

Juridical Argumentation for the Verses of General Criminal Law

Soltani Zarandi Amin, Gudarzi Taimeh Qolamreza, Karimi Aliakbar, Fahami, Masoud

Abstract

The holy Quran is not similar to discursive and rational books to solely rely on drawing conclusion from deduction and reasoning. That is because the language of the Quran is not like that of the sciences such as philosophy and theology, nor is its only aim for its addressees to become knowers. Rather, its language is that of the revelation, guidance and light; and as well, its objective is to educate the human beings to become knower, wise and pious. In other words, teaching the book and wisdom is accompanied by self-purification. That is why it warns if you cannot present a book like the Quran, which of course you never will, keep away from the fire which has been prepared for the unbelievers. (Javadi Amoli, Abdullah, 1378 S. H. Volume 2, p 447). Yet, the Quran is the most cogent and organized book on argument and reasoning so that its argumentation is considered as one its miracles; even if it would not be considered a miracle in itself, its' being presented by a non-literate brought up in an area far away from philosophical arguments is definitely a miracle (Haeri, Mortaza, 1384, third year, N 9, p2). Allameh Tabatabaei stresses on the authority of philosophical intellect, the Quran's use of logic as well as its manner of reasoning employing logic, and the validity of reason; for example, in volume five of *Al-Mizan*, after stating the method of thinking to which the Quran is inviting, he recounts eleven objections and criticizes them sometimes in brief and sometimes in detail, pinpointing their inaccuracy with his own principles. These objections are not hypothetical, but regarding the manner of citing them, it seems that he intended a specific person or people and cited these objections from a particular source or sources without mentioning their names. His aim in this part is to defend the intellectual or philosophical thinking and the citations are aimed merely to criticize them (Tabatabaei Sayyed Mohammad Hussain, 1363, V 5, p 256). If the Quran is God's book, it does not mean that it is merely for those who worship Him, but, on the contrary, it is the book for those who are suffering from egotism and xenophilia. The Quran seeks to revive the spirit of Unitarianism in humans and it is completely apparent that its addressees are the pagans, polytheists and dissenters as well.

Key words: argumentation, penal jurisprudence, general criminal law, dominant principles, punishment

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A. Concepts and Words

The verses on the Quranic Precepts refer to that class of the Quranic verses expressing the Islamic practical precepts (Shانه chi, Kazim, 1386, p2). In explaining the method of interpreting the Holy Quranic Verses, in Shiism, unlike the common method among the Sunnis, the discussion has always been topical and the division of various chapters of Jurisprudence into four main parts of devotions, contracts, unilateral legal acts, political and criminal rules has, more or less, been effective on the classification of the verses on the precepts (Shahabi, Mahmood, V 2 p 10, and Ismaeel Noori, Muhammad, 1378,, Chapter one p 24). However, Fazil Mighdad Soyury Helli, from among the scholars of the ninth century AH¹, integrated the whole precepts on verses into 21 books (chapters) and presented a different division from that of Qutb-ad-deen Ravandi², which is as follows: Taharah (purification), Salat (prayers), Soum (fasting) Zakat (religious tax), Hajj pilgrimage, Jihad (the holy war), Makasib (gainings), Bei' (sale), Dain(debt), Rahn (mortgage), Zeman (guaranty), Solh (amicable settlement), Vekaleh (agency); It is a book in which there are all about contracts, marriage, lawful foods and drinks, inheritances, prescribed punishments, felonies, judgment and oral evidence.

Now, two expressions, namely, "penal code" and "juridical argumentation" are the keywords of the discussion we are about to deal with.

¹ . of the scholars sixth century and the author of books such as Jurisprudence of the Quran and the exposition of the Verses on precepts and causes of revelation and . . .

². Argumentation: presenting reasons to prove the referent and sometimes is agreeable for guiding the way

Argumentation

Argumentation literally means to look for reason and explain an argument to reach a referent (madlul)³ which is derived from Refer (Dallal) that means to reveal, to expose and also to conduct something to its meaning and nature. As Allameh Mustafavi in Al-Tahqiq states, Refer (dalla), "إبانة الشيء بأمانة تتعلمها", expressing something by an indication which you are learning. (Mostafavi, Hassan, 1402AH, v3, p243).

Argumentation (Istidlal) is in the verbal formula of Istifal and means to seek reason or to want it. Argumentation also in logic means to use known propositions in order to discover unknown propositions (The Encyclopedia of Shiism, 1386, under the entry of Istidlal).

Sharif Murtaza, in defining the word Istidlal, says: هو التأمل الذي يتضمن ترتيب اعتقادات أو ظنون ليتوصل بها الى الوقوف على الشيء باعتقاد أو ظن

"Argumentation is thinking and meditating involving a collection of proofs and assumptions by which we can reach our purpose" (Sharif Morteza, Ali ibn Hossein Mousavi, 1405 AH, v2, p262).

