

The History of Changing Punishments in Sexual Crimes with Consideration of New Islamic Punishment Laws

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ABSTRACT :From far past human being tried to consider the most severe punishments for sexual crimes. Analyzing the approved laws related to sexual crimes we will see that what are the criminal policies that lawmaker selected against this crime, and we analyze the basis and reason of changing behavior of legislator in every period of time and we will see that this changing of attitude in legislation if affected by which social and personal factors and influenced by which criminal school. This study starts with the first Iran's criminal law that is Kent criminal law, then form investigating law(principles of criminal tribunals) and end with new approved Islamic punishment law. By historical analysis of execution legislation in sexual crimes in this study we discuss the purpose of these punishments and quality of changing punishments and their purposes. This article specifically deals with the punishment of sexual crimes and we discuss the reason of changing these punishments and replaced punishments.

Keywords: history of legislation, execution, sexual crimes, purpose of punishment, punishment basis

INTRODUCTION

Punishment in common divisions of law resources is divided in four categories: the privative and freedom restriction punishment, the privative and restriction of civil rights punishment, the privative and restriction of life punishment, and cash punishment. Now it is important that legislation in sexual crimes accept which of these punishments and reacts against sexual crimes. It is clear that legislation at first considered different behaviors in sexual crimes that cause of them are different that why selected this behavior. It seems that paying attention to factors that influenced on changing behavior of legislator in the previous periods and finding the cause of these changings and reaction to sexual crimes direct us to this result that dominant situation of society and the time of approving laws should be perceived and we should find this matter that what was criminal policy considered by legislation that it might be a way for next legislations and prediction of the behavior of legislator according to the conditions and situation of society and legislators individuals. Considering the previous documents and researches we conclude that there are studies about history of crimes and punishments in sexual crimes but formally and dealing with this subject that in this period of time this punishment has been dominant it seems that this research likes to find the reason of changing behavior of legislator in sexual crimes or short studies in other articles. The purpose of doing this research is dealing with the process of historical changings of punishment and its different types in sexual crimes and answering to these questions to find out what have been the mental and social complexes of the time of approving different laws? What are the purposes of legislation in selecting this behavior? And what was the criminal policy considered by legislator and what was the cause of changing the behavior of legislator in this respect? And finally the selected punishment from legislator is under the flag of which criminal mental school?

The time of this study is from 1906 until now that the researcher used library method in this study.

The process of study in this article is from the first criminal law in Iran that is called Kent Law and after beginning of public criminal law and next modifications then Islamic punishment law and recently the new punishment law and in each of these laws we dealt with the formal changes and intended to answer them.

The history of law in Iran

The roots of new law in Iran trace back to the period of Naseredin Shah Dynasty that corresponds the time of Constitution in Iran that is in line with the 18th century in France. Regardless of the process of approving constitutional law that has the long history before Constitution that consists of principles of Board of Azerbaijan (a group of civil judgment) and law of "government sign and signature" as the group of registration law that rooted in these loose constitutional laws in Iran. The first documented criminal law in Iran is the booklet of Kent Law that in 1879 Naseredin Shah signed and executed it:

It is a pamphlet in 24 pages one introduction is description of duties of police and 58 criminal article that consists of criminal, misdemeanors and wrong doing punishments. Kent Do Mount Froust that is Italian and was selected as the Chief of Police in 1296. Montazam Naseri in the happenings of 1296 writes that "based on the willing of excellent leader the Police Office for security in the city was appointed by Navabolashraf and excellent Amirkabir the prim-minister under responsibility of Kent Do Mount Froust in the official center of government (Damghani, 1978, p. 7).

Kent criminal Law and modesty inconsistencies

In three articles of the Kent Law that consists of articles 13 to 15 of this law that is the most clear reason and criteria for selecting punishment in these three article it is emphasized on crime that we see in article 13 modesty inconsistency act against a girl that is not reached the age of puberty is punished based on degree on crime from 5 to 15 years imprisonment. It is interesting that in the Kent law the restricting punishment is considered for the subject and it is "subsistence for immature girl until the age of maturity and marriage with that girl with allowance of her parents" that in article 14 the mature virgin girl is the aim of criminology and modesty inconsistency with such victim is considered 1 to 5 years imprisonment and cash punishment from 30 to 100 toman, and if the result of this crime is a child and criminal person do not marry this victim he should pay a day from 1 to five gheran (currency of money in old Iran) for her expenditure.

