

## **A Comparative Study of Some Crimes in Islamic Religion and the Rules of Zoroastrianism in Iran**

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**Abstract:** So, it seems along with the historical evolution of criminal justice institutions in the world that has continued until the late eighteenth century, we should study the situation in Iran. It can be said which coincides with the historical evolution of criminal justice institutions in the universe that lasted until the late eighteenth century should see in our country (Iran) what is passed. It can be distinguished that the Iranian criminal law, according to different foundations to the three times: The first period start since ancient times and continue till the Arab attack to the Iran and promotion of Islamic law; the second period begins with the rise of Islam and the Constitutional Revolution seems to the change. The second period start with the rise of Islam and the shift with the Constitutional Revolution; The third period start especially after the revolution of 1982 and 11 February 1979 and caused many changes to replace the legal issues in the criminal affairs.

**Key words:** Islam, the Zoroastrian, criminal law, law, Iran

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### **INTRODUCTION**

So, it seems along with the historical evolution of criminal justice institutions in the world that has continued until the late 18th century, we should study the situation in Iran. It can be said which coincides with the historical evolution of criminal justice institutions in the universe that lasted until the late eighteenth century should see in our country (Iran) what is passed; we respect to and the great respect the beliefs and ideas of all scholars of law, experts and scholars and professors of law, according to the study can be concluded that before the advent of Islam in the Ancient Testament, is applied highly violent and ever punishments for multiple offenses but after the rise of Islam and Iranian desire to the sacred religion of Islam.

**Evolution of criminal law in Iran:** Without any doubt, to understand the features and real character each tribe or nation, inevitably have referred to the history the rights of the nation because in each period, Rules and regulations for life and legal relations of the mass of the people, has a special place in the set of governing rules on their social life. Hence, the presence of correct perspective of criminal law ethnicities and nations is not possible without any real understanding of the situation, location and characteristics of their social life, So, the history that has been written carelessly to the rules and regulations on the

legal relations of nations is not nothing more than a set of abstract concepts; the principles and rules of the judicial relations of each nation can be extracted in terms of the history of a nation in this article review the history of criminal law and its evolution in Iran in the various periods.

**The penal system in the ancient Iran of era:** The Code of Criminal Procedure of each society as part of the legal system of governing it is generally as the diagram of social status and the values of society; these provisions, depends also on the amount of scientific, cultural, economic and moral advancement of the society (Goodstein, 2006). Hence, by examining the history of each society, can be understood to the legal coordinates and the method of their interference in the resolve the issues and criminal matters; In relation to code of Criminal Procedure in the ancient Iran, there is no the cogent and reliable evidence. Nevertheless, according to artifacts and remained text of this era can be extracted the feature of the penal code in the ancient era.

**The punishment in the course of ancient Persia:** By studying in the historical scattered texts and writings, can find that generally in ancient Iran, had been common the severe corporal punishments such as: the execution, blinding, imprisonment, flogging, especially the punishment some of the crimes that were conducted

against the king and the people around him or against the government such as espionage and treason to country includes the execution with severe physical torture such as cutting off the nose and ears and tongue; before the execution or mutilation; the implementation of crucify, premature burial and so it has been very difficult the punishment committing crimes against other persons, such as the punishment committing crimes against other persons includes murder, assault injury, life retribution; now , for more information, first, we express the types of the punishment and its objectives.

**The type of punishment:** Generally the most common types of corporal punishment in the era include. The execution: the capital punishment has carried out while the occurrence of the crime against life and property and relatives of the king and conspiracy and rebellion and treason as hanging or separating the head from the body will Durant in his book in this regard, writes: ((In the course of Achaemenid, the law had prohibited the killing of individuals in small crime against the king and treason and rape and sodomy and cremation of the dead and the violation of the sanctity and approaching with the handmaidens of King or Sit on the his throne or impoliteness to the royal family have the death penalty; In such cases, the guilty was forced to drink poison or crucify or hanged; About the punishment of rebellion against the king in the paragraph 14 of the second column of Bisotun inscription in the near Kermanshah, has been expressed ((the person that named (Chitar Takhm that had revolt, defined him as the dynasty of Hvakhshathra and King of the Sagartians; The Median and Pars armies, were fighting with him and to order of Ahura Mazda dominate him and his army and him has been arrested and to the orders of the king, cut off ears and nose and were blinding his an eye and then some time has been chained In front of the palace of the king to all the people see him and then has beheaded and about the penalties of ordinary crimes such as assaults and killings of persons also has expressed in the inscription Naqsh-e Rostam ((Darius says, anyone harm, according to the harm that has mad, we punishment and never happened that someone has been hurt, not punishment)).

