

THE PHILOSOPHY OF PUNISHMENT IN THE VIEWS OF ISLAM, PLATO AND IRANIAN CRIMINAL LAW

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Any social system has its own rules and regulations. If anyone violates society's rules and negates others' rights, he has committed a crime and is entitled for punishment. However, an issue preoccupied philosophers and thinkers – the philosophy of punishment and penalty. Plato's attitude on punishment is mostly based on criminal's correction; in addition, he believes that a criminal is not guilty. Rather, he is a mental patient who should be healed. In contrast, as the most recent and complete religion, Islam considers various and multilateral basics for punishment including cooling the victim, justice respect and retaining Divine sanctuary. Since Iranian criminal law is devised in accordance with Imamiyyah Fiqh (jurisprudence) and it is in line with Islam in terms of basics, obtained results on Islam can be extended to Iranian laws. Comparing both insights can reveal their similarities and differences and can show the superior and more comprehensive one. Thus, the necessity of performing a comparative study concerning both insights is felt. This is a descriptive – analytical research by materials collection and library method. The most important results of this study include basics and principles governing punishment in Islam such as the principle of making punishments public, the principle of punishments equity, the philosophy of punishment in Islam such as cooling the victim, justice respect, a criminal's correction and retaining Divine sanctuary. The basis of Plato's punishment is a criminal's correction and status of punishment in Islam is contrary to Plato's punishment philosophy. According to this comparison, Islamic Punishment philosophy is integrative and more comprehensive than Plato's punishment philosophy.

Keywords: *philosophy, punishment, Plato, Islam, law, Iran, dialectic*

Introduction

One of the most important legal entities in any country is its criminal system. Any society has foreseen rights and tasks for its people and all people are obliged to respect them. However, there are always individuals in any society that violate other's rights and tyrannize them. In such case, the society attempts to defend victims' rights and punishes perpetrators. Here, the philosophy of punishments matters. Concerning Islamic punishments, the question is what the origins of their wisdoms are. In expounding the penalties, which goals and wisdoms are pursued by religions which can be achieved by punishing perpetrators? According to Imamiyyah approach, religious verdicts are effects and are following a series of real interests and expedience. It means that the Divinity has devised all verdicts based on expedience. Penalty or punishment is not excluded from this rule. Thus, the philosophy of punishment should include divine expedience such as respecting divine limits, criminal's correction, social deterioration, etc.

In ancient Greek punishment philosophy, Plato's punishment philosophy enjoyed a special status. It was based on the philosophy of Homer and Sophists. However, they were not similar in all pillars. In fact, it differed in terms of basis and punishment philosophy. Plato believed that punishment philosophy is only criminal's correction while Homer's is based on revenge. Islam, however, considers various basics to determine and implement criminals' punishment including social deterioration, criminals' correction, repelling the crime and so on. Each is considered considering crime conditions as well as criminals' circumstances and moods. Since Plato's punishment philosophy provides contemplable ideas in his time and today and Islam is considered as the most complete divine religion, the necessity of performing a comparative study and comparing both philosophies is felt.

Upon devising key concepts and necessary general discussions, this paper attempts to find similarities and differences between Islam, Iranian laws and Plato's theory on punishment philosophy through a comparative study.

1. Concepts and Principles

(a) The Concept of Penalty and Punishment

Punishment means to encourage and award good jobs and punishment for bad ones which is general lexically and includes punishments in this world or next world and also natural and contextual (Moin 1985: III/3154).

(b) Punishment in Terminology

In criminal laws, it means punishment for perpetrator. Penalty is along with affliction and distress and it is the same affliction and distress which is the real earmark of punishment which distinguishes it from other preventive initiatives and crime prevention as well as actions on compensating losses in legal claims (Golduzian 2007).

As a legal consequence of a crime, punishment is a type of reaction and the guarantee of afflicting and deteriorating implementation against an action foreseen in the law and its determined types.

Overall, punishment is intentional loss and pain and affliction against someone who has committed an illegal action. On the other hand, punishment implies that another person has the right of posing legitimate power to create such pain and infliction against another person (Scott 2008: 17–18).

(c) Dialectic

Plato calls the character of philosophy which moves in facing with error concepts toward correct relations of concepts dialectic. Dialect is the way to achieve correct relation of concepts which is an encountering for excellence toward reality since the beginning (Plato 2001: 253).

2. Types of Punishment in Islamic Laws

In Islam, the punishment of criminals and offenders of commands and objectors to people's rights and security is divided into two radical types.

(a) Otherworldly Punishment

Punishments determined on the basis of divine wisdom and justice to contravene divine commands and exerted in after death world. This reality is pointed out in Holy Quran: "The Day that every soul shall find what it has done of good brought forward, and what it has done of evil, it will wish if there were only a far space between it and that (Day). Allah warns you to be wary of Him; and Allah is Gentle with His worshippers" (Ali Imran: 30). And also reads: "Whosoever has done an atom's weight of good shall see it, and whosoever has done an atom's weight of evil shall see it" (Zilzal: 7–8).

(b) Mundane Punishments

Mundane punishments are divided into two groups:

Group 1. Evolutionary punishment, which is the direct result of action, namely, due to cause-and-effect rule. It has different forms and is achieved as destruction of nations, overwhelmed by enemies, famine, economic problems, abjectness, contempt and so on.

In its verses, Holy Quran provides a constant divine tradition on such punishments: “There have been examples before you. Journey in the land and see what was the fate of the liars” (Ali Imran: 137). “Have they never journeyed through the land and seen what was the end of those who had gone before them? Allah destroyed them! Likewise, it is for the unbelievers” (Muhammad: 10). “And those villages! When they became evil, we destroyed them and appointed a meeting for their destruction” (Kahf: 59). “Those are their houses, all are in ruins because of the evil they committed; surely in this there is a sign for nation who know” (Naml: 52).

