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REVIEW ARTICLE

DELINQUENCY CONNIVANCE IN CRIMES AGAINST VIRTUES

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ABSTRACT

Connivance is to chasing felons for goodness of society. Based on retributive policy, especially in reaction to crimes which are contrary to virtues of society, delinquency connivance has received remarkable attention especially in Islam. Like the holy verses in Quran in which you can explicitly find that probing into people's privacy and their crime is prohibited. Connivance based on this policy is practical. The reason in which you can find permitting to apply delinquency connivance is nothing but hiding some crimes which are contradictory to the virtue of society. To put it in a nutshell, probing into crimes in which you can find vice and contradictions to the virtues of society is highly prohibited, only if probing into heinous crime is permitted by people in charge you can find the aforementioned in 43 act of our criminal procedure.

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INTRODUCTION

Hiding crimes and preventing the revealing the evils originated from a certain view on the concepts, fundamentals and inputs of criminal law that shape the outlines of Islamic criminal law such as de-penalization based on hesitation in the efficiency of punishment which is highly paid attention in Islamic law on criminal justice as well as ethical aspects of criminal prosecutions and to respect public interests to which one can point out delinquency connivance. Present paper tries to answer this question: what are the most important requirements of delinquency connivance in crimes against virtue? It seems that they are preventing prostitution, aiding criminal social integration, avoiding criminal labels, persuading them to penitence, respecting the privacy and personal freedoms. Since penalty is not desired by lawmaker per se and it is used to curb the crime, it is recommended to avoid it in unnecessary and possible circumstances. Forbidding investigation in crimes against virtue stems from delinquency connivance in Islam. Such policy used in our domestic criminal law is based on the emphasis by lawmaker on prohibition of prostitution diffusion which is also emphasized in Holy Quran (Noor: 9). Special attention in Islamic laws on criminal actions and reactions has caused that in Islamic retributive policies, penalized reactions are not seen as the only way or a even proper and efficient was to fight against felony. Hence, different and wide forms are anticipated in escaping the execution of retributive reactions In present paper, we study such concepts as (a) delinquency connivance, (b) de-penalization, (c) crimes against virtue;

history; basics including (a) divine mercy, (b) the priority of non-penal guidelines, (c) decreasing crime statistics by keeping human dignity; the aims of delinquency connivance in crimes against virtues: (a) preventing the diffusion and tainting crimes in the society, (b) avoiding excessive usage of penalties, (c) persuading to penitence; delinquency connivance audiences concerning crimes against virtues: (a) judicial and administrative officials, (b) public people, (c) the felons of crimes against virtue; and investigations on crimes against virtues: (a) explicit crimes against virtues, (b) latent crimes against virtues.

Article 1: concepts

(a) Delinquency connivance concept

Delinquency connivance is prosecution negligence. Also, delinquency connivance means to ignore a crime. Crime means "cut" and also "aggression" (Mirkhalili, 2012, p. 2). In verses and narrations, "hiding" is a concept close to delinquency connivance which means to cover. There are other terms that their differences can be explained through studying them in Holy Quran (Mostafavi, 1981, p. 49). Forgiveness means to destroy (EbnManzoor, 2009, p. 294). It also means "cover" in verses and this meaning is closer to delinquency connivance. "If you display good or hide it, or pardon an evil, surely, Allah is the pardoner, the powerful" (Nesa: 149). Some believe that if forgiveness is accompanied with ignorance it means delinquency connivance such as verse (Nesa: 14 & 199, AL-Omran, 159; Maede, 13v & 15; Shora, 25, 30, 34). This verse: "but because they broke their covenant, we cursed them

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and hardened their hearts” (Maedeh: 13) connivance is also emphasized. Forgiveness is highly paid attention in Islamic narrations and it enjoys a special status as the Prophet (PBUH) says that forgiveness yields to self – esteem (Rayshahri, 1981, p. 20310). According to criminologists, delinquency connivance is a type of diversion with general and particular abstract relations since they believe that diversion includes the methods to bring out an accused from penal judicial procedure which may be happen in any step of procedure (Najafi& beige, 1998, p. 141). Imam Ali (PBUH) has emphasized on keeping the honor of people and believes the highest rank of generosity is to keep the honor of people (Majlesi, 1980, p. 75). According to Him, crime statistics would decrease if people’s dignity is respected and someone with high and excellence esteem would not humiliate it with sins (TamimiAmadi, 1987, p. 677).

