positions, the provincial governors, the county governors and the general crimes committed by the military officers and the police officers in Brigadier rank and higher is within the jurisdiction of Tehran's Provincial Criminal Court except for the cases for which the other judicial courts are qualified". Despite

the normal procedure of the Provincial criminal court which is qualified for trying the heavy crimes, Tehran's criminal court, based on the article 307, tries all of the crimes committed by the individuals mentioned therein, including significant or insignificant.

In the present study, it was dealt with the survey of the government employees' accusations and that in which judicial court (s) they have to be tried and also some of the relevant issues were highlighted and there was made a reference to the concept of the "government employees", and then a historical record of the judicial courts qualified for trying the accusations against the government employees was presented.

Also, according to the role and the impression that the clergymen have in and on various social and cultural areas and on the macro-level policies adopted in Iran, as well, a specific and independent judicial court named "the clergymen-specific court or the clergymen-specific public prosecutor office" was constituted in order for the religious role and the personality of the violator to be considered in qualifying a judicial court for trying the crimes perpetrated by such a group. In addition, the present study dealt with the past history and then the reasons behind formulating such courts and then the question was answered as "who should be called a clergyman" and finally the clergymen-specific courts qualification and competencies regarding trying the clergymen were also investigated.

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