In article 15 of this law the punishment of modesty inconsistency action with married woman is posed that entails from 10 to 100 toman cash punishment. The considerable point in this article is the necessity of approving this action in discipline office. The interesting issue in this law is dealing with the modesty inconsistency between man and woman that are not neither virgin nor matured and is single. By studying social conditions at the time of Ghajar we find that trembling government of Ghajar and lack of legacy at the time of Naseregin Shah and necessity of supervision on uprisings like women uprisings for the expensive costs of bread and necessities, these movements of women resulted in formal and legal supports in that time and as we know one of the reasons of legislation is complexes of a society.

Studying the condition of women at the time of Ghajar we find that women in this period had the specific importance and Naseredin Shah sited on throne with help of his mother (Etemadolsaltaneh memories newspaper), but lower rank women had no good situation, so that in poems at the time of Naseredin Shah we see that women were considered as tools and man was considered as higher and superior creature, even political men in the press assaulted wives of each other as if it is political campaign (Hejazi, 2009, p.26) since Kent law was unable to consider an appropriate punishment for this action toward women, so that it was imagined that this laws are appointed for common people without any power and ideology. Abdolhossain Khan Sepahsalar in Moraatolvaghaie writes that " In ten first days of Shawal the a business man Arbab (Lord) in Tehran sleep with the wife of Aziz Soltan (Akhtaroldoleh) daughter of Shah and invited her to his garden, Alaodoleh beware and invite her to home and at night gives 25 thousand tomans and releases.

The Kent law that considered these punishments is more considered modernistic spirits influenced by French Laws to see necessities of society in reflections out of regulations that if in tribes a girl has illegal relationship was punished by execution because she was considered as a modesty inconsistency for the tribe (Ensafpor, 1984, p. 374). But prostitution was concurrent that solders more than others intended to such action that if higher rank authorities observe such actions punished solders severely and shaved the head of the prostitute women. Any way the punishment of sexual relationship out of marriage in most of the times was death and the observation of history is Death Hole near Shiraz that they throw prostitute women into it or they were feed raticide with permission from the woman family or relatives.

It is clear that this law is not in accordance with the society of Iran. By studying the political and international relationship at the time of Ghajar dynasty we see that Naseredin Shah's communication with Europe and intention of people to education in Europe and influences of these travels on Nasereodin Shah causes the signing of Kent law.

The purpose of punishment in this law is close to the laws of French than Iran. The style of legislation of Kent originated from the book "speeches about punishments" by Don Manuel Do Lardizabal Orio. In this book the

first purpose of punishments is security of citizens and defending the government and then compensation of damage of victim and then modification of criminal than in Kent law is observable in articles 13 and 15. It seems that Kent found the imprisonment punishment from neoclassic school and according to the Iran's society as the past tried to execute imprisonment punishment is like formal thoughts. Also in the case of cash fines in article 15 of Kent we know that adultery with married woman that should be proved is of the principles of criminal judgments of 1808 that executed the special judgment customs in Iran for the first time. For the last point of Kent law this case is very interesting that in this law there is no trace of pederasty that by studying the social condition of that period we found that in that time it was common that in turn shows that women were considered by legislation because they were abused more than men and were not supported by government.

Law of public punishment in misdemeanor and punishment against modesty and public ethics

In chapter five section three the law of public punishment about criminal crimes is discussed that starts with article 207 and ends with article 214.

Public punishment law and its supplements totally has 289 articles that from article 1 to 169 in January 13, 1926 from article 170 to 280 in January 27, 1926 and from articles 281 to 288 in June 1931 was approved. As mentioned these cases from article 207 to 214 were approved in January 27. Considerably Mah created a new division minimum in laws under the title of crime and misdemeanor and wrong doing. The basis of this division is distinguishing threefold stages of damage that because of crime are opened to the victim respecting intensity and weaknesses. Criminal punishments are: execution, permanent imprisonment with hard labor, temporal imprisonment with hard labor, singular imprisonment, exiling, depriving from the entire social rights that contains main and subordinate punishments. Misdemeanor punishments contains correctional custody more than a month and depriving from some social rights and obligatory residency, but punishment of Takdiri crime is imprisonment from 24 hours to a week and remedy punishment at least to fifty rial that in misdemeanor and crime in sexual crimes the public punishment law is considered.