**Blind:** The blind have been another corporal punishment during the Sassanid this punishment was implemented about princes who opposed and rebelled the punishment was carried out by inculcate the melted rods in the eyes of condemned or pouring molten oil in the eye.

**Imprisonment in the dungeon:** Undoubtedly, detention of people as punishment has been conventional in the

ancient times and there is no reliable evidence in this regard, but according to the book Iran has come in time of Sassanian, dumped the offenders in the unsanitary places and black holes that are usually animals like mice were left there and closed the detainee's hands and feet so they cannot prevent to repel attack the animals such imprisonment was conducted to eliminate those people that their existence was dangerous for the country this imprisonment has been referred as "oblivion castle" and no nobody has not right to express names of prisoners and its place.

**Scourge:** In the period of Achaemenid and Sassanid for petty crimes, the punishment of scourge was common. In the book of Will Durant has come: ((Everyone was poisoned shepherd dog, he had two hundred lashes and the punishment of those who killed another as a fault and he had the ninety lashes; meanwhile, to safeguard the rights of judges in this period, often instead of flogging, has taken fines and any lashes exchange with the equivalent of six rupees; in the period of Sassanid, the people who have refused to do the simple contractual engagement to punish sixty the scourge and the punishment of crime which leads to unconscious victim was a hundred and eighty scourge and was beaten again if he commits a crime was convicted to four hundred lashes.

**Chain:** In ancient times, chain of prisoners and thieves who were caught while committing a crime to prevent his escape, but was considered kind of punishment and the number of chains were different in terms of crime in the violent crimes, the number of chains was high and in minor offenses, the number of chains was low and it was different in the every crime with the another crime, however, chains covered a part organs of the body of the commit crime.

**The purpose of punishment:** According to a variety of common punishments in ancient times and the method of their implementation, it seems that the main purpose of such penalties in the first place was to maintain order and then, create fear and panic because, the severity of their punishments and combined with the torture and persecution in the examples such as peeling offender's and fill it with chaff put publicly and blind the offenders eye, well show to follow the twin mentioned purpose by presenters.

## MATERIALS AND METHODS

**The litigation method and the procedure smoking gun in Ancient Iran:** Although, it appears from the study of

historical works about the ancient Iran era, cannot be determined the specific system in criminal proceedings at this time, according to what is common in today's penal systems, but can be considered as a certain style and means of investigation evidence in the course of the following:

- Litigation method
- Evidence

**Litigation method:** According to the historical inscription, Achaemenid kings, was granted judicial proceedings to the specific individuals called "royal judges" and for each city were determined the magistrates to deal with complaints of people, however at all times, people would refer to the king and ask justice from him as well, one of the tasks of the provincial governor, was the judicial supervision, namely the governor could intervene and comment at all stages of the judicial proceedings; The king was the country's highest judicial authority and had the right to intervene and decide on any subject. Dealing with offenses that against the security of the country and the monarch was carried out in all stages under the king and to do some of the kings at the reign of his headquarters, formed the court entitled "the court of Justice" and with the specific membership and all of them were dealing with two lawsuits; As regards infidelity of ((Aaron tas)) the Younger Cyrus, formed the Consultative Parliament with seven of his first class men and after that, "Aaron tas" summoned and confiscated and was carried out his trial with the Consultative Committee and the Consultative Parliament later condemned him to death; furthermore in ancient Iran, the pardon of the convicts and discount guilty, has been the right of King (Hinchcliffe, 1968).