In the Holy Quran there are argumentations some of which are about good and holy people especially the prophets like Abraham and the other prophets, while some are about the evil-doers in the history of Tawhid (divine unity) like Satan, Nimrod, Korah and the like. Herein, there are some argumentations which are peculiar to God the Almighty. Before entering the discussion, it is noteworthy that God the Almighty in the Holy Quran introduces Himself as the owner of the highest proofs and reasons, as He states in the Chapter of Al-Ana'm (Cattle), verse 149: "قُلْ فَلِلَّهِ الْحُجَّةُ الْبَالِغَةُ"

Say (O Prophet): "Allah alone has the conclusive proof"; and in the verse 125 Chapter Nahl (the Bees), He states: "Say (O Prophet): "Allah alone has the conclusive proof"; and in the verse 125 Chapter Nahl (the Bees), He states: "dispute with them in the best manner". Hence, we find out from these holy verses that the strongest and most reasonable proofs and argumentations are those possessed by God, the Prophet, and the followers of the monotheistic culture of Islam.

Penal Code in the Quran

Paying attention to the method and tone of the Quranic verses is of importance since the Quran has sometimes spoken in the literary or metaphorical style and sometimes in the legal manner. Where the Quran speaks in a legal manner, it is not proper to interpret it in the allegorical style, in which case we have stepped in the wrong way. We can point to some of the Batenieh sects who do so and consider an implied meaning for every verse of the Holy Quran.

For example, let us consider this holy verse: "O' believers, retaliation is decreed for you concerning the killed; a free (man) for a free (man), a slave for a slave, and a female for a female"; or,

"فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنْ عَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ" he who is pardoned by his brother, let the ensuing be with kindness, and let the payment be with generosity, this is an alleviation from your Lord and mercy, he who transgresses thereafter shall have a painful punishment" (Baqareh, 178).

This verse is a juridical and legal one which issues an order. In the Quran, there are verses whose wording is in metaphorical and allegorical style and if we interpret them legally, we have mistaken the meaning. For example, take the word "ناظره" in the verse 22 and 23 of chapter Qiyamah we read: "وَجُوهٌ يَوْمَئِذٍ نَاصِرَةٌ إِلَىٰ رَبِّهَا نَاطِرَةٌ". On that day there shall be radiant faces 'Gazing' towards their lord". As is the case if we take 'Gazing' in the meaning of normal looking with these natural eyes; or the word "يد" in the verse 10 of chapter Fath saying: "يَدُ اللَّهِ فَوْقَ أَيْدِيهِمْ", "The hand of Allah is above their hands", if we take the meaning of "hands" the hands peculiar to humans; then, we have misunderstood the meaning. Therefore, we should pay attention to see if the tone of the verse is legal or not. Now, it seems necessary to explain the rhetorical styles of the Quran so that it can help us understand what the speaker really means. But what does really penal law in the Quran mean?

Huquq (rights or law) is the plural of haq (right) and means "what one deserves" (Hemyari, Neshvan ben Saeed, 1420 AH, V3, p1248). Jaza also means penalty and punishment and this is true when it gets transitive with "باء و على", "ba" or "ala" and if it gets transitive with "عن", "a'n" it means "compensate" and "perform" and without a preposition it means 'كفى', to be sufficient" (Qarshi, Settes Aliakbar, 1412AH, v2, p35). Raghib Isfahani says: "الجزاء: الغناء والكفاية", "Jaza means richness and sufficiency" (Isfehiani, Hossein inb Mohamad Reqeb, 1412 AH, p195). In Majma'a al-Bayan the author maintained: "Jaza and punishment and retaliation are parallel (Toraihi, Fakhr-al-Din, 1416 AH, V 1, p360).

However, we consider reward and punishment as Jaza (compensation) and this renders sufficiency in terms of equality.

In the science of law, penal code is also defined as a series of rules governing the quality of punishing the people by the state. In this field of law, we will speak of actions that impair the public order and the outcomes of these actions are so severe that the state must punish the transgressor by execution, imprisonment, recompense or exile, and punish the wrongdoer (Katuzian, Naser, 1384, p95).

We should know that in the criminal law the only matter is not the offenses against the state or public law but many of its rules protect the private rights of people against each other. That is why in the Holy Quran such actions as homicide, theft, breach of trust, fraudulence and insult to others, etc. have been criminalized.

³ . He was guided when he was directed, see: Ibn-Manzur, Abulfazl, Jamal-aldin, Muhammad ibn Mokram, Lisan-alarab, 15 Vs, Daral-Fekr, for publication and distribution – Dar Sader, Beirut, Lebanon, Third, 1414 AH, V11 p247

B. The status and principles of criminal law in the Quran

Attention to the interaction as well as exchange of the Quran with criminal law is reciprocal, that is, as criminal law is of a valuable and important status in the Holy Quran, the verses of the holy Quran also comprise the basis of criminal law.