As mentioned at the time of Kent Law pederasty was very common. Maybe it is for this reason or pressure of religious men that legislator in article 207 considered pederasty against modesty. In Kent law we discussed that mere simple legislation based on personality of victim about punishment and criminology and based on conditions of victim the punishment is appointed. But in the law of public punishment we see that it pays attention to the personality and features of victim like paragraph 1 to 5 of article 207 that considered the feature of modesty inconsistency like paragraph 6 of the article 207, that considered conditions and situations of crime like article 209 that considered the damage of victim as the basis of punishment or article 207 that considered threat and modesty as features of crime.

Analyzing crime in the cases of modesty inconsistency public punishment law

Because the emphasis of this article is punishment according to the specified punishments we analyze the stated law.

In article 207 it is stated that: if modesty and ravishment is threatened the imprisonment punishment is from 3 to 10 years with other labors, the intensified reasons such as relationship of servant and teacher or the condition that victim is below 18 years old or she married, or she/he is unable physically, or the man that is modesty inconsistent is married, if the victim is blood relative to three generation or causal relative to the first generation or if she/he is one of the parents or government agent that are supervisor of the victim the punishment of such cases is lifelong imprisonment with hard labor and also ravishment of blood relatives has imprisonment from ten to 15 years.

In article 209 abduction with any method is punished by imprisonment from 2 to 5 years that with conditions that mentioned in discussion about misdemeanor, the punishment decreases. Just the same in part C it states that if a victim between 15 to 18 is abducted and is satisfied for the act of modesty inconsistency then the criminal will be punished from 1 to 3 years.

By a simple look we find prominent changings toward Kent law only in three articles based on features of victim, but this law dealt with this law in which scale, and even studying the draft about public criminal law we find that death punishment is considered for this crime that states "if the crime is in accordance with religious regulations, the person will be executed" (article 207 draft). As considered divisions thought considered divisions in this law are not inserted, but legislation interested to religious and custom framework of this punishment like considering pederasty in this law and appointing intensive qualities of modesty, threat and marriage not men of modesty inconsistency and victim of women (adultery with blood relatives).

Analyzing mental and social situations of the time of approval and attempts of Hossain Pirnia and saied Nesrolah Taghavi that interfered in principles of criminal punishments and such things causes approving of the law of public punishment in national assembly.

Analyzing the time of approving this law in Iran we can think about two important events. The first is that Iran in II world war entered that resulted in the social condition of problems, lack of security, and poverty... (Situation of Iranian the years of 1921 and 1922 from the reports of England agency in Iran) people and Iran's society were wished for a constitutional revolution. As mentioned the interaction of people and customs toward Kent Law was very intensive and people showed intensive reaction against punishment of sexual crimes. The public punishment law is very harder than Kent law. As we see in the draft death punishment is discussed and reason of decreasing and lowering inconsistency with willing of people maybe the cultured men of that time, or modernity attitude of Reza Shah and being far from religious judge and intention to custom structures.