Group 2. Enacted and contractual punishments determined by Sharia, which address perpetrators’ actions in terms of penal laws. A ruler is obliged to implement them; these include retaliation in murder, thief’s hand cutting, lashes and so on. In fact, we will discuss these types of punishments and we will talk about the philosophy or basis of such punishments (Ahmadinik & Nasirayi 2018: 6–7).

3. Punishment Philosophy in Islam*(a) Retaining Divine Limits*

By crime perpetration, criminal breaks divine limits in the first step and negates a religious rule. Such behavior entitles agony and punishment rationally and narratively (Peivandi 2016: 19).

(b) Supporting the Expedience of Individual and Society

Divinity’s will is a wisdom determination and it is not a manner that Divinity proves a right for someone and obliges an assignment for others without any basis and earmark and without considering expedience. All divine verdicts and commands and prohibitions and wills are a function of “real expedience and evils” and are based on wisdom (Mesbah Yazdi 2001: 232–234).

Obedying real expedience and evils does not mean that such expedience exists in the world without Divinity's consideration; rather, it means that Divinity commands something to human by which human can enjoy more Divinity's kindness and grace and concerning divinity prohibitions, it means that Divinity interdicts human from something by which human will be deprived of Divine's grace.

Besides, in some affairs that play a vital role in society's prosperity and its inaction would yield to a big evil for society or humanity and prevents human evolution, in addition to express the main evil and its intensive prohibition, Divinity has considered punishment for its perpetration in this world which indicates His further kindness. For instance, concerning adultery, Divinity asserts: "Do not draw near to fornication, for it is an indecency, and its way is evil" (Isra: 32). This expresses Divinity's guidance namely expedience and evils and creating motivation to avoid such evil work. However, it does not limit to ban this cardinal sin and asserts: "You shall lash the fornicates and the fornicator each with a hundred lashes. In the religion of Allah, let no tenderness for them seize you if you believe in Allah and the Last Day; and let their punishment be witnessed by a party of believers" (Nur: 2).

Determining this penal law to commit a cardinal sin is due to the fact that this filthy action plays a vital role in a community fall. Thus, only expressing this evil act and calling it as cardinal is not adequate and, in addition, punishment is determined and its implementation is clamped down (Mesbah Yazdi 2001: 235–245).

Imam's best choice in selecting criminal's punishment based on expedience: in some cases, Infallible Imam selects criminal's punishment based on Islam expedience or omits it completely. A narrative concerning theft witnesses such claim. Narrator asserts that someone went to Imam Ali and confessed theft. Imam asked him if he had read Holy Quran. The man said: "Yes, *sura* Baqara." Imam said: "I forgive your hand to *sura* Baqara. It is clear that it has been a *hudud* theft". Ash'as said: "Are you stopping a divine *hudud*?" Imam answered: "What do you know in this regard? In the time of production of evidence, Imam has no right for amnesty but if someone confesses his crime, Imam can choose between amnesty and hand cutting" (Hurr Amili 1994: XVIII/331).

Also, it prevents cases of revealing the crime in the society; for instance, in *hudud* crimes, the principle is to hide perpetrator's act and attempts and emphasise on perpetrator's inner modification and purification. It is seen improper to quest by people and even ruler so that witness' refusal of witnessing is seen praiseworthy in such crimes and criminal is recommended not to express crime and disgrace himself among people. Instead, he should have inner repentance as a constructive and effective guideline (Najafi 1983: XLI/307).

These two examples and hundreds more clarify the verdict of Imams based expedience of individual and community.

*(c) Divine Kindness – the Most Important
Philosophy of Punishment in Islam*

At first glance, the question may arise as to how divine kindness whose initial mental elements are benevolence, compromise and affability can be the basis of punishment philosophy. The answer is that although there is torture and agony in punishment, this torture and punishment is in line with human's expedience and interest and repulse of evil and corruption from their life (Ahmadinik & Nasirayi 2018: 8). Based on Islamic teachings, penalty is not only for establishing justice and punishment but also utilitarianism and purposefulness are also tacit in it. Such benefit is sometimes in criminal's punishment to achieve its social results and effects and sometimes in abnegation of punishment to prevent its undesired social impacts. The most important Islamic philosophy is the same principle all Islamic fundamentals including penalty are based on: "We have not sent you (Prophet Muhammad) except as a mercy to all the worlds" (Anbiya: 107). Islam orientation is to purview religious health and world and its verdicts, rules, do's and dont's are based on worldly and otherworldly prosperity and expedience. In Islam, punishment is never the main goal; rather, it is a deteriorating tool for criminals and other people so that in discretionary punishments, whenever criminal refuses and repents sin through another way, punishment will be dissipated. It is not unique to discretionary punishment and *hodud* is also dissipated in the case of repentance before determination (Peivandi 2016: 6–7).

(d) Crime Prevention

By contemplating Islamic resources, one can find the philosophy of adopting penal laws which indicates that Islam matters crime social and individual effects as well as the impact of punishment on crime prevention. Examples are provided below:

1. Considering as equal killing of one human to killing all humans which indicates the importance of human's life in Islam (Maidah: 32). Islam has foreseen retaliation as situational prevention of murder and other crimes against persons and as this punishment realizes penal justice, it would have the highest impact on crime prevention so that no other punishment can have such effect. Explicitly, Holy Quran asserts that

the philosophy of adopting such punishments is human survival: “O owners of minds, for you in retaliation is life, in order that you be cautious” (Baqara: 179).

