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Development of Criminal Punishment in the Iranian Post Revolutionary Penal Code

1. INTRODUCTION

1.1 Background

Before the adoption of the modern penal code in 1925 and the establishment of modern criminal justice, there were at least two kinds of adjudication in Iran. First, the Sharia courts headed by the prominent Islamic scholars that were based on the Sharia laws; Hudud, Qisas (retaliation), Deyat (compensation, blood money) and Ta’zirat (discretionary punishments); second, Courts appointed by the central government or the provincial rulers and under the supervision of the government which heard the customary cases such as crimes against the government, causing disorder, refusing tax payments, contact with aliens and so on. In such courts the administration of justice was not based on given and specified regulations and the individual who had committed a crime was punished by the monarch or the local governor based on their own discretion; in most cases the sentences were harsh corporal punishment, long imprisonment, confiscation of properties and banishment from the hometown.

Upon the enactment of the Penal Code in 1925, crimes and punishments to some extent became systematic, inspired by the customary punishments of the European

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1 Sharia which literally means ‘the way to the source’ and ‘a path to faithfulness’, is a corpus of Islamic jurisprudence. Sharia has been reduced to legalistic formulae of a penal code in the minds of many, Muslims and non-Muslims alike.

2 A concept which literally means ‘limits’. In the jargon of Muslim jurists, (fuqaha) this term is inclusive of the punishment which is revealed and therefore is fixed and immutable.
penal codes, French and Belgium in particular. By the time the bill of Penal Code was presented to the Parliament, the Islamic scholars and prominent clergies were extremely worried about the future of Sharia courts and administration of punishments foreseen in the Sharia. In order to reduce their anxiety, the Ministry of Justice of the time with coordination of the Parliament guaranteed the continued functioning of the Sharia courts based on the Sharia law to administer the justice and revival punishments stipulated in the Sharia by adding an Article to the law. However, by the power and authority of the Ministry of Justice and through breaking the authority of high ranking clergies in Tehran and other cities, regarding the secular rule of the first Pahlavi (Reza Shah), the Sharia justice was practically diminished and its courts were gradually closed down. In fact, there remained no room for execution of such penalties as Hudud, retaliation and other Sharia punishments and Sharia courts were just a name void of any function in the penal code and by later amendments, especially the amendment of 1973, where the legal status of this kind of court was altogether abolished.

1.2. A brief overview of the post-revolutionary penal code legislation in Iran

Following the Islamic Revolution (1979), one of the most important priorities on the agenda of the prominent clergies and religious authorities who took over the political power in Iran was the replacement of the Shah’s penal code with the Islamic type. The reason for this development was that existing penal code originated in the laws based on values of western countries that are considered as contrary to the Sharia law. At that time, this understanding was prevalent because the majority of the high ranking officials of the new government were graduates of the Islamic seminaries and felt a kind of commitment and responsibility for the enforcement of the Sharia rules and its penal code in particular and considered any delay and hesitation in this respect as contrary to their religious obligation. Due to these reasons, the amendment of the penal code was high priority on the agenda of the Supreme Judicial Council and the Parliament and numerous drafts were prepared by these two establishments, the most important among them was the Bill for Islamic Punishments, Hudud, retaliation, blood money (Deyat) and punishments known as Tā’zirat. In the Parliament, because of the lengthy process of law-making, on one hand, and the need to expedite the enforcement of the Islamic penal code, on other hand, the approval and experimental enforcement of these rules were debated and it was decided that these bills after review and approval in the Parliament’s judicial committee, based on the Article 85 of the Constitution be enforced for an interim period of 5 years.

But in the course of application of the Islamic penal code, what drew the attention of the officials of the Islamic Republic and prominent clergies were primarily two issues: the first, the Hudud offences, which in the Islamic Sharia were considered as forbidden acts and were entitled to fixed punishments; acts such as the drinking of alcoholic beverages, adultery, sodomy and lesbianism (Musahiqa) which were