The principles which comprise the basis of criminal law, due to the superhuman authority of their maker, are of an importance and stability and are universal and everlasting. Unlike the other legal systems in which the laws follow humans, in the laws based on religion, humans follow the laws and are subject to them.

On the basis of the Quran's view, God created humans so that they achieve perfection (Hosseini Hamedani Najafi, No 1363, V2, p457). But this perfection is achieved by way of free will. Accordingly, there must inevitably be two ways; first, the way of perfection and second, the way of downfall. God has created humans to be faced with dilemmas so that they might choose the right path. The quality of this world is such that humans should encounter dilemmas and quandaries out of which they are to choose the lawful or unlawful way. The Quran says ,basically, this is the very philosophy of life in this world; that is," خلق الموت والحياه ليبلوكم ايكم احسن عملا " Who created death and life(so) that He might examine which of you is best in deeds" (Malek, 2).

Now, how should the Almighty God provide the ground for human's evolution? For this purpose, He should guide them and tell them what act is good and what act is evil. If the divine guidance does not exist, perhaps the majority of humans, and maybe all, go astray. From among the Divine directions are the very legislative laws that explain which act is lawful, which is incumbent and which is prohibited.

The principle of our worldview is that if somebody infringes these laws, he suffers its punishment in hereafter. The world is a place for trial and the reward and punishment are in the other world. But God the Almighty, based on his Great mercy, has established another tradition. Some sins are of the kind that if the sinner suffers some part of their punishments, this worldly punishment would be a mercy for him/her and probably for others. The Quran says: "و ما اصابكم من مصيبه فيما كسبت ايديكم و يعفو عن كثير" (42:30). But why God creates such hardships in this world? He says: " He may let them taste part of [the consequence of] what they have done that perhaps they will return [to righteousness] ", ' (30:41), "ليذقهم بعض الذي عملوا لعلهم يرجعون؛

Then, the philosophy behind the fact that God punishes some of the sins in this world is that neither does He merely want to take revenge against others, nor is it merely for deterrence so that it be favorable however achieved. Rather, firstly, it is the very punishment of that act so that it will reduce the punishment of hereafter, and secondly, it can become an eye-opener for the sinner as well others to see that how much an evil act is harmful. This punishment makes both, the sinner and others, not to perpetrate that sin again.

Regarding the aforementioned, the philosophy of criminal law in the Quran is perceived out of these principles and that is the punishment of transgressors is for the fact that meanwhile it lessens the punishment of their hereafter, both they and the others feel its bad effects and perpetrate it no more. In this respect the Quran says: " " And We made it a deterrent punishment for those who were present and those who succeeded [them] and a lesson for those who fear Allah" (2,66).

On the basis of His Great mercy, God reveals some of the results of our actions in this world so that the humans see them and become awakened by suffering the bad consequences and be encouraged by seeing good results of good actions:

"و اتيناها اجره في الدنيا و انه في الاخره لمن الصالحين" (Ankaboot/27). "And we gave him his wage in this world, and in the everlasting life he shall be among the righteous"

On the basis of this Divine insight, the philosophy of criminal law becomes apparent. Those who are westernized and cannot resist the western worldview propound other principles and say: "the philosophy of these principles is mere deterrence; then, deterrence, when achieved in any way, is good and it is not necessary to be attained by Islamic criminal law!". But we believe that we should explain the philosophy of Islamic criminal law based on these ontological and anthropological principles, and not follow merely the western principles which are materialistic, individualistic or hedonistic ones (Misbah Yazdi, 1390, p8).

The most important feature of legal system in the Quran is its being of Revelation; the existence of a legal system and discipline in Islam religion is so apparent that even the adherents of secularistic ideas have not been able deny it. In fact, they merely have let themselves extravagantly separate the religious aspect of this legal system and say: "Islamic Law is completely separate from Islam and if some laws have entered from the Quran into Islamic Law, they should be viewed from a legal viewpoint, and not from a religious one; and that is because Islamic Law is a system that has been established on the basis of practical reason".

But the reality is something else, because the Islamic Law System is firstly, a divine system since the origin and source of the Islamic law rules are God's will; and secondly, this divine law is a religious one because its originator is a divine prophet and not a king who falsely calls himself "the higher lord" or "God's representative" or "God's shade". Islamic Law lies within the religion of Islam and it is not separable from it. This fact has not been unnoticed by even western jurists. René David(1906) writes: "No one researching on Islam can let themselves be unaware of Islamic Law. Islam essentially, like the Jewish religion, is the religion of law. According to Bergsträsser, "Islamic Law is the extraction of real spirit of being a Muslim, the most definite symbol of Islamic thought and the fundamental nucleus of Islam." (Ezatollah Iraqi, 1378, p 44; and, René David, 1378, p4).

