

The Influence of Enjoining Good in Drafting Criminal Laws on Women's Rights

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Abstract

The survival of any society is to preserve and protect it from deviation and corruption; that every social system has provided special mechanisms for this purpose. One of the most important and effective tools explained by the religion of Islam for this issue is public supervision; which is applied through enjoining good and forbidding evil. The purpose of writing this article, using descriptive and analytical methods, is to examine the existing laws and regulations in the field of enjoining good and forbidding evil, so as to reveal the effectiveness of this duty in reducing crimes and deviations in women's society. The findings of the research indicate that enjoining good and forbidding evil by using people's participation can play a special role in social and situational prevention of crimes and deviations in society. In addition to the preventive role, this duty comes into action in the event of crimes and violations by applying the guarantee of criminal and non-criminal reactive actions and fights against crimes and violations. But considering that the main foundation of this duty is formed by reactive responses, reactive responses were rarely observed. For this reason, institutions that respond to this duty are more of the activist type.

Keywords; enjoining the good, forbidding the evil, reactive responses, action measures, the law to protect those who command the good and forbid the evil, accountable institutions, women's rights.

Introduction

Enjoining what is good and forbidding what is bad, which are among the most important religious duties, shows the sensitivity of society against acts that violate the norm (Huong LLT, et. al., 2022; KHUC AT, et. al., 2022). This sensitivity, when it appears in the right voice, closes the way to promote abnormality in the society (An TB, et. al., 2022; Mohamad TA, et. al., 2022). On the contrary, if the society does not show any reaction in front of the abnormalities, or the sensitivities and objections are very weak, the ground for the promotion of abnormalities in the society is provided (Singh GP, et. al., 2022; Mathew ST, et. al., 2022).

Enjoining what is good and forbidding what is evil, which are considered as the seventh and eighth branches of religion in Shia jurisprudence, are among the most important and greatest religious obligations in Islam? Noble Shia jurists, along with the compilation of jurisprudential books and chapters on worship and transactions, such as "Book of Salah", "Book of Zakat", "Book of Hajj", "Book of Al-Ajarah" and..., "Book of Enjoining Good and Forbidding Evil" have also compiled and emphasized its necessity by referring to the evidences of the four jurisprudence "Qur'an, Sunnah, Reason and Ijma". (Imam Khomeini, 1984, p. 285). Enjoining what is good and forbidding what is evil in Shia jurisprudence books has been raised above and superior to an ordinary obligation and is considered among the essentials of the religion of Islam (Sergun V, et. al., 2022). This duty in Islam has conditions and levels. The lawful purpose of implementing this duty in the society is to realize the good and remove the bad. Therefore, it is necessary for the government and the nation to implement the necessary measures and measures in order to fulfill this duty, according to its conditions and

levels. Enjoining good and forbidding evil is subject to several conditions, and without these conditions, this action is not considered obligatory. Often, there are four conditions for this obligation, which are: 1. knowing the good and the bad 2. The possibility of influence 3. Insistence on continuing the negative and leaving the famous 4. Not being corrupt in its implementation (Zargosh Nasab, Ghaibi and Rezaei, 2013, p. 29) that each of these conditions needs a separate discussion and investigation, which has the scope to investigate. It is not available in this article. This duty can be effective in women's society when it has the necessary legal support.

In Iran's legal system, where laws and regulations are derived from Sharia rules and standards; in most cases, there is a close relationship between sin and crime. In such a way that enjoining good and forbidding evil just as it can prevent people from committing sins; it also prevents them from committing crimes. Therefore, the revival and implementation of this duty over time will reduce the commission of crimes and deviations in the society (Gholami Sarmoli and Hosseini, 2013, p. 480)

The implementation of this duty in the society requires that the legal grounds for its implementation in the society are provided. This attitude made the command of good and the prohibition of evil to be included in Iran's legal criminal policy, and it was placed among the principles of the Islamic Republic of Iran's constitution, "Principle Eight". As stated in the eighth article of the constitution; The conditions, limits and quality of this divine duty are determined by normal laws and regulations. Enjoining the good and forbidding the evil in a limited and scattered manner in the country's laws and regulations, such as the "Islamic Punishment Law" approved in 1361, the Law on the Goals and Duties of Education and Education "approved on 25/11/1986", the General Policy and Principles Law The programs of the Broadcasting Organization of the Islamic Republic of Iran "approved on 4/17/1982", the law on judicial protection of the Basij "approved on 10/1/1992"... have been examined. The establishment of a comprehensive law that specifically deals with enjoining the good and forbidding the evil was delayed for a long time until finally the "Law for the protection of those enjoining the good and forbidding the evil" was approved in 2014. Obviously, due to its novelty and unprecedentedness, this law has some defects that have caused many criticisms of this law.

