

Investigating equipments for aggravating punishment in the new Islamic punitive law

Saeid Gohari

Zabol University, Department of Law, Iran

Abstract

Punitive laws are devised in societies to establish order and security. Undoubtedly, norms of the society are violated by some people which leads to some harms to the security and this requires the society to react appropriately to these outlaws. However, the reaction to offenders is different, since sometimes a person commits several crimes in different or the same times and places that shows a dangerous state. Or sometimes one commits a crime and repeats it even after certain conviction or enforcement; this reflects that the society's reaction has not been effective and deterrent. Iran's punitive system is not an exception. Therefore, the lawmaker in the new Islamic law enacted in 2013 has predicted equipment to aggravate punishment in the form of repetition in order for punitive courts to determine the appropriate punishment for dangerous criminals.

Keywords: punishment, repetition, plurality, discretionary punishment

Introduction:

Scientists in the area of crime define stages for punitive cases hearing including: discovery of the crime, prosecuting the accused person, investigation, hearing, and execution of the judgment. The stage of hearing also has been defined in three aspects. In other words, the punitive courts first ascertain the triple elements of the crime and then assess the organs of criminal responsibility followed by determining the type and extent of the punishment. Undoubtedly, punitive reaction in the form of intimidation and mere punishment is not favorable in regulating punitive policies. Therefore, recognizing the qualities of aggravating punishment correctly helps the court to take appropriate decisions in the stage of determining punishment. Thus, the stage of determining punishments is crucially important since justice manifests itself in that.

In order to actually perform justice, the punitive systems predict different equipments in the laws. Aggravating punishment is one such equipment. Putting them in the hands of judges, the lawmaker has given the ability to the courts to determine the appropriate punishment according to the status of criminals. Hence, we seek in this research to fully understand policies and purposes of aggravating punishment in the newly enacted law by investigating regulations regarding plurality and repetition, the content of chapters five and six of the first book of the new Islamic punitive law enacted in 2013. So, the first part of this Article is devoted to investigating punishment and the second part deals with the quality of aggravating punishment and how to operate regulations of plurality and repetition.

1. Concepts, Basics and categories of aggravating punishment

1.1. Concepts

1.1.1. Identifying the concept of plurality of the crime

Plurality of crime refers to a situation occurred in two or more crimes but conviction and punishment is not determined (Elham, 2013). Some has defined plurality as when two or more crimes occur at two or more times (Langarudi, 2003). It has also been said that there are two types of plurality: the real and the constructive. By real plurality we mean a situation in which his crime or successive crimes are committed in a state that the first crime has not led to conviction. Therefore, in real plurality we face a situation in which one has committed several criminal behaviors where they be of the same type or different, for example when a person has committed robbery several times (Elham, *ibid*, 2013). The lawmaker in the new Islamic law has not defined the real concept of plurality of crime. However, it has mentioned the decrees for real plurality in crimes which are retaliation and Hadd and to the decrees for plurality in Taziri crimes.

The lawmaker in Article 132 of the new Islamic punitive law states that: “in crimes deserving Hadd (Hadd) and retaliation, the punishments are added, but should the Hadd removes the subject of retaliation or causes to postpone in performing retaliation, the priority is left with performing retaliation. In case performing retaliation is not quickly required or is transformed to exemption or...the Hadd is performed. Thus, as can be seen, the lawmaker has not defined the real concept of plurality of crime and has attempted to present the decrees for real plurality.

1.1.2. Identifying the concept of repetition

Repetition of the crime is equipment for aggravating punishment. The lawmaker in the new

law, sixth chapter of the first book, has devoted Articles 136 to 139 to the repetition of crime. Looking at these Articles, it is obvious that the lawmaker has not defined repetition of crime and has only presented the decrees for repeating Taziri and Hadd crimes. Article 136 of the new law for example states that: “whenever a person commits a crime deserving Hadd for three times and each time punishment is performed on him, the Hadd for the fourth time is execution”. As the concept of repetition and plurality of the crime are somewhat similar, it is necessary to distinguish repetition from plurality based on what we said. The lawmaker had not defined repetition of the crime in the old law either. Scholars of punitive law have provided some definitions: some has defined it as description of deeds of a person who, according to the certain binding decree of one of Iran’s courts, has received criminal conviction and later has committed another crime requiring severe punitive conviction. One aspect of distinguishing repetition and plurality of the crime is the existence of punitive conviction record which is considered as an important condition of repetition of crime (Ardabili, 2003). Others believe that in order to distinguish repetition from plurality the conditions stated in the law must be taken into account. So, whenever these conditions are met, the repetition of the crime is evident.

According to this opinion, the conditions regarding repetition include: 1. A previous conviction to Taziri or deterrent punishment, 2. Executing the previous decree. 3. Committing a new crime (Goldouzian, 2004).