The Quran, in details and comprehensively, presents complete principles in its priceless statements to safeguard human rights and actualize criminal justice. From among these principles we can mention the principle of the legality of punishments; the principle the punishments' being personal, the equality of punishments principle, the presumption of innocence principle, and the principle of the proportionality of punishments.

C. General criminal law in the Quran

General criminal law deals with a collection of laws, rules and regulations that secures public order; recognizes infringing this order as a crime; and reacts towards the crime by punishment as well as educational and security measures (. Noor Baha, Reza, 1386, p10). Although enjoying various cultures causes a difference in values and eventually leads to difference in various commands and injunctions in societies; and an act, which is considered a crime in a legal system, in another one, is not a crime but a lawful act, due to the fact that all of these systems have something in common in an existent called human that is subject to criminal reaction, we can find many various things in common in them that we can ignore such differences. In Common Law criminal law, we can call these aspects "General Principles of criminal law" in such a way that geographical borders and differences in attitudes don't change them from border to border.

In the priceless statements of the Quran, we can find, in details and comprehensively, perfect principles to secure human rights and actualizing criminal justice, some of which include: the principle of punishments' being personal, the principle of equality of punishments, presumption of innocence, the principle on the legality of punishments, and the principle of proportionality of punishments.

The Principle on the Legality of Punishments:⁴

This principle is among the essential and fundamental principles governing criminal law (Golduzian, Iraj, 1369, p153). In modern criminal law, too, this principle has been gradually accepted and emphasized since the end of 18th century. Beccaria- Cesare in his book "Crimes and Punishments" stressed on the necessity of attention to this principle.⁵ Following the beliefs of Beccaria and other classical school theorists, the declaration of human rights in 1948 replied positively to accepting this principle⁶. In fact, according to this principle, one of the components of crime is the existence of the Legal Element of crime; this matter has been considered in many verses of the Holy Quran and we will mention some of them in what follows.

A. "و ما كنا مُعَذِّبِينَ حَتَّى تَبْعَثَ رَسُولًا" (Chapter Isra/15). "And nor do we punish until we have sent a messenger" (Chapter Isra/15). This verse comprises four sentences. The first and second sentences are about the impact of guidance and aberrance upon the guided or aberrant person himself and with the context of "إِنَّمَا" indicates limitation, i.e. the effect of guidance or aberrance is limited to the person himself and not anybody else. Of course, these kinds of limitations are proportional limitations and are considered in the position of imagination of affecting guidance and aberrance on others. For example, in verse 41, chapter Zomar, we read: "انا انزلنا عليك الكتاب للناس بالحق فمن ...", "Surely, we have sent down to you the book for mankind with the truth. Whosoever is guided is guided for himself, and he who goes astray, it is only for his own loss, you (prophet Muhammad) are not their (compulsory) guardian." Considering the context of the beginning and ending of the aforementioned limitation, we see this verse implies that, for the time being, the aberrance of the aberrant people doesn't impair rightness of the Book but impairs themselves.

Considering the context of the sentence after limitation, we see that it says the aberrance of the aberrant people is not but harmful for themselves and nobody else will bear another's burden. For this reason, the first and second sentences are as a preparation for the third sentence i.e. «لا تزر» "doesn't bear"; the fourth sentence "ما كنا معذبين..." apart from upcoming discussions, is expressing a criterion for the agony of the hellish people whose place, in relation to previous sentences in verses 13 to 15, has the function of completing God's ultimatum on humans. Hence, we can say that the mentioned verses comprise from three preparatory points: reckoning, sequence of the load of sin in relation to the soul of the sinner (non-infringement of punishment from wrongdoer to the sinless) and the ultimatum, with the rest of the sentences serving as premises. A glance at the verses 16 and 17 shows that these verses are about the earthly agony. In the verse 16 with the expression "فحق عليها القول..." (then the word is realized against it), it has discussed an ultimatum in perdition of symmetries and in the verse 17 with the expression "كفى بربك..." "your lord suffices as one who is aware of and sees the sins of his worshipers", God has considered the origin for destruction of the generations their sins and in the verse 18, once more the Holy Quran has turned to the hereafter's agony. For the discussion about the relationship of these holy expressions pay attention to the followings.