2. Concerning crimes against properties such as theft which directly relates to men’s properties, Islam has determined deteriorating punishments so that people do not agree their financial rights (thief’s hand cutting) since it is aware of the importance of properties in people’s social and personal life (Maidah: 38). Thus, Islam has a goal for adopting any punishment and they are toward realizing social and individual valuable goals. To the same reason, it is mentioned in Islamic narratives that implementing a divine *hudud* on the earth is more useful than forty nights raining. “Establishing a punishment is better than rain for forty mornings” and “to establish the punishment on the earth, there is more benefit to the earth than rain for forty mornings” and “there is no punishment established for God on earth that is better than rain for forty mornings”. A similar narrative is mentioned by Imam Baqir (Hurr Amili 1994: XXVIII/12).

(e) Purifying and Refining Criminal

In Islam attitude, human action has direct impact on his spirit and life and as a good deed causes spiritual excellence, bad deeds pollute his spirit and it is the same spiritual pollution that manifests as unbearable agony. In the view of Islam, a method which can remove spiritual pollutions by crime perpetration and saves him from otherworld agony is to endure worldly punishments. In the view of Islamic theory, someone who is ready to endure his worldly punishments will not be punished for the same perpetration in another world. It was based on the same attitude that many criminals were introduced to Prophet or Imam and asked to get realized from otherworldly hard agony by enduring worldly punishments (Hurr Amili 1994: XXVIII/49).

(f) Public and Personal Deterrence

Concerning crime deterioration or public and personal deterrence, two meanings can be imagined: the first one is a broad meaning that involves crime prevention and consists of any tool which prevents crime and it must also include training and culture building. The second one is a limited one which believes that deterioration is correct only if individuals are threatened to undesired consequences and includes apprehension, trial, conviction and punishment (Najafi Abrandabadi & Hashem-Beygi 1998: 131). Since punishments were recognized as a phenomenon which needs contemplation and

thinking rather than an instinctive one, deterioration means to prevent others to imitate offenders becoming one of its radical aspects.

Criminal law should be in a manner that has its impact on crime prevention before implementation. Pursuing such penal policy, Islam has devised its rules so that a criminal avoids heavy crimes perpetration as possible and the possibility crime occurrence is reduced to the minimum level rather than adopting the rules in a manner by which criminal can easily violate them. Upon crime perpetration, criminal will be punished. For instance, a narrative is mentioned in interpreting “And you have life in retaliation” verse, Imam Sajjad says: “There is life in retaliation for you as the *Ummah* of Muhammad since anyone who intends to kill someone else would refuse when he knows that he will be retaliated and this causes survival both for the person who was going to be killed and the person who intended to kill. It is the cause of life for other men since when they know that retaliation is necessary, they would have no courage for murder.”

(g) Criminal's Correction and Rehabilitation

One of the important and radical goals of penalty in Islamic law is to correct and educate delinquents. For instance, when we look at delinquents' penalty fall down, this concept can be achieved that in the case of repentance, all penalties are fallen (Maidah: 34). All these cases indicate that Islam intends to correct and educate delinquents (Peivandi 2016: 28).

(h) Corruption Repelling from the Society

In using more natural gifts and endowments, human has an endless will. Forcing others to follow one's demands would even yield to serious and bloody conflicts. In such cases where one can see the signs of corruption in human behavior, penalty is raised as an important tool to combat them. In fact, such unbridled productivities by some men are a big barrier against society's prosperity and calmness. To the same reason, as the last solution, penalty can play a vital role in preventing social perturbations.

(i) Crime Repelling

On the one hand, Islamic penal code has utilized the policy of intensifying punishments in adopting penalties and, on the other hand, it has clamped down on proving the crimes especially concerning *hudud* so that it is sometimes perceived that Legislator is not satisfied with proving such crimes and, to the same reason, one of the wisdoms of penal serious alarm is to prevent perpetrating such crimes so that such crimes do not occur (Ibid.: 23).

Another goal to determine penalty for criminal is to cool the victim. Satisfying victim's revenge sense and compensating the pains from such crime would prevent victim's despotic act followed by revenge (Moghimi Haji 2007: 113).

4. Plato's Punishment Philosophy

Plato used the views of Homer and Sophists for many of his definitions. One case is his definition on punishment. He attempts to reform their attitudes through dialectic. As we know, dialectic does not negate and reject, rather it intends excellence. In Plato's dialectic path on punishment, one should initially show the mistakes in conceptualizing punishment by Homer and Sophists and then one should move toward the real meaning of punishment.

In Homer's philosophy, the basis of punishment is neither the action per se nor the result of action and preventing its repetition. The impact of such action is on victim's dignity. Dignity is determined by society's expectation of an individual. Hence, a minor action against a champion may be seen as mocking his dignity which would yield to a heavy compensation to cool such champion. Someone without social dignity has no power and right for punishment and any action against him is allowed. Social dignity is the greatest value in Greece and it is used as the basis of punishment (Hoseini Beheshti and Mashhadi 2016: 3–4).

As already mentioned, one of the important basics of punishment in Islam is to cool the victim of his family and such feeling of satisfaction is based on the feeling of revenge against criminal. Thus, Islamic punishment philosophy and Iranian criminal laws are in the same line concerning revenge. Revenge is not their only basis for punishment or main goal; rather, it is not like Socrates and Plato who neglect the role of criminal's will and intention in crime perpetration. Islam believes that revenge by victim or his representative would cool and satisfy the feeling of revenge and prevents the feeling of being victimized and oppressed considerably.

(a) The Root of Punishment in Greek Philosophy

In Greek encyclopedia, there are two terms for punishment with different meanings of which one has the correct meaning of punishment; *timôa* that some have wrongly translated it as atonement (White 2011). According to Lidell and Scott its root is time which means honor, dignity, reputation and the second meaning as value and glory and the third meaning as coolness and punishment (Lidell & Scott 2007; Adkins 1975: 17–23).