**Means of evidence:** Despite, the fact that in the ancient Iran, there was no the regular and special criminal proceedings method, but due to the establishment of Zoroastrianism that in the era of Sassanid kings, was Iranian official religion, some religious methods were used in the addressing the crimes; Zoroastrians, worship the alone God and they knew Ahura Mazda as the origin of good deeds and they knew devil as the origin of the bad things; Zoroaster was also considered great value to do good deeds and truth; therefore, the use of "oath" was common to prove the claim or innocence as well as the acquiescence of accused of carrying out the difficult, dangerous and cumbersome tests as ((ordalie)) was common in order to prove innocence.

**Oath of office:** According to the book of ancient heritage has come, Darius has said, who accused another must take the oath to prove their claim and apparently in Iran, the people swear to the Ahura Mazda.

**Ordalie:** It was an ancient judicial practice by which the guilt or innocence of the accused was determined by subjecting them to an unpleasant, usually dangerous experience. Classically, the test was one of life or death and the proof of innocence was survival. In some cases, the accused was considered innocent if they escaped injury or if their injuries healed.

## RESULTS AND DISCUSSION

**Iranian penal system since the establishment of Islam as a constitutional:** After the extinction of the Sassanid dynasty and the establishment of Islam to Iranian Constitutional Revolution about thirteen centuries, has been ruling Iranian Constitutional to Revolution, about thirteen centuries, has been ruling the principles of Islamic law on the judicial relationships of the people, the influence of Islamic law in the Iran's penal system in the relatively long period is clear that there is no need to explain; in this period, the main source of our country's legal system was Qur'an and Sunnah and other reliable sources of Islamic law; The provisions in the Quran and the codified legal traditions ,the famous collections Kutub al-Sittah, kafi, Al-Istibsar, Tahdhib al-Ahkam, Man la yahduruhu al-Faqih, Jame' Abbasi has been the main basis for the settlement of claims and judgments in criminal issues.

**Terms of the Iranian penal system of the period of the establishment of Islam to constitutional:** The history of criminal law shows with the spread of Islam and the establishment of the Islamic penal system in our country (After the fall of the Sassanid dynasty) have been new developments in the field of the principles of the Iranian penal system; the principles which in those days was not only unprecedented in the criminal justice systems of other European countries but in the current system importance of principles and rules of law remain (Tabari, 1982). By studying of the approved collection of laws at this period, can be derived principles of crime and punishment and methods and ways to prove the criminal proceedings during the establishment of the Islamic religion and the Constitutional Revolution as follows.

**The principle of legality of penalties:** Overall in the Islamic legal system, the execution of any task that is directly owned to act or leave it Such as governing regulations to the hudud and qisas and so on, is subject to the official quit or do it by legislation.

**The principle of lack of retroactivity of criminal laws:** Whenever to a special decree or law, commit actions has been banned and has provided punishment for them, the

criminal law can not be enforced in respect of acts that took place before the enactment of this law, adhere to the principle that has known to the principle of “lack of retroactivity of criminal law has accepted in all criminal systems of the world, while in the Islamic penal system about this rule can not be seen a special text but its purport can be extracted reference from the verdict some Quranic verses .

**The classification of crimes in terms of type of crime and Local territory of penal code:** In the Islamic penal system, crime can be divided into the ((God’s right and Human rights in terms of subject of the infringement and according to the famous quote, Hudud is the God’s right Unless the Offence of Qazf (Enforcement Of Hadd) that it will come it’s description; Qisas system of punishment is prescribed in the Quran and Hadiths to any case of unnatural death (murder, manslaughter), bodily injury or aggravated assault suffered by a Muslim are human rights. The use of this classification is issue that in the field of Human rights, prosecution and punishment of offenders is subject to demand for rightful owner or his lawful deputy and by his forgiving will stop the criminal prosecution or enforcement of a judgment but about God’s right because penalties have been established in order to maintain public order and ensure the security and welfare of individuals; So prosecution of crime and criminal penalties, is not only based on the request of the rightful owner or his legal deputy and by his forgiving will be ruled out the punishment of offenders (Spalek, 2013).