It seems that the concept of repetition of crime has changed in the new law, and the lawmaker has not considered full performing of punishment as the criterion for repetition of the crime in...crimes. Whereas, the source to implement regulations of crime repetition against the person who commits the crime is the date of decree’s certainty. The concept of crime repetition has also changed in

prescribed crimes. The lawmaker states in the Article 136 of the new Islamic punitive law that: “whenever one commits a crime deserving Hadd for three times each time punishment being performed, the prescription for the fourth time is execution.”

Repetition of crime in Hadd crimes means that one who commits such a crime has been certainly convicted for three times each time the decree was being executed and he commits the crime once again after execution. However, it appears that based on what we said, we cannot defend the opinion that repetition of the crime means the person who commits the crime repeats his action after being punished or certainly convicted (Elham, *ibid*, 2013).

1.2. The basics of aggravating punishment in the new law

1.2.1. The basics of repetition of the crime

The experts of crime repetition have mentioned that crime repetition is a criminal's dangerous state. In fact, repetition of the crime indicates ineffectiveness of the previous punishment on the convicted person which shows that the criminal cannot be improved by usual punishment and requires aggravation of punishment. 2. The second basis for repetition of the crime is that the obscenity of it has been removed in the eyes of the criminal and such kind of person is more courageous than typical criminals. 3. The third basis for repetition of the crime is that this repetition causes the criminal to become professional especially in similar crimes and such criminal need absolute guarantees for execution (Ja'fari Dolatabadi, 2005).

1.2.2. The basics of plurality of the crime

Different bases have been mentioned about plurality of the crime. The Islamic rule of: “originality of non-interference of instruments and

cause” is one basis for the repetition of the crime (Bojnourdi, 2002). This rule means each cause creates its own instrument independently. If each crime is considered as a cause and the crime as instrument, by committing two crimes the punishment also appear and in case of plurality of the crimes, the punishments are added as well. Thus, according to the presumption of interference of causes in Islamic jurisprudence, all Islamic scholars agree on the interference of punishments of one type and in case of different types of crimes they believe in lack of interference (Elham, 1993).

1.3. Aggravating punishment in the new law

Sometimes the criminal commits a crime accidentally and under certain circumstances; though his deed is immoral on the one hand and antisocial on the other, his status is normal and it is necessary that the punishment is modulated. However, there are conditions which show the criminals enmity and dangerous state and there is need for more severe punishment for him. Thus, a criminal who repeats a crime or commits different crimes at different times despite society forgiving him, faces stronger reactions compared to ordinary criminals from the society (Nourbaha, 2004). In other words, sometimes the criminal acts contain more risks for the society and are very disgusting for its members. In this case, the lawmaker considers stronger punishments form such person. It may be that someone is not punished though he has suffered primary crime's punishment and repeats the same crime or a different one. Hence, the lawmaker considers heavier punitive responsibility and punishments for such people (Shambayati, 1992). The aggravation of punishment based on the committed crime and mental aspects of the criminal is a different factor which provides security and stability among human communities (Abdollahi, 1994).

Looking at the new law, the equipment for aggravating punitive punishment are generally divided into two groups: the first group known as general aggravating equipment pertaining to general crime and being predicted in chapters five and six of the first book of the new law entitled repetition and plurality of the crime as well as the decrees being clarified. It could be said about plurality of the crime that it is a situation in which two or more crimes are committed but their conviction and punishment are not determined. The laws of plurality in new Islamic punitive law enacted in 2013 about retaliation, Hadd and Tazir is enforced. However, it should be noted that the lawmaker has excluded the weakest form of Taziri punishments from the role of plurality by classifying punishment into eight categories. The regulation pertaining to plurality of crime and the new Islamic punishment law indicates that plurality is either actual or constructive the real plurality which is also called material plurality is a situation in which several behavior is displayed by a person each has an independent criminal title(zerat 2013). This concept can well be inferred from article 134 of the new Islamic punitive law, the lawmaker states in this article that: in crimes inducing Tazir , of the committed crimes are not more than three, the court decrees the utmost punishment and whenever committed crimes.

Whenever the committed crimes are more than three, each one's punishment is determined more than the utmost legal punishment conditional to that it does not exceed the utmost plus half of the punishment...".

Some of the regulations of the new law are related to constructive plurality. The lawmaker states in the Article 130: "in the crimes deserving Tazir the person who commits the crime is convicted to the utmost punishment whenever a single behavior contains several criminal titles". This Article

expresses one of the factors to aggravate punishment called non-material plurality of punishment and a very important and complicated legal issues particularly in detecting the examples of plurality of the crime (Aliabadi, 2003). However, some believe that constructive plurality has wrongly become widespread among lawyers, because the fact is that the element of aggravation is not punishment and it could even be a cause for relaxing punishment since a single punishment is performed for two crimes (Nouruzi, 2011).