B. "و ما كان رَبُّكَ مُهْلِكَ الْقُرَى حَتَّى يَبْعَثَ فِي أُمِّهَا رَسُولًا تَتْلُو عَلَيْهِمْ آيَاتِنَا" (Qesas, 59). "...nor did your lord destroy the villages until he had sent a messenger to its mother village reciting to them our verses"

C. "لئلا يكون للناس على الله حجة بعد الرُّسُل" (Nesa, 165). "... so that the people will have no argument against Allah, after the messengers"

D. "فَمَنْ جَاءَهُ مَوْعِظَةٌ مِّن رَّبِّهِ فَاتَّبَعَهَا فَلَهُ مَا سَلَفَ وَأَمْرُهُ إِلَى اللَّهِ وَمَنْ عَادَ فَأُولَئِكَ أَصْحَابُ النَّارِ هُمْ" (Baqareh, 275). "To whomsoever an exhortation comes from his lord then he desists, he shall have his past gains, and his matter is with Allah, but whoever reverts shall be among the people of the fire and shall remain in it forever"

⁴ . In the science of the Principles of Jurisprudence this is called Presumption of Lawfulness or evilness of punishing without legality

⁵ . Beccaria, Italian Scholar, is among the philosophers who, inspired by the thoughts of Montesquieu and Volter, allocated his total studies and works to criminal issues including the principle of legality of crimes and punishments and in 1764 he published his brief but extremely rich dissertation titled "Crime and Punishment".

⁶ . the Declaration of Human Rights, 1948 in articles 9, 10, 51, International Pact on Civil and Political Rights, 1966 especially in articles 9, 14, 15 and European Convention on Human Rights and protection of political liberties, 1950, too, meanwhile express citing this principle, stressed on the importance of its prediction in the laws and executing it by internal judicial authorities.

"...to whomsoever an exhortation comes from his lord ..." is about all disgraceful acts before faith and repentance and includes all the Muslims at all ages.

These texts indicate the fact that there is no crime before being explained and hence it cannot be punished before being warned against. Moreover, God does not punish anyone unless it is explained by His prophets and warned by them.

E. "عَفَا اللَّهُ عَمَّا سَلَفَ وَمَنْ عَادَ فَيَنْتَقِمِ اللَّهُ مِنْهُ وَاللَّهُ عَزِيزٌ ذُو انْتِقَامٍ", "Allah has pardoned what is past; but whoever offends again, Allah will take vengeance on him. Allah is the almighty, owner of vengeance" (Maeedeh, 95). But, whereas no ordinance normally encompasses the past, this verse expresses that God has forgiven the wrongdoings you did in the past on this ground "عَفَا اللَّهُ عَمَّا سَلَفَ".

And whenever someone does not heed these repeated warnings and the ordinance of atonement and again perpetrates hunting in the time of Hajj pilgrimage, God will revenge such a person and God is All-Knowing and revenges in the due time (Makarem Shirazi, 1374, V5, p87).

The principle of punishments' being personal

Punishments' being personal means that only the one who directly commits a crime, or is an accomplice in it, must be punished and his family, relatives and friends must not be punished for the crime he commits. In fact, justice and equity dictates that punishment should exclusively involve the offender and it must not inflict his relatives or family and friends (Sham-Bayati, Hushang, 1375, p290).

In the private revenge period, in return to a crime committed by a tribe member, no member of that tribe was inviolate against aggression and any bad act might be responded hundred times more; and using any trick to annihilate the enemy was considered honorable.

By the end of the private revenge period and the advent of the formation of the new schools of thought, the personal principle of punishments was accepted in the countries and international conventions and proclamations. It is noticeable that the mentioned principle was expressly accepted by Islamic law so that the holy verse of "...no laden soul shall bear another's load" is repeated five times (Isra/15, Fatir/18, Ana'm/164, Zomar/7, Najm/38) in the Quran.

A. "لَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ وَإِنْ تَدْعُ مُثْقَلَةٌ إِلَىٰ جِهْلِلهَا لَأَنْحَمِلَنَّ مِنْهُ شَرْعًا وَلَوْ كَانَ ذَا قُرْبَىٰ", "... no soul shall bear another's load. If one is heavy burdened and calls for his load to be carried, nothing of it will be carried, not even if he is a close relative" (Fater,18).

Zamakhshari (Zamakhshari Mahmood, , 1407 GH, third ed, p607) in his Kashshaf says:

الوزر والوقر: أخوان، ووزر الشيء إذا حملة. والوازره: صفه للنفس، والمعنى: أن كل نفس يوم القيامة لا تحمل إلا وزرها الذي اقترفته: لا تؤخذ نفس.

"the load and the heaviness are corresponding, and heaviness of something is when one is carrying it". And carrying a load is a quality of a person and its meaning: verily every soul in the hereafter doesn't carry but his or her load which he or she carried: nobody will be punished for somebody else's sins.

That means, load and heaviness are used together and that is a quality for the soul and that means every soul in the hereafter carries the heaviness of his acts on his shoulders that he has attained in the world.

B. "أَمَّنْ كَانَ يَرْيِدُ الْعَاجِلَةَ عَجَلْنَا ...", "Everybody is seeking the commodity of this world as much as he tries for it" (Asra,118).

