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Study of cognitive whipping in public punishment

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ABSTRACT: Criminal punishment is the most systematic approach to crime, Therefore a form of punishment in the Iran's penal system the whipping in public punishment is applied in the case of criminals. This investigation is written with a look at the theories of criminology and sociology of punishment and its research method is based on the purpose of type of operational and it's according to the method of data collection of library type. The purpose of this study is pathology of whipping in public and its impact on the prevention of recidivism, prevent people from committing crimes, criminal reform, crime reduction and re-socialization of criminal, the impact on individuals and society, and coordination with existing standard punishment and investigating and explaining of whipping in public in Iran's legal system and Proving it's Validity or invalidity according to the purposes of punishments. During the investigation it can be concluded that this type of punishment leaves negative impact on the overall position of criminology and sociology and by changing the attitude of the legislature and using legal alternatives we can show our work and effort in order to re-socialization and appreciate and value humans due to his position and increased control and balanced distribution of different applications at the community level, this way we can reduce the criminal population.

Keywords: punishment, whip, public, penal law.

INTRODUCTION

The punishment is among those social phenomena that have gone through many changes. Different systems have different ways of dealing with crime. Right of existence, freedom right, the right of security, Property rights and other rights are among dozens of rights that to maintaining order in society, subject to respect these rights. Punishment is undoubtedly one of the essential elements to ensure that these rights are respected. With no punishment legal provisions will become a set of social customs regulations and in this case, the opposition and the violation will be easy. Accordingly, In Islam the requirement to access to the best interests of the society is respondent making within man, recalling to the refining and perfection and ultimately inspire them to obedience to the Lord Taken into consideration. Therefore, from the standpoint of Islam, crime, In addition to the arrangement and social order destruction, is traumatic and destructive for truth of human existence. Islam tries to modify settings and environments causing crime and the replace behavior excellences instead of vices and before proceeding punishment, tries to promote and guide people and also tries that their crime extend and punishment have a special sensitivity and a different situation than other crimes and punishments. Generally what will be discussed in this research is investigation, and analysis of the implementation of whipping in public in Iran's legal system and the legal quality and impacts of criminology, sociology, penal law, will be explained

1.Theoretical Framework

1.1.The lexical concept of the whip

Whip with opening and aggravation on is a lash which is made of leather. This term comes from Arabic word which means whipping, but in Arabic that means beggars baskets. Deceased Dehkhoda suspect that the mentioned word means lash or is artificial to Persian linguistics or be dead in Arabic dictionaries and remains in continuation of Iran. Also it's been known as synonymous of beat and suchlike, jawing, hit with stick, lashing, to hit and been hit. (Dehkhoda AA: ibid., 12729).

1.2. The punishment cognitive concept of whipping

As was pointed out, nowadays range and scope of penal law is very wide and go beyond the realm of the prison. In this case, performance of any punishment requires the use of penology scientific findings in the field, if it's going to be actually beneficial and provide the field of improvement and remedy of criminal. In other words, if we believe in this principle that sanctions should be prepare the context of criminal's return or social reform, while respecting his dignity and if in general we consider the role of utilitarian and preventive punishment of whip (Bernard Bolak: K. 1991, pp. 16 and 22).

1.3. The lexical meaning of public

Dehkhoda the deceased translate "public" in the dictionary by means of in passage, in the street and alley, forum, event and apparently. In another source within the meaning of "public" reads: "public is group of people who fill the eyes and also it is been said "public" is elders and nobles of the people that people will refer to their promise and word (Dehkhoda Ali Akbar: *ibid.*, p. 12729).

1.4. The idiomatic meaning of public

Interpretation of "public" idiomatically means in public and in front of people's eye and when we speak of punishment in public, it means that the representation of the punishment is taking place among people, which is mostly the major squares of the town or village or place of public resort or at the site of the crime, In principle, without limitation or restriction occurs. Public is called the majority group of people and presents a general meaning and carrying out the punishment in public means that criminal was not present at the passage of people including in the squares and city centers and pathways, then carrying out the punishment in presence of population.