**The principle of moral responsibility of offenders:** The purpose of the moral responsibility is issue that the committee of the crime must have the physical and mental qualification and ability and according to the intent and the authority and the knowledge of the wrongfulness of work, has been committed a crime until be considered him as responsible for the undesirable effects of the action; so, the realization of moral responsibility of the offender was based on conditions that in the legal system of Islam is named (The situation of public duty). These conditions are maturity, wisdom, the will and authority and knowledge of the sanctity of act; generally, despite these conditions, leads to create the general rule of moral responsibility, that is the basis for imposition of punishment on committed the crime (Gibb, 1947).

**Types of Punishment and mitigating and aggravating circumstances:** In the Islamic period, the punishments can be divided into four parts Hudud, Retaliation (qisas), Diya and Discretionary (Tazir) and after the Islamic Revolution is the same.

**Hudud:** Hudud is an Islamic concept punishments which under Islamic law (Shariah) are mandated and fixed by God. The Sharia divided offenses into those against God and those against man. Crimes against God violated His Hudud or “boundaries”. These punishments were specified by the Quran and in some instances by the Sunnah They are namely for adultery, fornication, accusing someone of illicit sex but failing to present four male Muslim eyewitnesses, apostasy, consuming intoxicants, outrage (e.g., rebellion against the lawful Caliph, other forms of mischief against the Muslim state or highway robbery), robbery and theft (Keddie, 1983).

**Retaliation (qisas):** Qias is an Islamic term meaning “retaliation in kind” or revenge eye for an eye”, “nemesis” or retributive justice. It is a category of crimes in Islamic jurisprudence where Sharia allows equal retaliation as the punishment. Qisas principle is available against the accused, to the victim or victim's heirs, when a Muslim is murdered, suffers bodily injury or suffers property damage.<sup>[3]</sup> In the case of murder, Qisas means the right of a murder victim's nearest relative or Wali (legal guardian) to if the court approves, take the life of the killer.

**Diya (Blood-money):** Diyah, in Islam, the traditional compensation due for the shedding of blood. In pre-Islamic times, the compensation required for taking a life was 10 she-camels. The figure was increased to 100 in the area where Islâm originated and this regulation was subsequently endorsed by Muhammad. Blood-money, sometimes blood-wit, paid as a compensation for murder, wounds, etc. (caused intentionally or unintentionally) to the victim or next of kin.

In cases that involve premeditated murder, the blood-wit is payable only if the victim’s awliya’ (next of kin) so agree. Otherwise, it is life for life. Obviously, just as they can forgive the murderer, they can forgive the diya also. And, where there is no inheritor of a deceased, the blood-money is payable to the State Treasury. At no time will the offender himself get a share in the diya.

**Discretionary (Tazir):** In Islamic Law, tazir refers to punishment for offenses at the discretion of the judge (Qadi) or ruler of the state. It is one of three major types of punishments or sanctions under the Shari Islamic law hadd, qisas and tazir. The punishments for the hudud offenses are fixed by the Qur’an or Hadith (i.e., “defined by God”) qisas allow equal retaliation in cases such as murder or injury and however ta’zir refers to punishments applied to the other offenses for which no punishment is specified in the Qur’an or the Hadith.

**Mitigating and aggravating factors:** If a judge or jury finds a defendant guilty at the end of a criminal trial, the court must determine the defendant's punishment. State and federal criminal statutes often set maximum penalties based on the offense classification, with felonies having the most serious possible punishments. Judges have some discretion, with regard to sentencing and a sentencing hearing allows both prosecutors and defendants the chance to present evidence for the court to consider (Amin, 1985).

**Aggravating factors:** Prosecutors can offer evidence of aggravating factors that would merit a harsh sentence during trial. Criminal statutes often identify specific factors that should result in harsher punishments. A common aggravating factor is a prior record of similar convictions. Other aggravating factors typically relate to the circumstances of the offense itself, such as the use of a weapon or the severity of the injuries suffered by a victim. With the exception of prior convictions, a court may not use aggravating factors to impose a harsher sentence than usual unless the jury found those factors to be true beyond a reasonable doubt.