C. "وَلَا تَزِرُ وَازِرَةٌ وِزْرَ أُخْرَىٰ" (Najm, 38).

Sheikh Toosi in his Al-Tebyan says, "وزر يزر إذا كسب وزراً، و " nobody will be prosecuted (keelhailed) for anybody else's sins" (Tousi, Mohammad ibn Hassan, Bi Ta, v9, p435).

The Principle of Equality of Punishments:

The principle of equality of punishments has origin in the principle of "The equality of individuals before law". The equality of individuals before law is a matter which has been of consensus and acceptance to the majority of humanity and has its origin in the nature and mettle of humanity so that everybody enjoys an inner feeling of equal rights as compared with their fellow creatures.

According to this principle, the criminals, who have committed crimes in similar circumstances, should be sentenced to similar punishments.

This principle has been inserted in the Universal Declaration of Human Rights (UDHR), and International Covenant on Civil and Political Rights. The principle on the equality of punishments means that the criminals who commit crimes in similar circumstances should suffer similar punishments. This principle is the major supplement to the principle on the legality of punishments; therefore, all individuals, in every place and position, must be equal before law and the enforcement of punishment should be done without considering the individual. This fact has been accepted in many verses and traditions to some of which we refer to in the following.

A. "وَمَنْ يَشْفَعْ شَفَاعَةً حَسَنَةً يَكُنْ لَهُ نَصِيبٌ مِنْهَا وَمَنْ يَشْفَعْ شَفَاعَةً سَيِّئَةً يَكُنْ لَهُ كِفْلٌ مِنْهَا وَكَانَ اللَّهُ عَلَىٰ كُلِّ شَيْءٍ مُّقْتَدِرًا", "Whosoever intercedes with a good intercession shall receive a share of it, and whosoever intercedes with a bad intercession shall receive a portion of it. Allah has power over all things" (Shambiat, Houshang, 1374, v2, p270).

B. يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتْقَىٰكُمْ إِنَّ " يا ايها الناس انما خلقناكم من ذكر وانثى وجعلناكم شعوبا وقبايل لتعارفوا ان اكرمكم عند الله اتقاكم ان " O 'people, we created you from a male and a female, and made you into nations and tribes that you might know one another. The noblest of you before Allah is the most righteous of you. Allah is the knower, the aware (lineage is not the origin of pride)" (Hojorat, 13).

C. "وَمَا خَلَقَكُمْ إِلَّا نَفْسًا وَاحِدَةً", "Your creation and your resurrection are but as a single soul" (Loqman, 28).

D. "كَانَ النَّاسُ أُمَّةً وَاحِدَةً فَبَعَثَ اللَّهُ النَّبِيِّينَ مُبَشِّرِينَ وَمُنذِرِينَ", "The people were one nation. Then Allah sent forth prophets to give them glad tidings and to warn them" (Baqaresh, 213).

E. "هُوَ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَجَعَلَ مِنْهَا زَوْجَهَا", "He is the God who created you from a soul; from it he created its mate" (A'raf, 189).

The principle of proportionality between crime and punishment

The proportionality between crime and punishment has been taken into consideration in modern criminal law; whereas, it has been stressed on in Islamic Law from the beginning of the appointment of the Prophet. This principle means that between a committed crime and the assigned punishment there should be such a propriety that can act as a deterrence to any individual and community and as well serve as a model for potential criminals not to let themselves commit such a crime.

Attention to the personality of the accused and the circumstances in which the crime is committed is considered a sine qua non of determining the penalty. The indications of this new interpretation of criminal law can be observed expressly or impliedly in the law texts. In some cases, the law maker binds the judge to observe this new interpretation of criminal law. This new interpretation is translated as propriety between crime and punishment (Rahmdel, Mansoor, 1389, p52)

One of the punishments, that is justifiable based on this principle and seems appropriate in the criminal law in the Quran, is the punishment of nemesis in which the person is retaliated against in proportion to the committed crime.

In the Holy Quran the following verses deal with this matter.

A. "وَمَنْ جَاءَ بِالسَّيِّئَةِ فَلَا يُجْزَى إِلَّا مِثْلَهَا وَهُمْ لَا يُظْلَمُونَ", "But he who brings a sin shall be recompensed only for its like. None shall be wronged" (Ana'm, 60).

B. "مَنْ جَاءَ بِالْحَسَنَةِ فَلَهُ خَيْرٌ مِمَّا مَنَّا وَمَنْ جَاءَ بِالسَّيِّئَةِ فَلَا يُجْزَى الَّذِينَ عَمِلُوا السَّيِّئَاتِ إِلَّا مَا كَانُوا يَعْمَلُونَ", "Whosoever does a good deed shall have better than it. But whosoever does evil deeds, they shall be recompensed for what they were doing" (Qesas, 84).