1.5. Theoretical

1.5.1. The theory of reform and defense punishment

This theory believes that Impose punishments is based on reforming and providing community defense against the dangers that constantly threatened society by criminals. The foundation of realization and too much attention to the criminal and his character cause society's defense to be considered more. In the ways that the dangerous mode of criminals and society's defense against criminal's threat seriously studied in Criminology and legal assemblies of that day and lead to development of realization school and although with the passage of time and the absurdity of some of the this school's claims, a new movement creates and claimed that the reason for punishment and it's basis should be criminals probation.

1.5.2. reform theory

According to this theory, the purpose of constituting criminal justice system, is to by imposing punishment to enter trauma to the criminal, so that he finds an abomination that has been committed by him was not right and should not be repeated. In this theory, among punishments, there is more emphasis on punishment of imprisonment and the minimum is that the punishment of death to be generally removed from the punishment system; because the purpose of punishment, is to change the spirit and ideas of the criminal, and evolution his insight and this and this, in prison and with imposing alternative punishments of death, can be achieved (Mark Ansel, 1991, pp. 105_106).

1.5.3. The treatment theory

Some criminologists believe that punishments should be eliminated primarily because the criminal is not evil or wicked, but he is sick. Occurrence of crime, is the sing of personality problems or other mental disorder of its doer, such a person cannot be modified with punishment or terrifying. Hence, acts of punishment, cannot be based on any philosophy? (Oppressed, R., 1991: p. 133).

1.5.4. The satisfaction theory

According to this theory, in commitment of crime, the victim's rights have been abuse and violated, his feelings evoked in him and therefor the desire to satisfy the anger and hatred appeared in him and If this need is not satisfied by the way, revenge, will become personal and the society will be disrupted. The criminal should be punished for his ugly obscenity, and primarily it is the victim that must be satisfied.

1.6. Principles of deduct whip

Criminal phenomenon is still disrupting human societies, and punishment and retribution in order to regulation and restoration of the society's lost dignity, is still the most recognizable criminal justice system approach to this phenomenon. (Milaki, Ayoub, 2004: p. 14).

1.6.1.Revenge

One of the important purposes and principles of the punishment of whipping was revenge and retribution. In the past, the purpose of punishment was only imposing physical suffering and mental torture as revenge of criminal act on the criminals. Punishment of whipping for Greeks first and foremost was a tool for restoring the lost dignity of the victim and the also to return to his prestige and power, with insulting to insulted person (the criminal), so that he would be disgraced. In *Ajax*, written by Sophocles, the hero of the tragedy uses a whip. In Greeks opinion someone who has been whipped decline into slavery level (Jan Pradl, 1999, pp. 7 and 5).

1.6.2.Moral role

In this view, foremost, punishment is a reward and punishment that the community imposes to the criminal due to the fault committed. According to the theory of retribution, the main purpose of penal system is summarized in this that criminals to receive their justice punishment for their actions. Criminals should be incurred justly punishments that are proportionate to the seriousness of their crime (Ghasemi, G., 1380: p. 85). Kant and Joseph distinguish the most value for moral aspects of retribution and considered objective morality and justice the sole purpose of the punishment. Kant believed that if the punishment is not socially implies any benefits, but the guilty should be punished so the justice be observed. (Mohseni, M., 1997: 38).

1.6.3.Intimidation and deterrence

Among the ancient philosophers, Plato also believed specific deterrence for punishment of whipping and belief that correctly applying this punishment would intimidated criminals and others and would stop them from repeating or commitment of crime. (Plato, former, p. 305) so the Rousseau writes in a book called *Social Contract*: "Justice without force is contested because there are evil people who do not always obey the law, force without justice in obscures will be absolutism, therefore force and justice should be gathered together and for this purpose, something should be done that righteous be strong or The one who is strong to be righteous "(Rousseau,2006: p. 71).