**Mitigating factors:** The defense may put on evidence of mitigating factors that would support leniency in sentencing. Criminal statutes devote far less attention to factors that might mitigate a defendant's punishment, but courts have held that evidence relating to a defendant's character may be introduced provided that it is relevant to the sentencing process.

#### **The method of evidence**

**Special system of criminal procedure:** In the Islamic penal system, the legislator to address the crimes and punish offenders, had not only focused on the evidence the criminal statutes of Islam as the foundation of the rules of criminal law, but was established the principles and specific rules to prove the crime, the prosecution of offenders, issue a warrant and the administration of criminal justice about convicts, that it can be named adversarial system. In the penal justice system, there are not organizations called the public prosecutor. Adversary system is a legal system used in the common law countries where two advocates represent their parties' positions before an impartial person or group of people, usually a jury or judge, who attempt to determine the truth of the case. It is in contrast to the inquisitorial system used in some civil law systems (i.e., those deriving from Roman law or the Napoleonic code) where a judge or group of judges investigates the case. As an accused is not compelled to give evidence in a criminal adversarial

proceeding, they may not be questioned by a prosecutor or judge unless they choose to do so. However, should they decide to testify, they are subject to cross-examination and could be found guilty of perjury. As the election to maintain an accused person's silence prevents any examination or cross-examination of that person's position, it follows that the decision of counsel as to what evidence will be called is a crucial tactic in any case in the adversarial system and hence it might be said that it is a lawyer's manipulation of the truth. Certainly, it requires the skills of counsel on both sides to be fairly equally pitted and subjected to an impartial judge (Amanat, 1992).

**The means of evidence:** In the Islamic penal system, except compurgation and conjugal anathema which was dedicated to criminal issues other means of evidence include: Confession, Witnesses, Oaths, knowledge of justice; In the civil and criminal affairs, was common both issues; In addition, one of the accepted principles of criminal law this period was ((the presumption of innocence)) according to while the court doubt in the case of charges to the accused, can be acquitted the defendants of the charges according to the presumption of innocence and the hadith narrated from the Prophet (PBUH).

#### **The evidence of this period includes**

**Confession:** The Holy Quran has recognized in many verses confession/admission as a valid source of proof. "And when God took compact with the prophets: that whatever of the book and the wisdom I gave you then comes to you any messenger, confirming the book with you, you shall believe in that messenger and you shall help him? said He," Do you agree and on that condition acknowledge my covenant?" They answered," we acknowledge" He said," Now then be witness and I am also witness with you."<sup>7</sup> And "O Believers! stand on justice; give witness of the side of God, though there is a loss to you or to your parents or to your kinsmen, if any one is rich or poor then Allah is their well-wisher more than you, so do not follow the wish of the heart in doing justice; and if you will twist your tongue or evade, then God is aware of all your actions."<sup>8</sup> Similarly the Sunnah (traditions of the prophet (PBUH) has recognized it as a valid source of proof. "It has been related on the authority of Jabir Ibn Abdullah who said that a man from the tribe of Banu Aslam came to the Prophet (PBUH) and confessed to have committed adultery and gave testimony against him four times. The Holy Prophet (PBUH) then ordered to stone him to death.<sup>10</sup> besides, there is a consensus among All Muslim jurists that confession/admission is a valid source of proof like testimony and oath (Buchta, 2000).

**Conditions for the validity of confession/admission:**

Although, confession/ admission is valid source of proof, however, the jurists have laid down the following conditions for its validity. 1: Adulthood and sanity: it is must that if a person confesses /admits should be adult and sane one. The confession/ Admission of a child, insane and sleeping person is not admissible. The Holy prophet (PBUH) said” Three persons have been exempted from any liability, the minor until he attains puberty, the insane until he attains sanity and the sleeping person until he awakes’ 1: the Admission /Confession must be explicit and there should be no ambiguity in it. 2: self expression is pre requisite for a person who confesses or admits. With confession/ admission of a deep and dumb person are admissible or not? In this regard majority of the jurists say that it is admissible provided he or she can write his or her confession/admission. While Imam Abuhanfah says that admission is admissible while confession in Hudud crimes is not admissible. 3: the confession/Admission must be without any coercion or compulsion. It must be with free consent. The confession /admission given under threat inducement or promise is not admissible.