C. "فَمَنْ اِعْتَدَى عَلَيْكُمْ فَأَعْتَدُوا عَلَيْهِ بِمِثْلِ مَا اِعْتَدَى عَلَيْكُمْ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ", "If any one aggresses against you, so aggress against him with the likeness of that which he has aggressed against you. Fear Allah, and know that Allah is with the cautious" (Baqareh, 195).

D. "وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ", "And the recompense of evil is punishment like it, but whoever forgives and amends, he shall have his reward from Allah; surely He does not love the unjust." (Shura, 40).

As a result, only the school of Islam and the Quran's teachings can be considered as being the first and most essential to propose and claim the laws to promote the dignity of humans; and that the Quran is a proof indicating all laws emanate from the right of God. This proof also explains religion on the ground that all laws emanate from one right and the origin of all laws is one right and that is the right of God towards the human being. Accordingly, the right that all humans have towards each other is drawn from a right that God has on them and what is certainly perceived from this argument is that the Quran and Islam's teachings are the basis for all man's sublimating laws.

Mandatory Principle of Criminal Law

In private law there are laws whose enforcing is optional for people; this kind of law is called volitional laws; an example is the regulations on transactions. The one who does not want to have a sale does not act upon these regulations. There are supplementary laws from which people can, by the authority of law, withdraw. Article 1114 of civil law provides that: The wife must stay in the dwelling that the husband allots for her unless such a right is reserved to the wife. This order is of the supplementary rules which the man and woman meanwhile contract or by stipulation can agree against it.

This permission expressly has been given under the last part of the above-mentioned article which provides: "unless such a right is reserved to the wife."

But in criminal law there is not any supplementary or optional law; the victim cannot agree or undertake that murder or theft from his or her house should not be prosecuted and supposing there is such an undertaking, it is null and void. Divesting life from the slain, even though it would be with his permission and his previous agreement and with any incentive (even by the doctor towards the incurable patient), deserves punishment. Abortion in other than legal cases, although done with the mother's permission, does not negative the responsibility of the physician (Golduzian, Iraj, 1383, p65).

In the Holy Quran, although there is the possibility of classification of liabilities into the contracts drawn from obligations between individuals and also there are liabilities having public aspects; and since liabilities of any origin, take the form of commands and injunctions from the holy lawmaker so that the omission of what should have been done and also doing what should not have will have hereafter's response, Quranic liabilities are more encompassing than criminal law. For instance, in the chapter Nisa' verses 29 and 32, Hadid/7, Isra' 27, Isra' 27, Baqarah/195, and Tawbah/35, it emphasized the private ownership and the rights relating to it; or in the Maedah verse 1, it reminds us to fulfill our promises and likewise poses hundreds of verses concerning domestic, economic, cultural and social affairs emanating from individuals' relationships. Ignoring these verses not only causes material losses but also, due to deviating humans from the route of guidance, makes them reserve the agony of the hereafter.

As an example we can say murder, fornication, vilification, belligerence according to the ordinance of the verses 38 and 39 of Maedah, 179 Baqarah, 93 Nisaa', 4 and 5 Noor, 33 Maedah, have the worldly punishment and the hereafter's agony.

Sanctions in General Criminal Law

Punishment is not wastage of a human's right, but it is the incipient effect of man's own behaviors and actions. Secondly, receiving God's message through divine messengers is a certain right of human society and among his imperative demands. In the beginning of Islam when, according to the Imam Ali's ordinance (pbuh), a theft punishment for a thief young man was administered and his hand was amputated (ibid., 6) the young man shouted and spoke of Imam Ali's grandeur and said that He (pbuh) had delivered his soul (Beharol Anvar, v41, p210). Punishment is in reality delivering the offender and being delivered is a man's right (Jvadi Amoli, Abdollah, 1384, 130).

Thirdly, the principle of justice dictates that punishment should be proportionate with the crime, as God the Almighty says: (وَجَزَاءُ سَيِّئَةٍ سَيِّئَةٌ مِّثْلُهَا فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ إِنَّهُ لَا يُحِبُّ الظَّالِمِينَ) (Shura, 40). "And the recompense of evil is punishment like it, but whoever forgives and amends, he shall have his reward from Allah; surely He does not love the unjust." And He says: (جَزَاءُ وَفَاقًا) (Nab', 26), "for a suitable recompense", not more than the crime (Javdi Amoli, Abdollah, Thematic Interpretation, v5, Resurrection In the Holy Quran, p496).

In reality, divine punishments are not like the despots' punishments or something to be for the consolation of the oppressed; nor are they like the law courts' punishments to establish security in the society, but they are like physician punishing his/her patient. A proficient physician says to his patient, "Don't eat this food or take this medicine". Now if the patient does not act upon his physician's order and becomes worse, the physician prescribes a bitter medicine for him. Does this mean that the physician has taken revenge on him? Or this affliction, followed by that bitter medicine, is the consequence of not following the physician's order? (Javadi Amoli, Nasime Andishe, 1391, p46).