1.6.4.Modification and reform

It is been for long time that criminal policy seeks to, by using punishment in order to correcting the criminal, prevent the criminal from committing new crimes. In other words, correcting offender is with this aim that he would not return to the wrong way. According to investigators, sometimes softness and gentleness would be better than force and strict; however, the techniques joint with generosity during the selecting or the process of execution of punishment that have positive impact from specific prevention perspective, May harm the exemplary role and undermine general preventing. (Bernard Bolak, same p. 24.).

1.7.Evaluation of whipping punishment from the perspective of cognitive

1.7.1.Advocates point of view

Advocates of imposing whipping punishment with offering several reasons argue that this punishment in comparison with other popular punishments such as imprisonment or pecuniary punishment would have desired and pecuniary effects. Therefore, it is necessary to explain some their reasons to in the implementation of imposing whip (Nvrba, 2006: p. 130).

1.7.1.1.General and specific inhibitors

The advocates of whipping believe that the mentioned punishment through criminal intimidation will affect his criminal determination and stop them from committing further crimes (specific deterrence) and yet control the potential criminal's desire and crave to the text of law (general deterrence). In other words, torment of whipping on criminal's body have a close relationship with many cases in which motivation of the crime is directly or indirectly related to the acquisition of illicit pleasures and direct impact of whip and direct impact of whip is the most visible response to such a rapists. So It is claimed that if The punishment of whipping imposed on the convicted the crime case will be lower than if no punishment was ever imposed. If the punishment of whipping reduce future crime, then an unpleasant pain inflicted on an offender by preventing other people unpleasantly in the future by alleviates, thus the whip punishment is morally and in the view of profit oriented is correct and right (Safari, Ali. *Journal of Legal Research*. (4): p. 290).

1.7.1.2.Fit with the principle of individuality of punishments

Along with the necessity to classify of crimes and punishments, parallel to each other, we witness formation of a progressive principles of modern criminal law as a principle of individualization punishments, according to the personality characteristics of each criminals. Whipping proponents insist on the fact that the mentioned punishment play the special role in order to individualization policy of punish so to suit every criminal according to his character and success in crime and action to be modified and treatment. For individualization of punishments, the judge should reasons and motivations of the crime, the criminal's personality, mood, and treated his criminal liability (Optical, R., 1998: p. 210).

1.7.1.3. Being free from the negative effects of imprisonment

Another reason that the fans of whipping punishment expressed is lack of fields of prison for the crime that is punishable by whipping. Studies indicate that criminal punishment of imprisonment for failure to prevent or special Intimidation of inmates. This is important so that nowadays is called prison as the "school of crime". Statistics show that the detention does not degrade the degree of guilt and does not deter crime. Prison necessarily involves the separation of condemned of the social realities that this matter had negative affect on the process of reforming criminals. Prison is lower in view of the health level and morals and the prevalence of drug use and the prevalence of AIDS in prisons have been reported in recent years (Amir Mohammad Sadeghi, p. 250).

1.7.1.4. Avoid increasing the crime

One of the positive effects of punishment of whip that supporters claim that if the judicial corporal punishment is usable it certainly would be able to prevent a lot of potential criminals and especially those who may have committed violent crimes from it, and in fact, the increase in violent crimes against persons are related to revocation of the mentioned punishment. Thus, it is claimed that if the whip punishment imposed or applied to committed the crime event will be lower than if no punishment was imposed. If the mentioned punishment reduce the future occurrence of crime so an unpleasantly and pain inflicted on an offender through preventing other people's unpleasantly in the future by alleviates.

1.7.1.5. Low cost of whip performance

Unlike imprisonment that construction and maintenance of prisoners cost too much and enormous expenses, whip is affordable. On one hand, the government is forced to bear the costs which ultimately bear the burden of the taxpayers and on the other hand prevent prison condemned of economic and social activity, which in total have undesirable effects on economic development and anyway it makes the compensation of Victim's damage impossible and faces some problems (Ashory. M., 2006, p. 41).