This article tries to investigate the effect of the presence of this duty in the laws and regulations on the drafting of criminal laws on women's rights in Iran. Examining this issue shows that the presence of enjoining good and forbidding evil in Iran's legislative criminal policy has a preventive role against crimes and deviations. This duty can cause situational and social prevention of crimes and deviations in the field of women.

preventive programs implemented in other countries; According to the topic of each program, it is related to social prevention or situational prevention. While the implementation of the program of enjoining good and forbidding evil, as mentioned, is a comprehensive social and situational prevention. In this way, by applying various measures, this duty causes the identification of norms and values to the members of the society, which is considered as a factor for social prevention of crimes and deviations. On the other hand, this duty is effective in reducing the situations that expose people to committing crimes by exercising supervision in the society and causes situational prevention. In addition to the preventive role, in the event of crimes and violations, by applying the guarantee of appropriate executions in each case, criminal or non-criminal reactive responses are applied.

For this reason, although in a brief and transitory form, this duty has been stated in the laws and regulations of the country, which are examined in this article in order to explain the role of this duty in the development of criminal laws in Iran's women's rights.

Background research

Regarding enjoining what is good and forbidding what is evil, comprehensive and complete research has been done in the field of jurisprudence; However, there has been no research on the role of this duty in the drafting of Iran's criminal laws on women's rights. Nevertheless, the following sources can be mentioned as researches that are somehow related to our research topic.

- 1- Dissertation on the place of enjoining good and forbidding evil (principle 8 of the constitution) in Iran's criminal policy (Taghipour, 1998), examining the jurisprudential foundations of enjoining good and forbidding evil and analyzing this duty as one of the factors of criminal behavior deals in criminal politics.

- 2- Thesis of Correlation between prevention criminology and ways of enforcing good and forbidding evil (with a look at the performance of the city of Esfrain) (Muhadith, 2013). This thesis is divided into two parts. In the first part, the substantive relationship between the criminology of prevention and the command of good and the prohibition of evil has been discussed, and in the second part, the structural and executive relationship of the institution of the command of good and the prohibition of evil with the criminology of prevention has been examined.
- 3- The article on the position of enjoining good and forbidding evil in criminal policy (Ilham, 2012), deals with the situation of enjoining good and forbidding evil in jurisprudence sources, both Imamiyya and non-Imamiya, and the functions of this duty in the Islamic government. This research has examined the types of supervision in commanding good and forbidding evil, which includes commanding good and forbidding people to each other, the government to the people, and the people to the government.
- 4- Essay on enjoining good and prohibiting evil and criminal policy (Haji Dehabadi, 2008). In addition to examining the basics, concepts, and conditions of enjoining good and forbidding evil, this research has investigated the consequences, functions, and characteristics of enjoining good and forbidding evil in Islamic criminal policy.
- 5- The book of the eighth principle (jurisprudential and legal obligations of commanding the good and forbidding the bad) (Joan Arasteh, 2012), has examined the concepts, "rational, Shariah and legal" foundations and sources of knowledge of the good and the bad in the first chapter. In the following chapters of this book, the types of supervision in the matter of good and forbidding evil have been examined.
- 6- Situational measures (situation-oriented).
- 7- Crime prevention has always been one of the basic and important issues in human life, which is divided into two stages. In the case of the first stage, various social, cultural, economic, etc. measures are taken to dry up the roots of criminality in the society and not even to create a decision to commit a crime in the minds of people, which is called social prevention. The second stage takes place when the measures of the first stage have no effect on him and the person has made a firm decision to commit a crime. At this stage, methods are used so that a person determined to commit a crime cannot implement his decision. This stage, by changing the person's condition or environmental conditions such as time and place, makes the realization of the criminal act difficult, risky or impossible, or the attraction of committing the crime is lost; Therefore, this method is called situational prevention. Situational prevention, unlike social prevention, does not investigate the roots of delinquency and stop it by strengthening society's values, but focuses on reducing opportunities and situations for committing crimes. This type of prevention does not change the internal motivation of people, but rather closes the ways of the perpetrator to reach the subject of the crime and the victim, in order to reduce the crime in the society (Ebrahimi, 2010, p. 86). The purpose of this type of prevention is to change the pre-criminal situations in order to influence the deterrence of potential criminals. The meaning of pre-criminal situations is "conditions and situation that happened to a possible criminal and exposed him to commit a crime". Therefore, pre-criminal situations are the basis for criminal acts and incite and facilitate the commission of crimes (Norouzi and Nabizadeh Asl, 2013, p. 18). This type of prevention claims a methodological approach that pays attention to the study of crime regardless of the individual and psychological characteristics of people. In other words, this type of prevention reduces crime in the society only by changing the situation and reducing the opportunity of crime, without changing the personality of individuals (Felson and Clark, 2008, p. 167) according to what is stated in "Principles of Policies Culture of the Country" approved on 5/20/1992 states that a human being is affected by the positive and negative factors of his social environment and it is the duty of the government to keep the atmosphere of the society healthy and with the participation of the people to remove criminal and deviating factors in the society environment. Destroy one of the tools that, according to No. 23, Clause c) of the principles of cultural policies, causes situational prevention, is enjoining good and forbidding evil.
- 8- Situational prevention consists of two types of measures: the first group is measures and measures