By coolness we understood that this punishment is different from atonement since in atonement, the basis of punishment is the action per se which

entitles punishment and not its impact on social dignity and personal reputation. Likewise, punishment amounts the action and not cooling the victim as Homer says Achilles' anger is calmed down. Atonement cannot be deemed as a Greek thinking and by the introduction of Abrahamic religions, atonement is changed to a type of punishment philosophy.

Another word in Greek, which is interpreted as punishment, has a completely different meaning. According to Lidell and Scott, *kolasis* means hearing and investigation of trees growth, especially almond. It also refers to corrective aspect of punishment. It was initially adopted by Sophists against Homer's revenge attitude and was determined by referring to Plato as Greece punishment philosophy. Protagoras interprets punishment as standing up the curvature of an atilt cane and in his long speech in Plato dissertation recalls punishment as standing up a sapling by gardener. Plato also recalls punishment with the same interpretation and his ideal punishment is reformist to some extent. However, he establishes a subtle dialectic with Protagoras' punishment and distances from it despite of their similarities. By criticizing Homer's punishment, Protagoras says clearly: "No one punishes a guilty only for crime perpetration otherwise punisher wants to revenge like a wild animal. Someone who penalizes a perpetrator by his own command not for his sin since by penalty one cannot annul the occurred sin rather for guilty and others' deterrent so that they perpetrate no crime in future". It is clear that although *kolasis* is aware of the root of this term, he utilizes it not as correction but as sin or evil deterioration. Thus, in the view of Protagoras, punishment is to prevent recidivism not criminal's correction. Plato aims at criminal's correction (Hoseini Beheshti & Mashhadi 2016: 4–5).

Thus, the basis of Homer's punishment was revenge and cooling the victim was the basis Sophists' punishment, which was also the basis of Plato. The basis of Protagoras' punishment is deterioration.

(b) No Liability and Criminal as Patient

Homer's punishment is based on revenge and it accuses the criminal while Socrates believes that no one does a bad deed intentionally and knowingly, and if he commits a bad deed, it is due to his negligence not intention. So, revenge has no meaning since criminal is not responsible. In fact, a criminal is deprived of responsibility and a criminal is seen as a spiritual patient who has perpetrated it unintentionally and unknowingly.

In Islam, any person is responsible for his actions and behavior while responsibility acceptance is only the task of those who have special conditions and oblige in general terms to be addressed by Legislator. On the contrary, they have rights to respond to their committed crimes and are punished to the

same extent of their crime. In such a case, one can consider criminal as guilty and tyrant to oneself and society and is entitled for punishment. In this case, punishment is in accordance with justice. In Islamic *Fiqh*, by referring to raise the pen *hadith*, criminal liability for a rational and authorized adult is removed for some individuals: children, sleepy, crazy, insensible, drunken, negligent and absent – minded.

The rule of Dara' and its relation to criminal nonliability in Plato's punishment philosophy: a legal rule in Islamic penal law is rule of Dara'. According to this rule, in the case of any doubt, penal liability is removed whether such doubt is from defendant side that is he has doubt on verdict or by the Judge's side as to whether we can assign a criminal act to defendant or not.

This rule indicates high precision of Islam to prevent violating people's rights and excessive punishment. In Islamic view, to confirm criminality, the person should know the criminality of his behavior and also know the subject of crime. So, uninformed person is not entitled for punishment. Punishing uninformed person has two negative consequences: there will be tyranny against him and such punishment is not useful.

This rule is applied in Iranian criminal laws, Articles 120 and 121 of Islamic Punishment Law has referred to this rule and it is mentioned as a barrier of penal liability (Mohaqqeq Damad & Rahbar 2018: 3–4).

In comparison, a similarity can be seen between this rule and the Platonic philosophy of punishment, but the similarity of the two is only in the exemption of an ignorant person from punishment, while the interpretation of each of them is different. In Plato's philosophy of punishment, no one is considered guilty because everyone commits a crime because of their ignorance, so no one deserves to be punished. However, in the rule of Dara, only criminals who are truly ignorant of the ruling and are exempted from criminal responsibility, but the punishment of the intentional criminal who has the element of knowledge of the crime and intent remains in effect.

According to Plato, when the reason and basis of the crime is ignorance, the punishment should be education to compensate for this imbalance and disharmony between the intellect and other forces. This imbalance is sometimes interpreted as a disease; it means a patient whose soul is sick, not his body. In the Platonic dialectic, punishment leads to the discovery of the soul. The soul is the cause of the crime and the ultimate goal of the punishment. The soul of the criminal is unbalanced and incoherent, and due to the lack of reason's control over it, it suffers from disharmony and chaos. Now that we have made the nature of justice and injustice clear, the nature of cruel and just action should be clarified.... Those two types have the same effect on the soul as unhealthy and healthy foods have on the body (Plato 2014: 444). The allegory of body and soul should always be considered in Plato's epistemology. In

a way, this allegory has a strong presence in all topics of justice, politics and punishment and makes Plato's epistemology possible. Therefore, oppression, crime and vice are all used by Plato in the same sense; it is a kind of mental illness, which is caused by the imbalance and disharmony of its parts, like a physical illness, and punishment is actually the art of saving the guilty soul from this illness. "The art that can free the soul from cowardice and oppression is the art of punishment" (Ibid.: 229). Therefore, for Plato, the definition of punishment is a way of saving the guilty soul from oppression. In this way, the purpose of punishment is focused on the criminal and his salvation, and the place of punishment is his soul. Therefore, punishment is beneficial for the criminal and should be done in any case. But from the point of view of Islam, as well as Iranian criminal law, punishment is a right, not a duty, and although the criminal deserves a punishment commensurated with his act (unlike the opinion of some Western schools, which consider punishment and its implementation as an inviolable duty). However, in some cases, it can be ignored and not only did not respond to evil with evil, but also repelled it with good. Islam prevents Muslims from violence and grudge in social relations in any form and invites them to mercy, forgiveness, forgiveness and tolerance. In many crimes, whether it is a punishment or retribution, there is a possibility of amnesty, and the victim or his relatives or the ruler have the right to waive the punishment of the criminal, and this is due to the fact that there is more expediency in this human act. It is that its moral and social effects are undeniable for both the pardoner and the criminal. Also, in some crimes, the punishment may be reduced by the criminal's repentance.