(b) De-penalization concept

It means any tendency to resort non-penalized initiatives and not insisting on punishment. Diversion is a sort of de-penalization in its general concept and it means to divert procedure from official retributive process (Mark Ansel, 1996, p. 105). In sexual crimes, de-penalization means to stop punishment of an act even though it seems necessary at present (ibid, p. 104). Delinquency connivance differs radically from de-penalization. In de-penalization and in contrary to delinquency connivance description, judicial procedure is conducted but it is not applied due to individual or social interests after his/her conviction. Among de-penalization implications, one can refer to mitigate penalty due to penitence, cooperation with judicial and security authorities in crime against security in order to explore the crime and criminals, suspension of punishment, provisional freedom, etc.

(c) Crimes against virtues concept

It means an act which is in contradictory to good traits, abstemiousness, chastity, abstinence, frenulum of the esteem and good morals. Crimes against virtues are particularly important due to aggression to material and spiritual life of humans. In legal terms, any act against virtues (any sexual affair with legal partner) is not allowed (Langroudi, 2005, p. 69). In defining crimes against virtues, one can say that these are crimes through illegitimate affairs which are immoral based on feelings and customs of the society or an act which is prohibited by religion and is in contrary to social general morals and chastity. An implication of crimes against virtues is illegitimate affair or showing it publicly (Irani, Arbati, 2007, p. 280). In terms of sexual affairs, the definition of an act against virtue means that it is immoral based on the customs and feelings of the society while if it is committed with the aim of starting and attacking someone for sexual intercourse, then it is rape and violation rather than an act contradictory to virtue. Acts against virtues include types of incest, homosexuality such as pederasty, inter-femoral, tribalism, and lesbianism as well acts which need punishment like cohabitation, kissing and illicit acts (Langroudi, 2005, p. 590). According to Article 43 of retributive procedure the related paragraphs in General Courts, one can define investigation on crimes against virtue as any legal act to explore a crime and to prove or assign it to person(s). This is similar to definition provided by lawyers on preliminary investigation (Akhoondi, 2005, p. 14). In fact, the

emphasis of this paragraph is on forbidding any attempt to explore or determine a crime. Therefore, prosecution can be also subjected to it. This opinion is enforced by the philosophy of such paragraph. In other words, any illegitimate sexual behavior that it highest level is adultery can be seen as a crime against virtue.

Article 2: history

Islamic retributive policy, the history of delinquency connivance backs to the time of the administration by Prophet Mohammad (PBUH) and Imam Ali (PBUH). In Islam, the initial principle is the necessity prosecution. It means that attorney general is obliged to prosecute the offender once he gets aware of an offence. Not insisting on determination especially in those punishments that are generally Divinity Rights and the domination of rule have encouraged many jurisprudents to respect delinquency connivance overtime (Sadoogh, 2000, p. 74). In his book *Traditions*, ShahidSani confirms Heli’s opinion and asserts that one of the reasons of no punishment is the existence suspicion (Jabei Al-Ameli, 1990, p. 359). During Islamic administration in Iran, crimes against virtue were addressed more precisely and more sensitively and punishments like or were decided on adultery, pederasty and lesbianism. Furthermore, intercourse with animals was considered as a crime and punishable (Validi, 2001, p. 63). In West, since the emergence of investigative school in 19th and then social defense school led by Philipo Gramatica in mid-20th, the concerns on reintegration of offenders to the society instead of punishment and justice execution were raised. Social defense school planned to create a different regime of prohibitions and limitations by which the grounds for criminals’ reintegration is not destroyed by a criminal label. Led by Mark Ansel, this school emphasize on derivation policy, resolving the disputes with retributive aspects through non-retributive channels especially arbitration, mediation and patriarchy (Mark Ansel, 1996, p. 103).

Article 3: the basics of delinquency connivance in crimes against virtue

It is vital to know that in Islamic instructions, what delinquency connivance is based and why it should be respected? It means that we should know that which Islamic instruction especially Holy Quran shape the foundation of stopping prosecution and delinquency connivance. In crimes against virtue, the aspect of Divine rights often dominates over its private aspect. To the same reason, in Islamic retributive system, not only the determination of such crimes is not emphasized but also it is tried not to prove the crime and retain the opportunity for remedy and penitence (Ghiasi, 2006, p. 134).