aimed at reducing criminal attractions and stimulating factors in order to prevent the final decision of the criminal. The second category is measures that seek to deny the possibility of committing a criminal act or at least make it difficult despite the existence of criminal motivation and intent. Of course, these measures, in addition to making it difficult and sometimes impossible to commit a crime, due to the increase in the cost of committing a crime and the reduction of its benefits and the difficulty of accessing targets or victims, will also reduce criminal motivations.

- 9- The effect of enjoining good and forbidding evil in creating these two types of measures that lead to the prevention of crimes and deviations is stated in the following two topics:
- 10- The first topic: reducing criminal attractions
- 11- Situational prevention theorists believe that "the likelihood of a crime occurring depends on how the potential criminal perceives various elements of the environment." Situational crime prevention is comparable to the concept of "agent" in psychology, i.e. stimulus control. They are of the opinion that the probability of crime is formed based on the quality of the stimulus in the environment. For this reason, through management, by intervening in the environment, it is possible to change the stimulus and reduce the probability of crime. Based on this, they use the method of de-attraction to reduce the occurrence of crime (Mir Khalili, 2018, pp. 68-690).
- 12- De-attraction refers to the measures aimed at reducing or eliminating the expected benefits of criminals and causes potential criminals to withdraw from committing crimes against potential victims or property related to the crime (Yosefzadeh, 2012, p. 40)
- 13- The success of situational measures depends on the extent to which potential offenders perceive situational changes as a negative factor affecting the commission of a crime and cause a change in their decision.
- 14- For example, using credit cards instead of carrying money to buy and transfer it to another can be one of the examples of reducing attraction and reducing provocation in stealing cash, or observing the appropriate veil and avoiding thick make-up plays an effective role in crimes against women. . Unfortunately, in our society, there is no obvious difference in terms of clothing and makeup between prostitutes and chaste women. In other words, many chaste women who are committed to the family use the same clothes and makeup as prostitutes. This issue causes many lustful men to disturb modest women. An issue that has become a completely normal and common issue in our society and sometimes causes cases in this regard in the courts. Although the duty of the government is to create a safe society that even if women appear with any kind of covering, they will not be assaulted or harassed; But it is appropriate for the women of the society to observe this issue to some extent so that they do not become victims of such crimes.
- 15- Some prevention strategies and methods are used exclusively with the aim of dissuading criminals and preventing the emergence and intensification of criminal motives. Among the cases that are carried out with this purpose is the implementation of what is good and forbid what is bad in the field of chastity and hijab. Applying the second stage of the religious duty of forbidding malevolence, i.e. linguistic warning, ensures observance of hijab and chastity and eliminates the motivations of potential criminals in crimes in this area. Below are some of the regulations in this area that will prevent the situation in this field:
- 16- The first speech: The Law of Executive Solutions to Spread the Culture of Chastity and Hijab
- 17- Hijab and chastity are among the most valuable concepts of Iranian society, whose history dates back to before the arrival of Islam, but it reached the peak of its prestige in Islamic culture. These two phenomena play an important role in preventing some crimes and deviations in the society. Clause B of Article 209 of the "Fifth Program of Economic, Social and Cultural Development of the Islamic Republic of Iran" has paid attention to the implementation of the plan for the culture of chastity and hijab in all executive bodies of the country.
- 18- In the Law on Implementation Solutions for the Promotion of the Culture of Chastity and Hijab, attention has been paid to the measures to implement this issue, and paragraph 14 of this resolution introduces one of these measures, the implementation of what is good and what is forbidden in the field of chastity and hijab. Other rules and regulations have been established in the field of chastity and hijab, which have paid attention to the role of enjoining what is good and forbidding what is

bad in strengthening and promoting chastity and hijab. It is from: "Principles and Basics of Implementation Methods for the Development of Chastity Culture" approved on 14/11/1995 and "Approved Strategies for the Development of Chastity Culture" approved on 4/5/2004 and...

