

A Comparative Analysis of Multiplicity and Recidivism in Imami Jurisprudence and Iranian Criminal Law

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Abstract

Multiplicity and recidivism are among the most significant institutions in criminal law, playing a decisive role in aggravating punishments and shaping criminal policy. This study, through an analytical and comparative approach, examines these two concepts in Imami jurisprudence and Iranian criminal law. In Imami jurisprudence, multiplicity of crimes is generally governed by the rule of “cumulative punishments,” while recidivism—particularly in hudud crimes—is associated with progressive aggravation, ultimately leading to capital punishment at the fourth stage. The foundations of these rules are rooted in Qur’anic verses, such as “*No bearer of burdens shall bear the burden of another*” (Qur’an 6:164), and numerous traditions from the Imams. In Iranian criminal law, the Islamic Penal Code of 2013 (1392 SH) has established clear provisions: Articles 131 and 134 regulate multiplicity, while Articles 136 and 137 address recidivism. Nonetheless, certain differences exist between the two systems, such as the statutory cap for aggravation in multiplicity cases and the restriction of recidivism to first- to sixth-degree ta’zir crimes. Findings reveal that Imami jurisprudence offers greater theoretical consistency, whereas Iranian law—through combining fiqh-based rules with modern criminal policy—provides more flexibility and social adaptability. It is concluded that further legislative reform is needed to clarify the boundaries of multiplicity and recidivism while enhancing both justice and efficiency.

Keywords : Multiplicity of crimes, Recidivism, Imami jurisprudence, Iranian criminal law, Aggravated punishment, Criminal policy

Extended Abstract

Multiplicity and recidivism are fundamental concepts in criminal law that significantly influence the severity of punishments and the formulation of criminal policy. These two concepts play a crucial role in ensuring justice by determining how repeated offenses are addressed and penalized within a legal framework. This study adopts a comparative and analytical approach to examine these concepts in the context of Imami jurisprudence and Iranian criminal law. In Imami jurisprudence, the principle of “cumulative punishments” is applied to address multiplicity, meaning that when an individual commits multiple crimes, the punishment for each crime is applied separately and consecutively. For recidivism, particularly in the case of hudud crimes (those with fixed punishments prescribed by Islamic law), there is a system of progressive aggravation. The punishment escalates with each subsequent offense, culminating in the death penalty at the fourth offense, especially in cases of major crimes like theft or apostasy. These legal

perspectives are grounded in Islamic legal texts, including Qur'anic verses such as "No bearer of burdens shall bear the burden of another" (Qur'an 6:164) and a variety of sayings (hadiths) attributed to the Imams, which emphasize the necessity of personal accountability in criminal behavior.

Iranian criminal law, particularly the Islamic Penal Code of 2013 (1392 SH), integrates these traditional principles with modern legal standards. Articles 131 and 134 specifically address the issue of multiplicity, while Articles 136 and 137 outline the approach to recidivism. However, Iranian law diverges from Imami jurisprudence in several key aspects. One notable difference is the statutory cap on the extent to which punishments can be aggravated due to multiplicity. Iranian law also restricts the application of recidivism provisions to certain categories of crimes, particularly those categorized as ta'zir, which are discretionary punishments imposed for offenses not covered by the fixed hudud or qisas laws. Recidivism in Iranian law is confined to first-degree to sixth-degree ta'zir crimes, limiting the scope of progressive punishment in cases of repeated offenses. These distinctions indicate a more flexible approach in Iranian law, where the combination of Islamic fiqh principles and contemporary criminal policies allows for a more adaptable legal framework suited to modern societal needs.

The comparative analysis reveals that Imami jurisprudence is more consistent in its theoretical foundation, offering clear and structured rules regarding multiplicity and recidivism. However, this approach may lack the flexibility needed to address contemporary legal challenges, such as varying social and political conditions. Iranian criminal law, on the other hand, benefits from its integration of traditional Islamic principles with a modern criminal policy, which enhances the law's capacity to adapt to changing societal conditions. The flexibility of Iranian law allows for a more nuanced approach to cases of multiplicity and recidivism, ensuring that the severity of punishments can be adjusted based on the nature and circumstances of the crime.

Despite these advantages, the study concludes that there is a need for further legal reforms to improve clarity and consistency in the application of multiplicity and recidivism provisions. One area for reform is the need to better define the boundaries of these concepts, ensuring that they are applied fairly and consistently across different types of crimes. Additionally, the law should strive to balance the principles of justice with the goal of social rehabilitation, ensuring that the legal system not only punishes offenders but also provides avenues for reform and reintegration into society. By refining the legal framework surrounding multiplicity and recidivism, Iranian law can enhance its effectiveness in promoting both justice and efficiency in the criminal justice system.

In conclusion, while Imami jurisprudence offers a more rigid and theoretical approach to multiplicity and recidivism, Iranian criminal law incorporates a more practical and adaptable methodology that is better suited to modern social realities. The findings suggest that further legislative reform is necessary to create a clearer, more balanced approach that respects both traditional principles and contemporary legal needs.

References

Akhundi, Mahmoud. (2000). Similar Crimes and Aggravation of Punishment, Critique and Review of a Judicial Practice. *Journal of Higher Education Qom* 2, nd year, issue 6, Summer.