(c) The Profit of Punishment in Plato's View

According to Plato's dialectic theory, crime is a type of soul disease by which the governance wisdom of other powers is scattered. Due to such inefficient governance of rationality on other powers, sensual powers such as anger and lust dominate over reason, logic and inner justice, which causes her harm and loss. Thus, the necessity of punishment is to return the soul to its past normal condition. "A man is unaware of ultimate benefits and enjoyment of punishment when he passes a penalty. Those who escape punishment only see the pain of penalty and they are unable to see its healing and they do not know life with a sick, exhausted and tyrant soul is worse than life with a sick body" (Ibid.: 479). Thus, "if someone commits tyranny, as a patient who refers to a doctor, he should also refer to a judge intentionally and pass his proficient penalty so that tyranny does not embody his soul" (Ibid.: 480).

This view also exists in Islam and Iranian substantive laws; Islam is based on divine endless kindness and punishment is not excluded from this rule.

Criminal *Fiqh* and punishment are toward fruitfulness of creation purpose, namely grace. According to Islamic attitude, although punishment accompanies torture, pain and agony, it is necessary for correcting the criminal. In Iranian criminal laws, there is high emphasis on correcting the criminal, even though, by such punishment, the criminal and even his family and relatives would endure serious pressure. Noteworthy, in addition to correcting the criminal, punishment would have many results such as social deterioration and justice implementation.

(d) Punishment Method in Plato's Philosophy

As already mentioned, in Plato's punishment philosophy, crime is the result of soul imbalance. This soul balance means domination of reason over other powers and soul modification. Whether this modification is by increasing reason strength or reducing bad intentions can be firstly achieved by training and secondly by practical exercises, limitation, coercion and even murder. Determining the type of punishment depends on a criminal's reason, readiness and capacity. If a criminal's potency is high in training, his punishment will be training; otherwise, he will be merited for other methods.

Among soul diseases, Plato considered ignorance as the biggest disease (Plato 1996: 505) and among ignorance, the biggest one is the conjecture of knowledge or compound ignorance (Plato 2001: 229). The way to remove this biggest factor of tyranny and crime is training, especially a type of training which can remove knowledge conjecture is dialectic. Dialectic is soul awakening (Plato 1996: 505). Either in Gorgias's dissertation or in Sophists', Plato believes that dialectic is the most important punishment. Dialectic does not mean training since the beginning to bring out the person from absolute ignorance, rather a change in thought and reforming previous knowledge. Where training is not effective, the second degree of punishment arises, namely limitation and coercion (Mackenzie 1981: 185). Thus, Plato considers the proportion between crime and punishment, while in Islamic punishment philosophy and Iranian substantive laws, such proportion between crime and punishment is seen as a principle. According to this principle, proportion between crime and punishment should deteriorate individual and community and punishment should be intensively equal to destruction and damage (Moghimini Haji 2007: 19).

(e) The Basis of Plato's Punishment Philosophy

Since Plato's philosophy of punishment is to reform the criminal, the criminal plays an essential role in determining the type and severity of the punishment; therefore, the necessity of characterizing the criminal becomes

clear. This personality is effective in choosing the method of punishment and defines the view of this philosophy towards the criminal. The categorization of criminals is stated in the treatise of the President. In this treatise, the just and the unjust are introduced. At the beginning of the fifth book, it is claimed that we have four types of oppressive government and therefore four types of criminal character, and the treatise further introduces these four types of criminals. Of course, these four types of criminals come after the main type of criminals or Sophists. Therefore, in general, in Plato's view, we encounter five types of criminals (Hoseini Beheshti & Mashhadi 2016: 10–11).

In comparison, Islam has diverse, comprehensive and more complete basics for punishment, one of which is to correct the criminal. Another point is that although Islam has not pointed out to punishment individualization as a certain principle, contemplation in Islamic resources indicate that attention to personality is influential in selecting the type of punishment; for instance, one can point out the role of judge entity. According to this entity, judge is required to follow procedures from local traditions and issue verdicts in claims based on his own discretion, not some official techniques of *Ijtihad*.

In many studies on Islamic laws, a gap between theory and practice is mentioned. Such a gap is too considerable that some scientists such as J. Crammers even pay attention to two legal systems in Islam: practical laws and theoretical laws. Due to the distance between laws among jurists and the laws of courts, it was believed that to implement justice in the best and complete manner, only following Islamic laws cannot be accountable alone. Rather, verdict issuance should be based on discretion and personal policy (Masud 2003: 43–46).