**Witnesses:** Witness competence rules are legal rules that specify the circumstances under which persons are ineligible to serve as witnesses. For example, neither a judge nor a juror is competent to testify in a trial in which the judge or the juror serves in that capacity and in jurisdictions with a dead man statute, a person is deemed not competent to testify as to statements of or transactions with a deceased opposing party. Today all persons are presumed to be qualified to serve as witnesses in trials and other legal proceedings and all persons are also presumed to have a legal obligation to serve as witnesses if their testimony is sought. However, legal rules sometimes exempt people from the obligation to give evidence and legal rules disqualify people from serving as witnesses under some circumstances.

**Knowledge of justice:** Talking about the fact that knowledge doesn't have morals built into it. Fire can be used to keep you warm or it can be used to kill you. Fire has no morals, only the people who use it have morals (or are lacking them). Here, I use the word morals in place of justice as both refer to a proper and beneficial use compared to an improper or harmful use of knowledge.

Those who put knowledge to a moral or good use are considered wise. Those who put knowledge to use for

immoral or ill use are considered cunning. The knowledge is the same, but the use it is put to, whether there is justice or morals in the application, will determine the label, we place on it. In this case, to be just is to apply knowledge in a fair and equitable manner. By being consistent with the morals and values of a population, this just application is often considered wisdom.

The opposite, cunning is the use of knowledge without fairness or equity and is often in opposition of the morals and values of a population. A hero is rarely described in this manner, but a villain is often described this way.

**Oath and compurgation:** An oath is made when a suspect in an investigation swears to their non involvement; Compurgation, also called wager of law and oath-helping, was a defense used primarily in medieval law. A defendant could establish his innocence or non-liability by taking an oath and by getting a required number of persons, typically twelve; to swear they believed the defendant's oath. From Latin, com = with, purge = make clean, cleanse, excuse. Latin com is also an intensifier and turns a word into the superlative form, so compurgation by etymology, means 'to thoroughly clean or excuse; A defendant who elected to “make his law” was permitted to make a statement before the court, swear an oath that it was true and present one or more individuals, often 12 who swore that they believed he had told the truth under oath. This was the predominant form of defense in the feudal courts and it persisted for a time in the common-law courts. They did not testify about the fact itself and, indeed, might have no personal knowledge concerning it. The value of a man's oath might vary with his status; sometimes it was necessary for a defendant to meet a charge by assembling oaths of a prescribed monetary value. Because oath making often had religious implications for those who served as oath helpers and because there was also a possibility of legal sanctions (penalties), individuals might refuse to give oaths for persons with bad reputations. One reason for the long survival of the practice was that wagers in law were often considered better evidence than account books in cases of debt.

**Conjugal anathema:** Liaan refers to a situation where a person accuses his spouse of adultery. In this study, we examine the claim made by a christian writer that only husbands have the right to practise Li`aan' in islam, or in other words, only husbands ( according to the christian writer ) have the right to accuse their spouses of adultery. The case of Liaan is explained in Soerah 24:6-11:

And for those who launch a charge against their spouses and have (in support) no evidence but their own, their solitary evidence (can be received) if they bear witness four times (with an oath) by God that they are solemnly telling the truth; And the fifth (oath) (should be) that they solemnly invoke the curse of God on themselves if they tell a lie. But, it would avert the punishment from the wife, if she bears witness four times (with an oath) By God, that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of God on herself if (her accuser) is telling the truth. If it were not for God's grace and mercy on you and that God is Oft-Returning, full of Wisdom, (Ye would be ruined indeed)

Since, this holy Sura has recommended all believers and especially women to be virgin and chaste, Islamic narrations do give much prominence to teaching and reciting this Sura by women. In fact, it can be considered as the Sura of virginity, chastity and struggle against sexual defilements because the main part of its commandments is about removing society from sexual defilements through different ways and this aim has been set in several steps. It is the statement of severe punishments of adulterers and adulteresses which is mentioned with full decisiveness in the second verse of this Sura.