(a) **Divine mercy:** in Islam, retributive policy is even a manifestation of divine mercy since the aim of the religion is to punish and curb criminals in order to direct human life toward prosperity and perfection. Therefore, such Holy Quran verses on punishment are a manifestation of divine mercy: “we have sent down to you the book making everything clear, as guidance, and mercy, and glad tidings to those who submit.” (Nahl: 89). Divine mercy attempts to direct people toward prosperity, perfection and humanity

through any possible and legitimate way and to keep them away from inferiority, evils and offences. Negligence and ignorance toward individuals' offences are seen as the wellness and kindness by the Prophet. Therefore, divine mercy and not considering punishment as an aim is one of the most important basics of delinquency connivance (Kashani, 1990, p. 131). This approach is in favor of victims since efforts to determine such crimes need their repeated attendance in police and judicial organizations as well as spiritual pains. Even, it may lead into secondary offending due to improper accountability by people and organs like police or judicial authorities which is more painful than the first event (RayjianAsli, 2005, p. 51).

(b) The priority of non-retributive guidelines: the Divinity has severally expressed its reluctance to punishment and has recommended forgiveness. In Holy Quran, Divinity promises its forgiveness to keep them away from devils: *"if you display good or hide it, or pardon an evil, surely, Allah is the pardoner, the powerful."* (Nesa: 149). After expressing the verdicts of retaliation, Divinity asserts: *"but whosoever forgoes it as a freewill offering, it will be expiation for him"* (Maedeh: 45). In this regard, one can also refer to Chapter Baqara (187). The Prophet asserts: *"remove punishments as you can. Release a Muslim if you could find a solution for him"* (Shafei, 1990, p. 365). As seen in narrations and verses and pointed out by thinkers, in Islamic retributive system, one cannot stop or change divine punishment out of the framework of principles and norms simply by such excuses (Noor: 2; Maedeh: 44) (Kelini, 1986, p. 241). In Islamic retributive policy, the lawmaker is free to set any reaction or grant any authority to judicial officials with regard to preventive punishments except than lashing and retaliation as fixed penalties. The lawmaker has provided the liberty to judges by such tools as provisional freedom, punishment suspension, discounting or intensifying the punishment, to determine the minimum and maximum penalties, converting one punishment to another from and so on.

(c) Decreasing crime statistics by respecting human dignity and generosity: in Islamic view, human enjoys dignity inherently otherwise he/she falls down in perdition intentionally. Divinity has considered generosity for all human beings: *"we have honored the children of Adam and carried them on both land and sea."* (Isra: 70). Imam Sadiq (PBUH) states that human dignity is higher than Kaaba. Undoubtedly, by committing a crime, the criminal has initially broken the dignity of Divine verdicts and religious law and then he/she has committed self – oppression. Divinity has no need to follow the laws and verses on punishment. Respecting Divine dignity would lead into human growth and excellence and disrespecting it would cause personal damage and fall down. The goal of retributive policy is to protect a criminal from falling down in sin and offence through punishment and aware and to continue his/her life, splendor, growth and dynamism as healthy member of the society after being cleaned up of any corruption. To the same reason, respecting people's honor and keeping them away from criminal label which is perceived as a criminalizing factor is highly emphasized in Islamic

retributive policy (Majlesi, 1980, p. 225 & Makarem, 1986, p. 110).

Article 4: the aims of delinquency connivance in crimes against virtue

Concerning delinquency connivance, Islamic retributive policy pursues several aims of which the most important ones are:

- (a) Preventing dissemination and hiding crimes in the society:** one of the aims of delinquency connivance is to prevent their dissemination and diffusion in the society. Some thinkers believe that in certain cases, the criminal should not be blamed on his/her action; rather, he/she should be neglected to prevent insurgence (Tossi, 1977, p. 224). *"Those who love that indecency should be broadcast about those who believe theirs is a painful punishment in this world and in the everlasting life"* (Makarem, 2008, p. 19). In this verse, intensive punishment against indecency in this world is emphasized and indecency means adultery and similar crimes (Tabatabaei, 2004, p. 93).
- (b) Avoiding excessive punishment:** the executors of retributive policy should not be penalty – oriented and they should not look for entering a lot of people into the population of offenders; rather, they should minimize raising charges in judicial authorities through delinquency connivance (Mirkhalili, 2012, p. 6). In Holy Quran, forgiveness is highly recommended: *"but because they broke their covenant, we cursed them and hardened their hearts. They changed the words from their places and have forgotten a portion of what they were reminded. Except for a few, you will always find treachery from them, yet pardon them, and forgive; indeed Allah loves the good doers"* (Makarem, 2008, p. 13), *"it was by that mercy of Allah that you (Prophet Muhammad) dealt so leniently with them. Had you been harsh and hardhearted, they would have surely deserted you. Therefore, pardon them and ask forgiveness for them. Take counsel with them in the matter and when you are resolved, put your trust in Allah. Allah loves those who trust"* (Makarem, 2008, p. 159); *"many of the people of the book wish they might turn you back as unbelievers after you have believed, in envy of their souls, after the truth has been clarified to them. So pardon and forgive until Allah brings his command. Allah is powerful over everything"* (Makarem, 2008, p. 109).