(f) Criminals' Personality Attitudes in Plato's View

The first group of criminals are Sophists. A Sophist is against a philosopher. A philosopher is someone who likes knowledge. A philosopher seeks true knowledge, but a Sophist is immersed in imagination that is introduced behind the image of introducing the philosopher as the embodiment of human perfection. Socrates proposes eight conditions for a philosopher, which are: truthfulness, good morals, moderation, courage, high-mindedness, keenness of mind, passion for education, and strength of memory. If not to say that they are corrupt, then at least they will become idiots, and even the best of them, "who benefit from their innate talents, will become incapable of social work and remain idle and useless under the shadow of this same philosophy that you are so supportive of" (Plato 2014: 478). Socrates' answer to this objection is accompanied by the maximum approval because "most of those who practice philosophy are corrupt and unemployed". And their corruption is more than that of others': "Noble characters, apart from being rare because they are

exposed to countless dangers, quickly perish. Some of them commit the greatest tragedies towards societies and individuals, and others, if they are blessed with the right upbringing, become the source of the greatest goodness for mankind. While small natures can never be the source of great work” (Ibid.: 495). Here, Socrates interprets aptitude as a double-edged sword which, if it is brought up under education and a healthy environment, will lead to great deeds that other ordinary people are unable to do, but if they are exposed to unhealthy and dangerous environments, they will deviate greatly because talented people are different from others even in their crimes, and in fact, the destructive ideas they have in their minds do not exist in others. Socrates calls the criminally inclined or philosophically inclined a Sophist.

In answering the question why a Sophist is created, Plato says: “Only capable and talented characters can do great jobs whether it be a good deed or a unique crime and a big calamity. Weak characters cannot do great jobs.” Plato does not consider Sophist as criminals, rather as humans abandoned by the society. In determining punishment for Sophists, Socrates involves in confliction since the lowest punishment is considered for the biggest crime. He believes that a person who commits bigger crimes should have bigger soul and more talented character to do such a big job. On the other hand, due to his talent, he can be easily reformed by the effects of dialectic and training. This point can be extended to all punishment reformist theories. A reformist theory cannot be aggregated with the rule of crime harmony and punishment since its emphasis should be on criminal’s capability in reforming him. Hence, one should suffice to the minimum punishment for big crimes, which Plato believes come from great characters. Plato’s punishment theory hides a type of killing weak persons (Hoseini Beheshti & Mashhadi 2016: 13).

This principle is in conflict with crime and punishment proportion principle and Iranian penal laws. According to this principle, any punishment should be proportionate to committed crime intensity. The more destruction by such crime, the heavier the punishment.

In addition to Sophists, there are four other criminals equal with four types of tyranny administration. The first one is an ambitious and combatant or timocratic person, the second one is acquisitive and greedy or aristocrat, the third one is profligate or democrat and the fourth one is authoritarian.

In ambitious and proud or timocarat, that part of soul which is the origin of anger and will would command other parts. Hence, combat and ambition appear more than other traits (Plato 2014: 548–550).

Timocrats are deprived of right education and dialectic knowledge, which persuade enthusiasm to knowledge and believe that body grooming is superior to soul education. Hence, they like to combat anyone. Thus, in their life, they recourse to violence instead of “convincing others” and, as a result, crime appears.

The third type of criminal is greedy or oligarch person. Such person puts his acquisitive part of his soul as the king of his inside (Ibid.: 553–557). He is a lowdown, profit seeking and acquisitive person who is liked by ordinary people. A greedy person believes that money is superior to anything else. Some of them have the character of beggars and some are similar to thieves and offenders. According to Socrates, the nature of a greedy person can be seen where there is an opportunity he can take others' assets without revealing his deed. He is in a mutual conflict. On the one hand, he has to be seen as a good person in the eyes of others in order to keep and expand his properties and, on the other hand, his acquisitive character pushes him towards crime. Hence, he is a master of hidden and latent crimes.

Oligarch is not a single person; rather he is two persons and in the fights between good and bad intentions, good ones overcome the bad ones. So, he seems better than others apparently, while he is too far from right virtues, especially single souls.

The fourth type is profligate or democrat. Democrat has tasted "the fruit of amnesia" and has forgotten everything (Ibid.: 558–562). He is obliged by no law and principle. He is empty of any principle and mocks all values. He believes that shame is credulity and foolishness. He calls continence weakness and inadequacy and abandonment. He believes that saving and balance is roguery and fires it from soul by damaging intentions and fancies. He does not abandon any inclination and fancy; rather he bends all of them and a completed fancy is replaced by another one. A democrat's morale is equal to everything, every person and every inclination. Therefore, the democratic criminal hurts himself more than he hurts others, and in fact, his crime is against himself. Also, this spirit of equality makes the most obvious criminal, the tyrannical person, emerge from the heart of this most secret criminal.

The last type of criminal for Plato is the tyrannical person. As mentioned, the emergence of the tyrannical criminal is from the heart of democracy. Oligarchy becomes democracy due to excess of wealth and democracy ends in tyranny due to excess of freedom. Because exaggeration in anything turns into its opposite.... This rule is true above all in the political system (Ibid.: 563–577). The democratic person has ruled over his sensuality and has put everything equal.

*(g) Plato's Punishment and Correction Technique
Based on a Criminal's Personality*

In Plato's philosophy of punishment, the correction of the criminal is step-by-step and staged, not sudden and immediate, because its purpose is the improvement of the soul, not the perfection of the soul. Therefore, if the correction of each level of criminals leads to reaching the previous level and

they are actually adjusted by one level, then the punishment has been effective and correct and the goal of Platonic punishment has been achieved.

Therefore, turning a tyrannical criminal into a just person is impossible and irrational; the ultimate reform that can happen to him is to become a democrat; explaining that a tyrannical criminal has rare mind-boggling desires that even for the imagination of ordinary people and even for the rest of criminals is far-fetched; for example, the desire to eat human flesh. Now, to convert such a person with such strange inclinations, it will be enough for him if he can be made to indulge only in delicious but unnecessary inclinations. Plato in the treatise of Gorgias despairs of reforming such criminals and considers their punishment to be death.

Likewise, if a democrat is trained and his democratic inclinations are mitigated, he will be converted into an oligarch since from the outset, it is converted into democrat due to excessiveness in oligarchy. The method to correct a democrat or profligate person is that he should be persuaded to save and spend his wealth in necessary inclinations to prevent him from profligation and changes to oligarch or greedy. To reform a greedy person, he should lead him towards timocrat's thought and policy. Arguing that a greedy person only thinks about his personal interests, and in order to correct and adjust his policy, he should be forced to benefit the society.