1.7.2. Opponents point of view

Critics with a pessimistic outlook consider its performance without no desired effect and mostly has been denied or doubted its positive consequences. Now it is necessary to explain some of the reasons mentioned by opponents of the execution of the punishment (Soleimani, Nariman, 2010: p. 95).

1.7.2.1. Uncertainty in the general and specific deterrence

In fact punishing the criminal should make those who are tempted to emulate him to think so for this reason, legislators often focus on group intimidating purpose and in this regard, predicts punishments that in terms of severity and speed would affect public opinion. The purpose of intimidation have been predominated in the most ancient times, although at the current situation the actual performance of group intimidating has been doubted. Stephanie, Lvastr and ZhambvlN also write that the experiences are well documented that terrible tortures and cruel and brutal punishments which conduct to intimidate the potential offenders and prevent people from falling into the abyss of delinquency was able to bring a change in delinquency (Oppressed, R., No. 14, Summer 1975, p. 61).

1.7.2.2. Failure to decrease the crime amount

Proponents of whipping punishment believe that conducting whipping punishments on the criminal have deterrence aspect and cause him not committed a crime. But opponents say the lash does not degrade the level of culpability and does not deter crime. If only crime incident considered as a benchmark whether to measure punishment either in term of form or in term of amount, guilty and the social, economic, political conditions, etc., which have an impact on crime will be forgotten (Safari, Ali. Previous: 71). Enrico Ferri has mentioned in his testimony: So far, the best devised to eliminate the crime is punishment regulation. While this law does not have the effect that they are attributed. Because the increase or decrease in crime is due to the sets of factors that has no connection with the punishments which legislators easily make and approve. (Oppressed, R., 1975, p. 68).

1.7.2.3. The denial of educational reform

When whip was a common punishment in penal system there was no doubt there is no doubt that withstanding this physical punishment and fear of future punishment will create a fear in criminal that would prevent further crime but in such cases, intimidation is considered not modification. Modification involves changes in emotions, recognize that the action was bad and an honest decision to improve future life modification, so it is not only meant to change behavior pattern. One of the main goals of the social process should be included in the integrate of group norms and values in individual conscience so that members of the society accept value of a group rather than as measures imposed from outside but as well as their values and standards (Sotoudeh, Hidayatu'llah, 1999: p.140). Enriquer Fredi, the founder criminal sociology believes that should not rely on criminal

act and thought punishment based on it and impose various tortures. If possibly a relying on crime takes place it only should be by which the abnormality of criminal could be identified and realize his degree of consistency (Oppressed, R., 1975: p. 43).

1.7.2.4. Confliction with humanitarian criteria

In the human-centered or humanistic schools do not consider harsh punishments, particularly corporal punishment such as whipping competent to human authority and dignity of the human excellence. Nowadays in legal systems of many countries, the right of man not to be subjected to disproportionate punishments is deemed to be one of the One of the fundamental principles of civil laws in the realm and penal law. This right that directly arises from dignity and terms of human potential has been detected in many regional and national, international documents of human rights (Solomon, Nariman, 2010: p. 106).

1.8. Negative effects of whip

In this speech we will discuss and review negative consequences and effects of the whip in two terms of individual and social effects. (Soleimany, Nariman, 2010: p. 122)

1.8.1. Individual effects

1.8.1.1. The psychological impact of whip

One of the negative effects of corporal punishment, including whipping is actual prevention of behavior or treat the actual or to cause the depression of feelings. Punishment causes anxiety and leads to nervous protests which is a characteristic of depression. Medical reasons for the punishment of whipping been found from psychiatrist that related to the psychological effect of this punishment on criminals that the most important psychological impacts of the whip are Hypocrisy, its specific and general deterrence (Zeinali, Hamza. Justice Law Journal, No. 43, p. 55). "Gradually that torment becomes more cruel human spirit, such as liquids that consider themselves more important than the objects around, gets harder and constantly enthusiastic reaction forces causes that a hundred years after the brutal punishment, rotation provoke fear just like whip punishment in the past." (Szarbkarya, Former, 1993, p. 68).