We see that soft colonialist's dominant over governments and a great gap forms between city and village. Raising the wide class of citizens and staff and villagers that are a grate number of Iran's population and with old thoughts of citizens that still did not accepted these thinking. In this time Reza Shah needed the support of clergy and an assembly formed in which 40 percent were clergymen (1926-1928). Reza Shah Pahlavi to separate religion from legislation except in the cases of marriage and divorce appointed to work Aliakbar Davar that was theorist who founded the Pahlavi dynasty. He passed law educations and had modernism thinking. In the sixth period of National Consultation Assembly Reza Shah did activities against Islam called "Social modifications". In conflicts between representatives of Reza Khan, Mokhberol saltaneh, prim-minister, and Taimor Tash the minister write commitment letter with clergy that Ayatolah Haeri was their representative that according to this commitment letter "they should regulate the Islamic rules and five high rank clergy should take part in the Assembly and in the entire states there should be appointed the supervisor on executing affaires based of Islamic principles". In 1926 and 1927 the first experimental business law and public punishment law was approved. The first step was appointing lawmakers with European education instead of clergy in judicial ministry. The first step is appointing lowers with European education instead of clergy in judicial ministry (Amini, 2002, p. 36). For the first time in Iran the punishment appeared by jury that in some people's view it was against religion. As we see in this law for victim the age considered being 15 years old that is against some principles that entered hour history from this date. Maybe the periods between 15 to 18 years in article is inserted because of the influence of clergymen. Though having small impact in these cases, the criminal policy considered by legislation whether misdemeanor or criminal the general preventing policy from sexual crimes that in article 207 is punished by 10 years imprisonment and 15 years hard labor seems that has little preventing impact. Also, appointing the sociability criminal policy the criminal by cash payment specified this type of criminal policy. The behavior of legislator about sexual crimes against Kent law was appointed about 20 years prior than this law and creates trivial change in this punishment only in criminal conditions, crime and modesty inconsistency conditions. Also, respecting quantitative affaires that increased from 3 articles to 7 and one article that is related to death in the bed, entered the legislation in Iran and next discussions and disagreements that was over this crime and punishment we deal with the punishment of this crime.

By determining the punishment the legislator considered in public punishment law in 1925 is depended on punishment thinking of research school and some parts of social profits in this law. As legislation in article 207 considered punishment based on consideration and necessity of society for punishing the criminal based on ethics of that period that for example if victim is married women or virgin the criminal is punished to the maximum punishment. This is the idea of Bejari who states that "punishment should be based on necessity not justice" the consideration that legislation selected. It is obvious that according to the custom oriented people in legislation as mentioned and paying attention to experience in discovering and research and punishment, attitude to experience and research school in this law is very much.

Misdemeanor in modesty inconsistency in public punishment law

Based on punishment divisions that we mentioned that is according to the French law the legislation in modesty inconsistency considered misdemeanor. Legislation from article 210 on ward entered a new establishment to the criminal law that was not in Kent law. In this article every action that is against modesty that harm modesty and public ethics will be punished by imprisonment from one to month to one year that has some correspondences such as young lower than age of 18, male or female who facilitate the crime or provide the tools of crime that is considered as partnership in crime and it shows high centers of sexual abuse in that period. Even legislation acted more and considered adultery in criminology action and in article 212 considered relationship of married women with married or single man as crime and punished it with 6 to 3 years imprisonment. Again in the issue of assistance the article 213 considered simplification of prostitute manner of a woman as crime and considered punishment of imprisonment from one month to 2 years imprisonment.

Social conditions of the time of approval of these articles are that in crimes it is stated that criminal site is launched and principles of legislation is one thing that we avoid repeating it here.

Death in the bed new legal establishment

A new legal establishment that it seems that this establishment is originated from religious man that established legislation based on their thoughts. This establishment is a legal prevention from punishment and because of being professional in this respect we refer to some points in this regard.

As it was observed in the Kent law there is no trace of legal forgiving and thoughts of Kent was based on Italian and French principles and there was no trace of this legal establishment that was totally religious.

We told that public punishment law is a compound of custom oriented and religion oriented people and this legal establishment that devoted many discussions is of religious man thoughts. Reasons of these people are existence of different credible documents that exist in jurisprudence books and also the narratives that exist. These thoughts caused that article 179 of public punishment law that states in a man see his wife in the bed of a foreign man and kill or harm him is free from punishment. It is interesting that in the view of custom it aroused and it is the person see his daughter or sister in the bed of a foreign man that are not married and kill him, will be punished to 6 months imprisonment and if harm then criminal will be prisoned by 8 days to 2 months imprisonment. The short analysis of the latest part is interesting. Division of forgiving from punishment in death and harm in sexual abuse death is on the laws of French that the domain of crime differs from wife to girl and daughter and needs more study.

Competition of custom and religion in the punishment law of 1973 and 1982

In the law of Islamic punishment in 1973 we see that law became without consideration of religion and there is no trace of religion in the law of 1973. But in the law about Islamic punishment in 1982 we see that a new division that is totally Islamic aroused that is called punishment and revenge.

The contradiction of custom and religion in the law of 1982 and 1983 is like contradiction of these two public punishment laws in 1925, but religious group succeeded for two reasons: first the dominant social condition in year 1982 shows people orientation to Islam and secondly the fourth principle of constitution law that states the entire laws and regulations should be based on Islam. According to the limitation that we have in this article we refer to the law of punishment and revenge in 1983.