The aim of the lawmaker is to control illegal and illegitimate behaviors and actions by some people to satisfy their sexual tendencies while such tendency should be toward guaranteeing the survival of family, respecting Islamic ethical principles and executing retributive justice against criminals and resorting to judicial security in the society. Laws on crimes against virtue follow good ethics which aim at preventing dishonor, defame, disrespect and protecting families and no one can refuse them. It means that it satisfies its sexual tendencies out of admired relevant boundaries in our Islamic society. In such conditions, the lawmaker adopts retributive rules on controlling sexual behaviors contrary to public ethics and culture in order to protect public virtue, the prosperity of people and discipline

in joint life relations (Validi, 2001, p. 61). Delinquency connivance policy plans to prevent statistical development of people who lose their social prestige due to criminal labels and think that all their beyond bridges are destroyed. Therefore, they accept criminal behavior as natural and ordinary. In addition to mental and crime making effects on criminals mentioned before, criminality label yields to other damaging effects such as losing the job, family scattering and disputes which expose the society to crisis and delinquency flood. Therefore, it should be avoided in some cases. As possible, positive mentality should be fostered and prevent negative thoughts. Imam Ali likens life as a full vessel that two third of its charity and one third is negligence (Sadoogh, 2000, p. 384).

(c) Encouraging to penitence and repentance: one of the aims of delinquency connivance is to lead those ones who have committed crimes toward non-penalty methods of remedy like penitence. Furthermore, the evilness of the crime and sin will not be broken in the society. The way of repentance and self – revive should be open. The Divinity invites people to sincere penitence namely non-returnable penitence. In Hud Chapter (52), the Divinity emphasizes on not returning to criminality after recommending to penitence and repentance. This verse is on forbidding detection in people's private life. However, it is not in contrary to the necessity of detection and fighting against plots and actions against public security.

Article 5: the audiences of delinquency connivance in crimes against virtue

One of the main important discussions on delinquency connivance is about its audiences because those crimes against virtue mean such crimes as adultery, pederasty, lesbianism, illegitimate affair and so on that before approving this law, judges or judicial authorities were always criticized due to their investigation on the offenders and was in contrary to the aim of Islamic retributive law to hide them in order to prevent dissemination of indecency. By the law of establishing public and revolutionary courts in 2002 and assigning the main task of preliminary investigations to inspector and prosecutor, mentioned prohibition in article 43 of retributive procedure recipe was highly mitigated and the prohibition of investigation decreased from crimes against virtue to certain crimes like adultery and pederasty (Khaleghi, 2010, p. 157). It seems that delinquency connivance is only true for judicial and administrative officials while the reality is that delinquency connivance consists of three types of audiences:

- (a) Judicial and administrative officials:** in many verses pointed out on delinquency connivance to which the Prophet was the audience, forgiveness is recommended (Makarem, 2008, p.13). Imam Ali emphasized that both Muslims and non-Muslims commit mistakes in the Islamic society which should be subjected to delinquency connivance by the governance. However, such emphasis on the tasks of governance (attorney) in prosecuting the violators of public laws is not in contrary to the necessity of prosecution in certain conditions and they supplement each other.
- (b) Public people:** limiting the report of trivial crimes and forgiveness by private complainants and criminal

policymaking to encourage and persuade this trend can develop the scope of delinquency connivance and make it easier for the executors of retributive justice in implementing such policy. In Holy Quran, the Divinity has promised its kindness and mercy to those ones who forgive others' sins (Makarem, 2008, p. 22). In current laws, judicial officials are not permitted to neglect and ignore prosecution after crime discovery. Granting authorities to judicial officials as judges is in contrary to the mentioned principle (Sadeqi and Emami, 1998, p. 58). In answering this deficiency, one should say that there is no general principle or norm otherwise to neglect prosecution due to the expedencies of above mentioned authorities.