1.8.1.2. Create hatred and hostility

Another damaging effects of whipping punishment is creating hatred and hostility in guilty person which criminological research indicates the fact that what is the main incentive for committing a crime is sensual desires and criminal thoughts which can have various existence and different forms in terms of different personality. Therefore, the performance of corporal punishment of whip, instead of troubleshooting criminal tendencies and trying in order to purify the soul and spirit of man, puts an ultima focus on building physical suffering for criminal. In this situation, criminal who perceived his character crushed and assumes his social position lost will be caught by depression and dissatisfaction that the result of this process is resonance of Aggressive violence based on the principle of masonry and victimization. Socrates, the great Greek philosopher was one of the scientists that considered applying punishment about criminal necessary. Yet he turn away from violence and considered hatred and revenge during the punishment improper and incompetent. He recommends that should never use violent and aggressive methods against the criminal actions of criminal and enraged about their behavior (oppressed, R., Justice magazine, No. 1974, 106: 47).

1.8.1.3. Creating crime and violence

Sightseeing terrible executed and scourge of criminals causes the loss of feelings and eventually inciting people to commit a crime. It also makes him to do his action while committing a terrible crime in cold blood and has no sense of remorse, regret and guilt. In addition, in some cases, the execution of punishment in public leads to introduction other potential criminals with tricks and techniques of committing crimes by professional criminals. In this context, "Maurice Patton" says that if we wish the crime to eliminate we should do something other than punishing and torturing the wicked (R., oppressed, old, 1974, p. 42).

1.8.2. Social effects whip

1.8.2.1. Promote violence between different segments of society

In a society where physical punishment is used to deal with crime and people are forced to obey the rules threats, whipping and punishments also observing them by young people as well as the guilty person, can provide areas for violence and other crimes. Some of criminologists believe that the implementation of corporal punishment in public, causes outburst, civil unrest and agitation against the ruling Board and also states that prescribed punishment in this way have been more affected turbulence (Solomon, Nariman, 2010: p. 126).

1.8.2.2. Trampling human values

The legislature by setting whipping, responds violent crime by violently while it is inconsistent with the basic human sense of justice. In a society which appeal itself to clear and organized violence against criminals, it decay itself to them. The prevailing

opinion among scholars of criminal science was based on the fact that, however, for the prevention of crime and thereby reduce crime, providing effectively useful solutions even in a criminal reaction is inevitable but such a reaction should be compatible as much as possible with human dignity and From scientific rational and defensible be coordinated with the standards of the day. In other words, the most effective and yet most humane method is defense that can be invoked as the best criminal policy (Solomon, Nariman, 2010: p. 128).

Conclusion

There is no agreement about the effects and consequences of individual and social punishment in public among scholars and experts. Some consider it possessing positive effects, and they believe that the implementation of public punishment reduces crime, soothe public's opinion and restore peace order in society and some consider it having negative implications, and they believe that the prevention of crime is not always possible punishment. In addition, performing public punishment, is double punishment and has devastating effects on children and women. This were internationally followed widespread reactions many human rights organizations including Human Rights Committee and the Committee against Torture objected to this method of punishment and stated that imposing punishment in this way does not conform to international standards. So with regard to Islamic criminal policies that is to ignore crime and there is a disagreement between jurists about legitimacy or illegitimacy of the public performance of punishment and also in International level is in conflict with covenant that Legislators of Islamic Republic of Iran has been approved, and most importantly nowadays punishment in public in terms of domestic and international consequences will cause insulting Islam, so the implementation of public punishment should be refused to the extent possible and to avoid breaking the norm and delinquency, the crime factors should be discovered And then dealt with. The public performances of this punishment has different individual, physical, social, economic and international.

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