Law of punishment and revenge in 1983 in sexual crimes

In this law a changed process related to relationship with sexual crimes is selected that its punishment differs from punishment in 1925.

This law considered three physical punishments for modesty criminal that is killing, stoning, and lash that legislator in the following cases considered killing as punishment: adultery with blood relative family, with mother in law, with non-Muslim women and Muslim women and in the following cases punishment is stoning: adultery of blood relative man and women who are far from their wives. Lash punishment in the cases that is not of the upper cases. But it is interesting that following jurisprudence legislation shaving head and exiling are completion punishments and in some cases it is accepted and punishment of repetition of crime is adultery to four times that is killing the criminal. For the first time in the current law of formal regulations and quality of applying limitation in the current law that is called special judgment custom (article 132 of the law of revenge in 1983).

The third chapter of punishment is about pederasty that selected two types of punishment; one is killing, that if both are wise and mature and another one is lash for one who fraud the others or when they are immature. Of the other innovations of this law is adding one action for one criminal title called Mosahegheh. In this law Mosahegheh is women lesbian actions with masculine sexual organ that it will be punished by hundred lashes. Of the other things that is new in criminal punishments is Ghazaf that is defined as "relating adultery or pederasty to another person" other that these cases in lashes the illegal relationship between women and men are not couple are punished up to 99 lashes.

By studying Iran's political and social conditions in 1980s in which before this period the source of law was French law, from Islamic Republic of Iran afterward, Iran's relationship with west specially French was damaged. The beginning of this problem was execution of Amir Abas Hovaida who was very interested in French circles. Also French became a center for anti-Iran revolution system. By damaging Iran and French relationship the legislation releases the previous sources and considered Islamic laws. But we don't claim that cutting friendship with French was the cause of new Islamic laws, it means that entering the thought from French to Iran was restricted.

This type of legislation that is more like jurists books to law by jurists at first defined crime and then specified punishment and specifies the limitations.

It seems that Islamic orientation and growing Islamic processes in the approval period and distancing from previous government provided such legislation. The purpose of legislator from applying these punishments is manipulating the religion in primary society without consideration of necessities of society in that period. Punishment is the aim and representing the border of punishment for Ghazf need a way for giving up threats and

enmity that based on this law it related to individuals. But this law considered a type of consideration like man and woman who have no access to each other and they are out of some limitations. It is based on considerations of society that illegal relationships are considered as crime that we saw in public punishment law only married man and woman are involved in illegal relationship. But the law of lashes in 1983 considered every man and woman in this law.

The criminal policy of legislation from these punishments that is execution, lash, and financial punishment has a severe policy in action. But it is difficult to prove these crimes, but if it is proved the person will be punished severely. Generally the criminal policy tries to hide such crimes but if they are not proved the punishment policy is dominant.

The hiding of these crimes in the philosophy of crime it is to prevent such actions and preservation of people's modesty that prevented tagging people. It seems that the philosophy of execution in sexual crimes is public prevention as such applying lash in public view in some cases. Modification of criminal can be of the philosophies of repentance, before approving them in the court and before the governor. But legislator remedy of the harmed virgin girl is considered by legislation.

But making them Islamic and changing the behavior of legislator in such crimes is not only based on needs and will of society making them Islamic is the reason and basis of changing the behavior of legislator. But we should see that these punishments for sexual crimes are supported by which thinking school. Studying these schools and by comparing them we see that from one hand legislation used the school of complete justice and Kant thinking principles are similar to the classic school that tries to apply justice and suitability for the society that prevents research in such crimes. But researcher does not mean that appointing such punishments is taken from thoughts, but they are similar to the idea of legislator with upper schools.