- Ibn Idris Hilli, Muhammad bin Ahmad .(1991) .*Al-Sara'ir* .Qom: Society of Seminary Teachers.
- Abu Bakr Al-Kassani. (n.d.) .*Badā'i' al-Ṣanā'i' fi Tarteeb al-Sharā'i* 'Vol. 7.(
- Ardabili, Mohammad Ali .(2001) .*General Criminal Law* .Tehran: Mizan Publication.
- Ardabili, Mohammad Ali .(2015) .*General Criminal Law* (Vol. 3). Tehran: Mizan Publications.
- Isfahani Najafi, Muhammad Hassan bin Baqir .(1984) .*Jawaher al-Kalam fi Sharh Sharai' al-Islam* .Qom: Dar al-Kutub al-Islamiyya.
- Irvaniyan, Amir .(2013) .*General Theory of Criminal Policy* .Tehran: Shahr Danesh Publications.
- Behbahani, Ali .(1985) .*Al-Fawa'id al-'Alīyah* .Ahvaz: Maktab Dar al-'Ilm.
- Parsai Noorbahā, Reza .(1990) .*Foundations of General Criminal Law* .Tehran: Iranian Bar Association.
- Parviz Sanaei .(2003) .*General Criminal Law* .Tehran: Tarh-e-No Publications.
- Jafari Langarudi, Mohammad Jafar .(2015) .*Terminology of Law* (Vol. 1). Tehran: Ganj Danesh Publications.
- A Group of Authors .(2006) .*Ta'azirat from the Perspective of Jurisprudence and Criminal Law* . Qom: Research Department of the Islamic Propagation Office of the Qom Seminary.
- Khoei Gharvi, Abu al-Qasim .(1987) .*Mabani Takmila al-Minhaj* .Qom: Dar al-Hadi.
- Azad University of Tabriz .(2006) .*Collection of Articles of the National Conference on Quranic Researches of Seminary and University: The Book of the Quran and Law* .Mashhad: Foundation for Quranic Research in Seminary and University.
- Dehkhoda, Ali Akbar .(1994) .*Dehkhoda Dictionary* (New Edition). Tehran: University of Tehran.
- Dehkhoda, Ali Akbar .(2006) .*Dehkhoda Dictionary* (Vol. 1). Tehran: University of Tehran.
- Shams Natari, Mohammad Ibrahim .(1999) .*Comparative Study of the Death Penalty* .Qom: Islamic Propagation Office Publications.
- Sheikh Mufid .(1991) .*Al-Muqna'a* .Qom.
- Sheikh Tusi, Muhammad bin Hassan. (n.d.) .*Al-Nihāya fi Mujarrad al-Fiqh wa al-Fatawa* .Qom: Quds Publications.
- Sheikh Tusi, Muhammad bin Hassan .(1997) .*Al-Khilāf* .Qom: Islamic Publication Foundation.
- Shahid Awal, Muhammad bin Maki Ameli .(1992) .*Al-Lum'a al-Dimashqiya* .Qom: Dar al-Fikr.
- Shahid Thani, Zayn al-Din bin Ali .(1990) .*Al-Rawdat al-Bahiyya fi Sharh al-Lum'a al-Dimashqiya* .Qom: Da'uri Publications.
- Shahid Thani, Zayn al-Din bin Ali. (n.d.) .*Masaalik al-Afham* (Vol. 2). Qom.

Sayyid Murtaza Alam al-Huda ,Abu al-Qasim Ali bin Hussein .(1996) .*Al-Intisar* .Qom: Islamic Publication Institute.

Tabatabai, Muhammad Hussein. (n.d.) .*Al-Mizan fi Tafseer al-Quran* .Qom: Islamic Publication Foundation.

Tabarsi, Fadl bin Hassan .(1995) .*Majma' al-Bayan fi Tafseer al-Quran* .Beirut: Al-'Alami Foundation.

Abd al-Qadir Auda. (n.d.) .*Al-Tashree' al-Jinā'i al-Islami* (Vol. 2). Cairo.

Asgari, Gholamhossein .(2005) .*Review and Critique of Article 18 of the Law on the Establishment of Public and Revolutionary Courts* .*Journal of Fiqh Ahl al-Bayt*.(5) ,

Ali Abadi, Abdolhossein .(1989) .*Criminal Law* .Tehran: Ferdowsi Publication.

Fazl Lankarani, Mohammad .(2004) .*Jami' al-Masail (Fatwas)* .Qom: Amir al-'Ilm Publications.

Fazl Miqdad Seviri, Miqdad bin Abdullah .(1996) .*Nazd al-Qawa'id al-Fiqhiyya* .Qom: Ayatollah Mar'ashi Maktab.

Feyz Kashani, Mohsen .(1981) .*Mafatih al-Shari'a* .Qom: Majma' al-Zakha'ir al-Islamiyya.

Qara'ati ,Mohsen .(2004) .*Tafseer Nur* .Tehran: Center for Quran Lessons.

Kuleini, Mohammad bin Ya'qub .(2007) .*Al-Kafi* .Edited by Ali Akbar Ghafari. Tehran: Dar al-Kutub al-Islamiyya.

Lutfi, Reza .(1939) .*Aggravation and Mitigation of Punishment* .*Legal Administrative Collection, Ministry of Justice*.(12) ,

Encyclopaedia of Islamic Jurisprudence (under the supervision of Ayatollah Mahmoud Hashemi Shahroudi) .(2005) .*Dictionary of Jurisprudence According to the School of Ahl al-Bayt (AS)* . Qom.

Hamadhani, Mohammad Baqir .(2001) .*Translation of Al-Mizan fi Tafseer al-Quran* .Qom: Islamic Publications.

Yathrabi, Mohammad Ali .(2006) .*Lesson Notes on Deductive Jurisprudence Principles (1): With 500 Titles of Jurisprudential Rules* .Tehran: Jihad University Publications.