In addition, as for the last type of criminal in Plato's classification, which is a Sophist, due to his intellectual and spiritual strength and the capacity to accept education, he is corrected by dialectics.

(h) Paying Attention to a Criminal's Personality in Islam

Considering the radical principles governing punishment and its philosophy, one can understand that in addition to social interests, Islam also pays a special attention to a criminal's personality. In turn, one can say that in those crimes which interfere in the system, penal jurisprudence pays no attention to a criminal's personality while in other crimes, a criminal's personality and conditions and situations of crime perpetration are considered. In substantive punishment in which the judge is not obliged to a predetermined verdict and in the case of proving discounted aspects, he can mitigate to punishment and/or convert it to the defendant's benefit. Such aspects include the defendant's special conditions, his personality and good records, and evidence which indicate his repentance. One of the effects of paying attention to personality is Islamic respect and forbiddance of the defendant's dignity outrage. For instance, Prophet Muhammad commanded to stone someone to death while some called him a devil. Prophet Muhammad said: "Do not call him a devil. I swear by God the Divinity is cleaner and more perfumed than musk" (Al-Muttaqi 2008: 13409). Another example

was a woman who became pregnant from adultery. She came to the Prophet and said that she had exceeded from divine limit and was entitled for punishment. Prophet Muhammad called her and said: "She has repented in a manner that it is sufficient if it is divided among seventy persons in Medina".

Compared to Plato's theory, one should say that although Islam has not pointed out punishment individualization as a certain principle, contemplation of Islamic resources indicates that paying attention to an individual's personality has been influential in selecting the type of punishment; for instance, one can note the role of the judge's entity. According to this entity, like an arbiter, the judge is obliged to follow procedures from local traditions and issue verdicts in claim according to his discretion rather than some official *Ijtihad* techniques.

In many studies on Islamic laws, the gap between practice and theory is mentioned. This gap is so remarkable that some scientists like J. Crammers believe that there are two legal systems in Islam: practical laws and theoretical laws. Due to distances between laws among jurists and the laws of courts, it was believed that for full justice implementation, following Islamic laws is not accountable alone. Rather, verdict issuance should be in accordance with personal discretion and policy (Masud 2003: 43–46).

The basis of personality in Plato's punishment philosophy and determining punishments based on it has many implications in Iranian Islamic punishment law and Iranian Penal code.

One similar case is the defendant's personality file. Personality file means that punishment should not be determined by only looking at the criminal act. Rather, the delinquent's personality and crime perpetration conditions and situations should be also considered. This file has such cases as statement by a psychologist, psychiatrist and social workers on the defendant and his financial, family and social conditions and his/her penal records.

Command to form personality file is mentioned in articles 203 and 286 of Iranian Penal code by which the importance of recognizing the defendant's personality aspects and his personal and family conditions, especially children and adolescents, and the application of such information in judicial hearing process including preliminary investigation, trial, issuing and executing verdicts the manual of forming the defendant's personality file was ratified by Seyed Ibrahim Raisi on September 15th, 2019 within 24 articles.

In line with such articles in Penal code, Islamic punishment law entered new concepts in criminal laws by adapting itself to this law so that they have no usage without forming personality file; such concepts are imprisonment alternatives, probation, suspending punishment implementation, suspending verdict issuance, exemption for penalty (Sabzeh-Ali, Ashrafi & Heydari 2018: 13). Here, we explain some of them briefly:

In article 23 of Iranian Islamic punishment law, paying attention to the criminal's traits is implicitly mentioned in selecting and determining type of punishment.

Article 23. The court can convict a person who is convicted to lash, retaliation, or substantive punishment from six to one degrees by respecting conditions mentioned in this law proportionate to committed crime and his/her traits to some combined punishments.

“His traits” indicates that personality, family and social traits, age and many other factors are influential in selecting the type of punishment.

Another case in Iranian Islamic punishment law which shows the importance of criminal's personality in selecting the type of punishment is the principle of punishment personalization. In many legal writings, this principle is not defined and in some it is mentioned implicitly and functionally. Punishment personalization principle means that any person's punishment should be proportionate to his physical, mental and social features, which may lead to increased, mitigated, suspended or postponed punishment.

One of the results of punishment personalization is imprisonment alternative punishments, which involves articles 64–86 of Iranian Islamic punishment law.

According to article 64, imprisonment alternative punishments are determined and implemented by considering the type of crime and the quality of its perpetration, its impacts, age, skillfulness, situation, personality and records of the criminal.

As seen, in this article, a criminal's personality is recognized as an affecting factor in determining the type of punishment.

Another result of punishment personalization principle is to postpone verdict issuance as addressed in articles 40–45 of Islamic punishment law. According to article 40, in punishments from degrees six to one, upon determining the defendant's criminality, the court can postpone verdict issuance from 6 months to 2 years by considering the criminal's personal, family, social records in the case of the existence of conditions mentioned in article 40.

Articles 41–43 have divided postponing to two groups of simple and attentive that anyone has its own conditions as mentioned in law.

So, it is observed that both Iranian punishment philosophy and Plato's punishment philosophy believe that the criminal's personality and personal traits are influential in determining the type of punishment, while Iranian law has a broader and more thorough glance at this issue and does not limit criminal personality and personal traits to his individual personality. Rather, it believes that social, family, records, and conditions of crime perpetration under such

titles as punishment personalization and personality file are influential in determining his punishment.

In jurisprudential resources, this principle is used in substantive laws and a ruler can punish them proportionately to the criminal's personality. However, it is not implemented in *hudud*, retaliation and blood money. The strategy of punishment personalization in jurisprudence can be amnesty and repentance.

