



Research Paper

Jurisprudential Reconsideration of Procurement Punishment in light of Criticism and Proposal to Amend Article 243 of the Islamic Penal Code

Taha zargariyan ¹

1- Assistant professor, Department of Law, Faculty of Humanities, University of Ayatollah Boroujerdi , Boroujerd, Iran.



[HTTPS:// 10.22034/MFU.2023.62746](https://doi.org/10.22034/MFU.2023.62746)

Received: February, 14, 2023
Accepted: June, 20, 2023
Available online: June,25, 2023



Keywords:

procurement, whipping, exile, punishment.

Abstract

It has been recognized that bringing men to men for sodomy and men to women for adultery constitutes a crime of procurement according to criminal law and, accordingly, is a fixed (ḥadd) offense in the Islamic Penal Code approved in 2012. The Islamic legislator has determined the punishment for this offense. From a jurisprudential perspective, the legislator has imposed the punishment of seventy-five lashings for the procurement for the first time. Those who act as panders a second time will be exiled in addition to being whipped. Procurement crimes can be viewed as the beginning of sexual crimes such as adultery and sodomy within a society. Through the introduction of the perpetrators to each other, the pimp helps to remove the obstacles to the crime and paves the way for sexual crime in society. Although the exclusiveness of the punishment of lashing in the first instance of procurement comes from a jurisprudential perspective, it seems that the punishment does not adequately deter the crime of procurement and does not provide enough deterrent to prevent it from occurring again. The careful study of the jurisprudential sources shows that many Imami jurists, citing narrative reasons, regarded the punishment of exile as necessary for the first-time occurrence of procuring. Based on the descriptive-analytical method, this study examines conflicting jurisprudential opinions and considers the principle of proportionality to criticize the Article 243 of the Criminal Code, while keeping procurement under the category of a criminal offense. As a result, the punishment of exile is proposed to be transferred to the first-time occurrence of procurement in order to amend the Article 243.

Zargaryan, T. (2023). Jurisprudential Reconsideration of Procurement Punishment in light of Criticism and Proposal to Amend Article 243 of the Islamic Penal Code. *Comparative Studies on the Schools of Jurisprudence and its Principles*, 6(1), 68-49.

Corresponding author: Taha zargariyan

Address: Assistant professor, Department of Law, Faculty of Humanities, University of Ayatollah Boroujerdi , Boroujerd, Iran.

Tell: +989120514291

Email: tahazargariyan93@abru.ac.ir



3041-8682 © The Author(s) This is an open access article under the CC BY-NC /4.0/ License.

(<https://creativecommons.org/licenses/by-nc/4.0/?ref=chooser-v1>)



Extended Abstract

1- Introduction

The legislator of the Book of Islamic Penalties, according to the penal jurisprudence, in the third chapter of the second part of the Book of Limits, from Article 242 to 244, dealt with the issue of the crime of gambling and made it legal. Qawadi means bringing two or more people together for adultery or lust. Although there is a difference of opinion regarding the limitation or punishment of the mentioned crime in criminal jurisprudence; But the legislator, following many Imami jurists, has come to believe that the crime of gambling is one of the extreme crimes. The lawgiver has legislated the punishment of peddlers in Article 243 of BC as follows: "The limit of peddlers for a man is seventy-five lashes, and for the second time, in addition to the seventy-five lashes as the limit, he is exiled to He is also sentenced to one year, which is determined by the judge, and for the woman, it is only seventy-five lashes. From the appearance of the mentioned article, it is clear that the legislator has distinguished between the punishment of the first degree of gambling by a man and the second degree of gambling by a man. He considers the punishment of the first degree to be whipping only; But in the second place, a shopkeeper; It adds the punishment of exile to the punishment of flogging. Although the division of punishment in the mentioned article is based on a criminal jurisprudence point of view, the study of the undesirable and extensive effects of the crime of gambling in the society, as well as the examination of various jurisprudential views about the punishment of gambling, indicate that the punishment for the crime discussed in Article 243 MA is facing serious criticism. The exclusive punishment of flogging in

the first instance of a beggar cannot comply with the principle of the proportionality of the crime to the punishment; Because the dimension of corruption caused by the crime of panhandling in the society is such that it demands a more appropriate punishment in the first instance of panhandling. The reality of the crime of panhandling, which is considered one of the sexual crimes; It means to prepare and facilitate the path of crimes such as adultery and adultery. The relationship between boys and girls in Iran's society, due to many cultural, family and social structure reasons, is such that committing sexual crimes in Iran is not an easy path, and this can be an effective factor in not committing adultery or adultery. This is despite the fact that the direct effect of the crime of begging leads to facilitating the realization of the crime of adultery and adultery. It is on this basis that it should be said; The exclusive punishment of flogging for the first degree of panhandling cannot fulfill the principle of the proportionality of the crime with the punishment. Following the sayings of Imamiyya jurists shows that many Imamiyyah jurists are of the opinion that the punishment for Qawad in the first order of Qawadi is the number of lashes (75) plus the punishment of exile. The punishment of whipping, along with the punishment of exile, has narrative evidence that has attracted many Imami jurists. Punishment of exile in the first instance of peddlers can be a suitable answer in addition to whipping for peddlers; Because the heavy treatment of the society with such a punishment for corruption can bring compliance with the principle of proportionality of the crime with the punishment in the crime under discussion.



2- Method

The information data in the article has been collected through the library and documentary method.

3- Result

The limit of begging for a man is seventy-five lashes along with one year of exile, the duration of which is determined by the judge. The limit of begging for a woman is only seventy five lashes.

4- Conclusion

The verdict of clavicle bone fracture in the assumption of treatment along with the

defect is referred to the government and not the predestined payment.

5- Funding

There is no funding support

6- Authors' contribution

Taha Zargarian, assistant professor of law department of Ayatollah Azami University of Borujerdi (RA) is the responsible author and sole author of the article in question.

7- Conflict of Interest

Authors declared no conflict of interest