Another way to understand divine punishments is attention to the behavior of mothers; when a mother prevents her child from approaching fire, this prevention is not like having a poisoned food. But toughing equals burning. The reality of sin is the same; committing a sin equals burning. The Holy Quran says: (إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَى ظُلْمًا) (إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلَوْنَ سَعِيرًا): "those who consume the wealth of orphans wrongfully, only consume fire in their bellies, and they shall roast in the blaze" (Nasime Andishe, v2, p47).

When a crime i.e. an anti-social behavior is committed, public sovereignty has a duty to invoke appropriate and effective devices, meanwhile preventing the crime from reoccurrence and repetition in the future. Moreover, they should remind the citizens of the necessity of respecting the ordinances and orders. The warning of the officials to preserve public order and observe society's rights has various demonstrations whose emphatic form is implementing punishments. Predicting criminal sanctions according to the law is of the lawmaker's initiatives, but determining the amount of penalty or proper security measures, according to the case, is for the judge to decide upon (Ardebili, Mohammad Ali, 1386, p117).

In reality, retribution is reaction of the society against the crime that has deranged its order, impaired its norms and challenged its values. Of course, punishments differ from society to society, since the cultures, customs, traditions and manners are different. What is important is the fact that punishments, irrespective of their purpose and method, have existed and will exist in all societies. As the human history asserts, with the human creation crime was generated and this will continue. Reactions to the breach of law have brought about different sanctions. The sanctions, from the corporal punishments of the private revenge period up to the present time of victimology, have had leading changes but what has remained unchanged is that retribution as the punishment and penalty does still exist (Reshadati, Jafar, 1390, p352).

In general, in criminal law every crime is defined separately, and its elements and the circumstances forming it are considered, and this leads to discriminating crimes and distinguishing them from each other. The jurists, in their classification of the crimes, have often considered the pernicious effects of the criminal act and have placed the crimes whose damages have common aspects in one group. For instance, the crimes such as of robbery, fraudulence, breach of trust, etc. which are all violations of properties and ownership, are discussed in one category with the title of offenses against property and ownership. The crimes such as murder are categorized under the title of offenses against persons and other crimes such as: forgery, espionage etc. are classified under the category of offenses against public security and welfare (Sadeqi, Mohammad Hadi, 1385, p23).

As for the neglecting, on the side of the adults bound to perform religious precepts to the commands and injunctions of the holy legislator, the Holy Quran has presented different answers. The Quranic sanctions are both the worldly and hereafter's punishments. In the chapter Forqan verse 68, committing adultery and murder has hereafter's punishment. But, in the verse 178 of chapter Baqarah, the punishment for murder is worldly retaliation; and on the basis of the verse 2 Chapter Noor, the punishment of fornication is 100 lashes. The punishment for belligerence, too, in the verses 33 and 34 of Chapter Maedah, is mentioned to be both worldly and otherworldly. Of course, in some verses in the Holy Quran, the worldly punishment is different from what is ratified in the criminal law.

The descension of heavenly agony on Lot's people (verse 34, Chapter Spider), the earthquake for the people of Madyan who controverted God and Jethro (verse, 37, Chapter Spider), the perdition of the peoples of A'd, Thamud, korah, pharaoh and Haman for the sake committing evil actions and disobedience are among these punishments.

conclusion

Penal law enjoys a high status in the Holy Quran and serves as a worldly sanction for orders, ordinances and interdictions issued by the holy lawgiver. Accordingly, abandoning these ordinances or committing these interdictions leads to punishments which are considered either as revenge and relief (as in retaliation); or as general and specific preventive measures; or they might aim at ethical correction and purification.

The Holy Quran along with the other juridical texts, under the umbrella of the principles governing the general criminal laws, seeks to prevent any sort of sins, individual and social crimes, as well as worldly and otherworldly punishments. Within the invaluable statements of the Holy Quran, perfect principles are exhaustively to maintain human rights and materialize retributory justice. From among these principles we can refer to the principle of punishments' being personal, the principle of equality of punishments, presumption of innocence, the principle on the legality of punishments, mandatory principle of criminal law and the principle of proportionality of punishments. These governing principles, expressed in five separate parts, are from among the most advanced issues put forward within the current human rights. The Holy Quran's proposing appropriate sanctions, specifically regarding the crimes against the society's peace and security, is an effective factor in crime prevention.

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Soltani Zarandi Amin, Gudarzi Taimeh Qolamreza, Karimi Aliakbar, Fahami, Masoud, Ph.D. Student of Juridical Denominations, at Qom University of Religions and Denominations