Another case which points out forming the defendant's personality file is the executive manual of Prisons Organization ratified on December 11, 2005. Articles 63 and 64 read:

- Article 63: In every vocational training and employment center or prison, a section called identification is formed in order to recognize the character of convicts and accused and classify them using the services of specialized experts.
- Article 64: Convicts are subjected to medical, psychiatric, psychological tests and personality and talent tests for a maximum of two months in the reception and diagnosis section, and their physical and mental health, religious, scientific and technical information are examined and determined in order to identify their personality. According to the regulatory forms prepared by the organization based on Islamic standards, the social workers carry out the necessary research on the life history of the convict or the accused, from childhood to the time of preparing the report in various family, educational, local, professional, etc. environments in order to prepare their own comments. At the end of their stay in the acceptance and diagnosis section, all the experts' reports will be concentrated in their file to be presented in the Classification Council.

Conclusion

By contemplating Islamic teachings, Iranian laws and Plato's theory on punishment philosophy, the present paper has achieved the following results:

1. Islamic and Plato's Islamic punishment philosophies disagree on revenge. Plato believes that a criminal is ignorant and his responsibility is fully deprived and if someone commits a bad deed, they have no intention of doing so; while in Islamic criminal laws, intention is seen as a radical element in intentional crimes since a human is autonomous with full authority in selecting and intending an action.

Islamic Punishment Law, which follows Imamiyyah *Fiqh*, believes that the basis of revenge is a right for victim or avengers of blood and also a radical basis for crime punishment. Noteworthy, such revenge finds meaning only in intentional crimes.

2. Islam attempts to generate crime deterrence initially by its own teachings. Concerning crime commission, if Islam watches conditions in person and crime modes, it will change punishment to educative initiatives. In Islamic Punishment Law, it is observed that when a criminal has no conception on punishment philosophy and continues his criminal acts (such as habited criminals, criminals with mental diseases or children and adolescents), educative initiatives are taken. Besides, other criminals are subjected to attentive verdict issuance postponement and they should pass different training courses concerning ethical, religious, educative, sport and other issues. In the first degree, Plato believes in priority of training and education and reforming the thinking and opinion (in fact, he believes that training and dialectic are sufficient for a group of criminals) and if such trainings are not effective, one should recourse to decisive methods of punishment so that for a group of offenders, he believes that murder is the only proper punishment.
3. Forbearance and amnesty in Islam are seen as a big advantage in this divine religion that determines the status of kindness to other and forbearance and forgiveness as well as belief in Divinity satisfaction in doing the jobs. The existence of such an excellence concept in Islam indicates that it is never a religion of violence and revenge. Islam does not countermeasure against criminal seamlessly by crime commission against someone; rather it recommends forbearance and amnesty by considering the criminal's spiritual and physical conditions and the existence of grounds of his correction. In most cases, the impact of such amnesty is higher than criminal correction. In Iranian Criminal law, amnesty and forbearance issue is emphasized. In Plato's view, however, punishment is necessary under any circumstances.
4. Repentance in Islam is typically similar to Plato's punishment philosophy since it is said there that the purpose of punishment is to correct a criminal's soul and by punishment, a criminal's soul becomes better and one can say that it is the same psychotherapy achieved by repentance. However, it is obvious that repentance roots in Sharia aimed at attracting Divinity's gratification and divine kindness even converts bad things to good one. This is a point not seen in any other human and legal system.
5. Respecting criminal's traits: since all criminals are not the same in crime perpetration and violating the laws and do not have equal conditions,

their punishments will be different in accordance with their personalities. In Plato's philosophy of punishment, the punishment is determined based on the personality of the criminal and the punishments are different from person to person. According to the classification of the book of the president, there are five types of criminals, which are classified based on their psychological personality. Sophists, ambitious, money-loving, unrestrained, tyrannical. Each of them has a corresponding punishment according to their personality and the capacity of their soul and mind. However, Islam's attention to the characteristics of the criminal to determine the punishment is a multifaceted consideration and it looks at the criminal from the psychological, social, family point of view, as well as the conditions and circumstances of the crime. It is useful in determining the correct and effective punishment and as a result, it achieves the goals of the punishment.

6. In *Fiqh* and Iranian Criminal Law, there is a principle called proportion between crime and punishment by which there should be a proportion between the committed crime and the punishment so that it yields to the deterioration of the individual and the society. As the adopter of punishment, Divinity is just and aware of expedience and corruption. Thus, the criminal should be punished equally to the committed crime and this principle is the result of Divine's justice.

In Plato's punishment philosophy, punishments are determined by criminal's personality. In fact, greatness of crime is determined by perpetrator's personality and people with greater souls who commit bigger crime are entitled for lighter punishments due to their more readiness and capacity of their souls since they believe that such persons correct their soul easier by training and, vice versa, people with lower crimes are entitled for bigger punishments due to their further weakness and lower power and talent to reform their soul. This is a type of killing the weak people which is far from justice and fairness. As a result, more deficit character, more being victim by Plato's punishment system.

7. In Plato's punishment system, the only philosophy and purpose of punishment is to correct the criminal's soul and the victim's coolness has no status since Plato believes that no one commits a crime by his own will (in fact, criminal is decriminalized). As a result, revenge in Plato's punishment philosophy is void.

In Islamic punishment philosophy and Iranian Criminal law, however, criminal's retaliation and punishment is due to committing an intentional crime, which is not void and bad but is seen as a decisive right of the victim so that Holy Quran says: "There is life in retaliation

tion”. Penalty is a tool for revenge and satisfying the feeling of pain created in the victim naturally. Certainly, such a feeling of pain will be mitigated by the criminal’s detention and punishment and will reduce the feeling of being victimized and tyrannized to some extent.

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