Islamic punishment law of 1991 about sexual crimes

Legislation in Islamic punishment law like the law of punishment and revenge in 1982 without changing in the type of legislation and by collecting parts of law about Islamic punishment (approved in 1982) and the law of revenge (approved in 1982) and law of blood money (approved in 1982) and law of lashes (approved in 1983) in the law entitled as Islamic punishment law is appointed. In discussions about sexual crimes we can see that without any change they are the same thing that are reported in the previous law. Also, regarding partnership in the crime that is considered as partnership in adultery and pederasty is of legal establishments that law of punishment in 1983 entered them to our legislation. Any way because of repetitive and lack of changing the behavior of legislation about these punishments it is sufficient to say that condition of society in 1991 is the same thing that was 9 years ago and has no important change and values are the same and society has no prominent change to force the legislation to change the law. Therefore, criminal policy and thinking school is not changed. Finally we reached at the law is changed considerably.

Islamic punishment law approved in 2011 about punishment of sexual crimes

In the new punishment law that is applying now it seems that considered most of the situations of society and in the case of punishments that sexual crimes can be exemplified in the current form so that electronic relationship is considered as crime to be persecuted. In the case of adultery with dead that are couple the punishment is lashes and in gay the touching except penetration is considered as crime and up to 74 lashes are considered as punishment. Of the other innovations of the new law in sexual crimes about modesty inconsistency in addition to execution and paying the price of virginity, but if it she is not virgin he is punished only or they considered the partnership in adultery as adultery or pederasty and also relationship with dead is considered as crime but there is no change in the punishment of lashes and execution. One of the most controversial changings of this law is stoning that we discuss about them below.

Changings of stoning in the law of Islamic punishment approved in 2011

In article 830 of Islamic punishment approved in 1991 it is documented that married man and women if they have access to their wife and husband and commit adultery they will be stoned as much as the quality of the crime, but according to the severe criticisms and stating that this verdict is not of such quality and is not appointed at the time of absence this adjustment occurred in the law that at follow we discuss about them. In article 225 of Islamic punishment law the punishment of adulterous for married individuals is stoning and finally it stated a condition that while lack of stoning if it is approved the punishment is stoning if not hundred lashes. It seems that legislation has lowered the punishment of stoning in this law so that did not force it like the previous law. With this law and by consideration of the condition "while impossibility of executing the stoning" let the judge to adjust other punishments and the backward and forward policy of the legislator about stoning is for this reason that the attitude

of society and separation of it causes this subject to be against norms. In other words the foreign pressures and public attitude toward stoning and ideas of scientists like Ayatollah Mosavi Bojnordi and Ayatollah Mohamad Ibrahim Janati (jurisprudence journal No.65) and great people like them and a group of scientists and lawyers about this punishment caused that legislator to drawback. But according to the idea of Guardian Consultation and religious limitations by strong narratives they were not able to remove stoning from criminal laws, but referred it to the ideas of judges. This is an obvious case of necessity of legislation and punishment that rooted in the direct idea of Bekaria. The criminal policy is equivalent and a type of criminal policy of stoning in the law and purpose of legislator is satisfying and considering religion in law and satisfying the idea of society, scientists and public idea toward changing in these punishments.

Therefore, this law generally is the same as law of 1991 except in some cases that we showed in this section. This law is more in accordance with situation of society, because it regulated the religion and situation of society and necessities. The criminal policy aims at punishment and modification of behaviors but respecting thinking and schools of thought we should state that in Kant school and absolute and classic justice these are close to ideas of Chazare Bekaria because his ideas refer to the necessities of society that punishment should be at least profitable for the society by its impact.

CONCLUSION AND SUGGESTIONS

As from the start of this analysis it was the Kent law and we told that this law for punishment is not suitable for the society and also the public and Islamic punishment law we conclude that legislation in Iran is based on western positions and our Islamic orientation tendency do not rejects the west and Islam but the researcher believe that Islamic laws normalized the western laws and based on the most of the Iran society for legislation and Islamic laws based on the real decree of the issue from one hand and condition of society on the other hand and their necessities we legislated not by considering blind prejudice without study. The legislators who study this article later are suggested to consider these three issues in their legislation.

Paying attention to this issue that whether laws are considered as value in society or not, if they are considered as value, then they are closer to their purpose, but if they are not considered as value and this issue is favored by people and government or people with each other they legislate the issues considerably, but if the issue is not favored by non of the parties and society, by worthless legislation they should not suffer people with excessive costs.

That law according to the upper cases should not be so excessive or lower that so that government can not apply them and people reject to do them.

Based on the conditions the sexual intercourse based on the conditions of previous criminals and situation of society about sexual actions is dominant then legislation should be done.

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