Repetition of crime is also considered as another general means of aggravation of punishment. Though the lawmaker has not clearly defined repetition in the new law, by looking at regulations regarding repetition of the crime it is the state of a person who repeats committing a crime after being punished (in Hodoud) or certain conviction (in Tazir).

The second group, particular aggravated qualities: which are divided into two groups of objective aggravated qualities and personal aggravated ones. The objective aggravated qualities are those that exist in a particular crime leading to the fact that the committing the crime creates more hazards for the society. For example, Article 652 of the new Islamic punishment law mentions: "it is stated in the signification of this article that whenever the theft includes harassment or the thief is gunned, he or she is sentenced to three-months to ten-year imprisonment or up to 74 whips of lash, and if any injury has been made they are sentenced to the utmost punishment as well as punishment for injury".

Personal aggravated qualities; these qualities exist in the person who commits the crime which leads to the aggravation of the punishment (Shahbayati, 1992; *ibid*, 404). For instance, Article 718 of the Islamic punishment law indicates: "whenever the driver or the person in charge of motor vehicles is drunk while the crime is being committed...he or

she is sentenced to more than two-thirds of the utmost punishment for the abovementioned cases...”

2. Performing the regulations for aggravation in the new law

In this section we seek to become familiar with the way to perform regulations related to repetition and plurality based on the new law. Hence, the issues are followed in two parts: acquainting with performing regulations regarding plurality on the one hand, and getting to know about performing regulations of repetition.

2.1. Performing regulations related to plurality of the crime

The lawmaker has stated the decrees regarding actual and conventional plurality in the Articles 131 to 135 of the fifth chapter of the Islamic punishment law enacted in 2012. In the area of actual plurality, the crimes causing Hadd or retaliation and crimes causing Tazir are explained in details in the Article 134 of the Islamic punishment law. Therefore, having these Articles in mind, the punishment for material plurality in crimes deserving Tazir is defined as follows: in case he has committed up to three Taziri crimes, he is sentenced to more than the utmost punishment under the condition that it does not exceed the maximum plus half. What is important in this article is that there is no separation between material plurality in terms of different crimes (Chatr-e-Danesh, 2013). Moreover, the lawmaker has predicted the decrees related to conventional plurality in the Article 131. It is signified in this article that: “in crimes causing Tazir, when a single behavior contains various criminal titles, the person who commits it is sentenced to the utmost punishment”. Thus, by conventional plurality of the crimes we mean multiple criminal descriptions for a single act, i.e. sometimes a single act is considered as violating several punitive laws which seems that several crimes

have been committed (Ardabili, 2003). In this case, it should be investigated that which of the varying titles for a single act needs more punishment. The lawmaker has also predicted the decrees regarding actual plurality in Hodood in the Article 132 of the new law based on which the rule of adding punishments is done.

2.2 performing regulations related to repeating a crime

In Taziri crimes, the criterion of repetition of the crime is not regarded as full performing of punishment, whereas the source to perform these regulations is the date of certainty of the decree. The person who commits the crime is also included in the above-mentioned Article while, according to certain decree, is sentenced to a Taziri punishment of first to sixths degree and repeats committing the Taziri crime of first to sixth degree after the date of certainty of the decree. In this case, his punishment changes to up to one and a half times the primary punishment based on the new Islamic punishment law.

It should also be noted that the lawmaker regards collection of both aggravating and relaxing punishment as possible and has given the punitive courts the freedom in cases where the criminal gains the conditions for relaxing punishment to relax his punishment according to paragraphs A and B of Article 139 of Islamic punishment law.

Conclusion:

With regard to the fact that the lawmaker has enacted the new Islamic punishment law in 2013 and imparted it to be performed, the regulations related to aggravated general qualities indicates that the lawmaker has made changes in the areas of plurality and repetition of the crime. These changes show that the lawmaker has used the policy of quantity to aggravate punishment and has predicted different reactions for the plurality of crimes. According to the Article 134, in crimes

causing Tazir, when the committed crimes are not more than three, the court grants utmost punishment for each crime, and whenever the committed crimes are more than three each one's punishment is determined more than the utmost punishment providing that it does not exceed the utmost plus half. On the other hand, besides stating that Hodood and retaliation is subject to the decrees of plurality, this law has stated that performing retaliation precedes Hodood. Moreover, the changes in the area of crime repetition reveals that the law has improved problems with defining repetition of the crime in the Article 48 of the Islamic punishment law enacted in 1996, since according to the Article 137 of the new law, the criterion of repeating the crime is not considered as full performing of punishment; rather, the source to perform the regulations is the date of certainty of the decree. The political, journalistic and children's crimes is not performed. So, legally committing such crimes is not considered as a criminal record for people.

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