(c) Crimes against virtue offenders: any offender cannot be subjected to delinquency connivance. Offenders with repeated criminal backgrounds have exposed their courage on committing crimes. Therefore, delinquency connivance is not effective for them even though they have committed light crimes and this is not recommended by Islamic retributive policy. Imam Ali (PBUH) states that the offender maybe from respected classes of the society without any criminal background not from influential classes and white collars as interpreted by criminologists. *"Some of the Bedouin Arabs around you are hypocrites, and so are some of the people of medina who are well versed in hypocrisy. You do not know them, but we do. Twice we will punish them then they shall return to a mighty punishment"* (Al-Tawba: 101) (Kashani, 1990, p. 321).

Article 6: investigations in crimes against virtue

It is also called the necessary principle of prosecution. Prosecutor is required to make necessary investigation of explored crime and chase the offenders. In Hajarat Chapter in Holy Quran, finding and investigating other people's deficiencies are forbidden and as mentioned, the same command is issued by the Prophet. In mentioned exceptions by jurisprudents, any investigation is personal and sexual issues are forbidden. The rule on forbidding any attempt to prove crimes against virtue when the crime is obvious or there is a private complainant is decisive. In fact, the objectivity of the crime or losses to complainant is so important that crime commission cannot be ignored especially when it has a direct victim; any attempt to disprove the crime or to acquit the offender is a kind of oppression against victim (Sadeqi, 2008, p. 67). In some judicial statements, such oppression against victim is neglected due to the rule of forbidding any investigation on affairs against virtue.

(a) Explicit crimes against virtue: article 21 of procedure manual for Revolutionary General Courts has clarified the implications of crime in retributive affairs and the real explicit crime is expounded in paragraph 1 of the same article. It seems that according to article 43 of the same law, the explicitly of a crime means that a crime is tangible for judicial officials and, in other words, it is observable. However, all mentioned items in article 21 of this law are not investigable like when home owner asks immediately the entrance of officers when he/she aware crime commission. In turn, when the crime is committed so

explicitly that officers can observe it or offender(s) diffuse it so that the judge is not faced with any legal limitations in treating them. Like France, in Iranian retributive law, not only wider authorities are assumed for judicial officers in explicit crimes, but also they are required to take all necessary measures to do prevent destroying crime signs and escaping before the intervention of prosecutor and aware the chasing authority (attorney) (Ashoory, 2009, p. 142).

(b) Latent crimes against virtue: crime is an act that damages public order, is forbidden by law and criminal execution guarantees are determined for it. Therefore any crime has a public aspect and if not, it is not considered as legitimate. Some crimes may damage personal interests or certain people in addition to public order. So they have also a private aspect so that victims can prosecute and punish offenders. According to principle of legality or necessity of prosecution, the court should chase the felony one it is aware of the crime (Khaleghi, 2010, p. 96).

Although crimes against virtue can be forgiven, in facing with retributive system, existence or nonexistence of the plaintiff play a vital role. However, the ambiguity is that "who is private complainant in such crimes? To determine beneficiaries to submit a complaint, the concept of private complainant should be analyzed. According to article 9 of procedures by general and revolutionary courts, in criminal affairs, the plaintiff is someone damaged by the crime or has found the right of retaliation and demands it. But such definition does not resolve the problem since in crimes against virtue, the losses are not material and many people may face with spiritual and prestigious damages. According to definitions by some lawyers, complainant is someone to whom the crime is committed directly (Khaleghi, 2010, p. 43). In such cases, the existence of a private complainant is imaginable even if the act is evil. Therefore, if a man complains against his wife for her affair with another man, there is no permit for chasing and investigation. One cannot accept this belief. According to article 9 of procedures by general and revolutionary courts, in criminal affairs, the private plaintiff is someone damaged by the crime.

Conclusion

1. The lack of a legal and religious definition on an act against virtue which can be referred to court for its determination and its implications are defined generally rather than particularly.
2. The limitation of acts against virtue scope and implication in common law compared to the religion since they are restricted to sexual crimes like adultery, pederasty and lesbianism that are correct in terms of article 2 of Islamic Penalty Law and the legality of crime and punishment.
3. In contrary to article 43 of retributive law in which the judges should investigate a case with private plaintiff, these crimes should be investigated by public prosecutor's office due to the high volume of cases.

Consequently, according to clear commands by Holy Quran, tradition and narrations by the Prophet and Imams, the title of

present paper namely "delinquency connivance in crimes against virtue" is a principle. However, there is no definition of act against virtue in the religion or law and only the implications are expressed. Therefore, the scope and implications of act against virtue in common law and law is more limited than religion.

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