Executing this severe prescribed punishment is not an easy issue and from the view of Islamic judicial scales it has strict condition. If a man accuses his wife of adultery, the program Lian (Conjugal anathema) must be carried out, we will explain it later. And if a person accuses someone of fornication, that person must present 4 witnesses. Even if someone accuses other person of fornication, but he cannot prove it in the court of Islamic judgment, he will be extremely punished (one fourth of prescribed punishment of fornication), so that no one can easily think of Islamic punishment of others by accusing them, otherwise that penalty will be imposed on himself. The christian missionary comments:

A woman apparently cannot charge her own husband similarly. A woman apparently can only defend herself against charges brought against her. She cannot play the equal role of the man as accuser

**Response:** The above comment made by the christian missionary is not correct and untrue. The scholars of ourdialogue.com comment: "When we speak of the masculine gender used in the Qur'an, we should know

that in Arabic this is a standard usage and it applies to both sexes equally. Nevertheless, God has taken care to mention on several occasions that His provisions and reward apply to men and women in equal measure. If anyone does not agree, he is then saying that Islamic duties do not apply to women. That is absolutely wrong. Read, if you will.

**The orders of the head of state and his agents:** In the course of legal history, although the penal affairs of our country in general was based on Islamic law. But, senior officials such as governors Provincial governors and the judges throughout the country are appointed by the Head of government were right; in the scope of matters relating to their duties such as maintenance of the military, defense, war, taxation, summon the parties and judge between people, enact and execute the rules and regulations. But, the most people in the situation and law enforcement was not bound to observe the principles of the islamic religion and the legal system; In the penal affairs, the judges of Sharia were not implicated to the crimes was against the security of the country but by order of the head of government, the rulers and their pensioner, regardless of Islamic law, the government opponents condemned to the severe and terrible penalties and promptly has been implemented punishment by executioners but, sometimes due to the king's attention was handled to the judgment and administration of justice but this was no common and durable; on the other hand, the dominance and long rule of the Mongol tribes and their descendants in this country leads to the implementation of certain rules and regulations in Iran; This issue provides the circumstances of the development and the creation of special courts named Customary courts; In the period of Qajar was carried out the difficult and horrible punishment by agents of the rulers of the king against offenders; if someone inadvertently threw a pebble towards carriage of king or governor and ruler prince was killed immediately and without trial but, if someone killed one of the ordinary people as intentional and deliberate. By bribing a local ruler was release of punishment An English historian in a book entitled Iran and the Iranian issue in the terms of punishment and persecution in the period Qajar writes such as ((Until recently, it was common that offenders were crucified, put in the mouth of artillery, were buried alive and shoed like horse shoe on their foot and are tied to the tree and then are abandoned tree and ripped the body of accused). However, such the penalties along with persecution and terrible during the reign of Islam before the Constitutional show at this time, penalties depend only to the desire and opinion the rulers of and influential people and is not dependent to any principle (Jahanbakhsh, 2001).

## CONCLUSION

Nonetheless, with regard to all proposed issues, we respect to and the great respect the beliefs and ideas of all scholars of law, experts and scholars and professors of law, according to the study can be concluded that before the advent of Islam in the Ancient Testament, is applied highly violent and ever punishments for multiple offenses but after the rise of Islam and Iranian desire to the sacred religion of Islam, declined and reduce the penalties; If it seems that it would be along with the advantages and disadvantages among the advantages of this change was adapt and apply the proportionality between crime and punishment But one of the disadvantages of this change, was the loss of fear of criminals from punishment which, led to the terror and fear In the society so society move towards offense as summarily and disappears a sense of security and peace in the Islamic society. So, since one of the major tasks of the legislator, is prevention of fraud and abuse of the law therefore, should be established the measures till the law is not plaything by the opportunistic people.

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