- 19- The second speech: Ferdowsi University Chastity Promotion Plan
- 20- The commitment to the limits of religious and organizational covering, as a task, has been considered by religious teachings and regulations on hijab and chastity approved by the Supreme Council of the Cultural Revolution. Respectful and modest behaviors and far from immoral suspicions in the field of relationships between boys and girls are also among the accepted norms and values of the religious society.
- 21- Adherence to the mentioned items ensures the psychological and moral security of the university community. Based on this, Ferdowsi University's chastity promotion plan was approved by the University's Council for Prosperity and Prohibition in the meeting dated 2/30/1994 and approved by the University's Cultural and Social Council on 4/8/1994. Observance of hijab and chastity in the university area makes students not deviate from acquiring knowledge and commit crimes and deviations in this area. If the cultural practices and the command of the good and the prohibition of the bad language cannot be effective in observing the hijab and chastity of the students, the implementers of the plan will apply the command of the good and the prohibition of the bad in the form of non-criminal reactive responses, which are in the section related to the answers A non-criminal response is considered. It should be noted that following the field research that was conducted in the university and was published in the journal *Vaqai al-Efqamiyah*, 65% of the students were against the introduction of special and exclusive rules regarding hijab and chastity in the university, and only 35% of the students approved such rules in the university. The university agreed (Fattahi, 2014, p. 6). The mentioned research concluded that these regulations may be rejected by the students. For this reason, instead of making laws, it would be better to educate and promote culture in this field. This plan brings criticisms, some of which are mentioned below:
- 22- 1- The vagueness and impreciseness of the words of this plan and the use of expressions such as "The prestige of the university", "conventional", "usual" etc. causes the clarity of the text to be impaired and probably causes the application of taste and interpretation to the vote.
- 23- 2- Some provisions of this plan are in conflict with its goals and principles. Thus, this plan defines the scope of its implementation within the university environment and not outside of it, but Article 12, paragraph 3, considers the sharing of messages, images, etc. The moderators are spying on people's privacy.

The second issue: denying or making it difficult to commit a crime

Another situational prevention measure is to make it difficult or impossible to commit a crime despite the existence of a criminal motive. In this part, measures are applied to change the status and situation with the aim of making the person unable to realize the criminal intention. This type of prevention is based on external control. External control is a type of social control that is used to regulate the behavior of people in society. Talcott Parsons defines "social control as the analysis of processes that have the desire to neutralize deviant tendencies, and in this way social control is considered to be the restoration aspect of the social system". The purpose of this control is to apply measures so that as a result of the existing control and supervision, the person is forced to perform the expected behaviors and the possibility of actualizing the criminal intention of the people is faced with difficulty (Haji Deh Abadi, 2013, p. 81).

Durkheim believes that one of the important factors of abnormality is the lack of social supervision and control. Durkheim believes: "when the influence of the society's supervisor on individual tendencies loses its effectiveness and the members of the society are left to their own devices, the society will suffer from abnormality" (Mir Khalili, 2008, 306).

Based on this theory, Hirschi believes that the main reason for controlling a person's behavior is the connection between him and the society, and the reduction of the individual's belonging to the society is the main cause of people's deviance. Hirschi's attitude to control theory is consistent with the fields of situational prevention and its foundations (Tosalizadeh, 2012, p. 76).

The containment theory is also explained in line with the attitude of external control and situational

prevention. The deterrence theory was first expressed by Mr. "Walter Reckless" in the book "Maazal Bezekari". According to this theory, the conformity of individuals with the society is not only natural and based on the internal desire of the individuals, but it is due to the external supervision and control of the individuals of the society. He considers the lack of external controllers to deal with the criminal and deviant motives of people as the reason for the increase of crimes and deviations in the society (Mirkhalili, 2018, pp. 59-60).

Supervision is related to the concept of social control from a sociological point of view. For this reason, breaking the norms of disabled people is due to the lack of control of their behavior by the society. Therefore, as much as the amount of various supervisions, both official and unofficial, increases in the society, it makes people who intend to commit a crime or deviance refrain from carrying out their intention. Monitoring and control of people prone to delinquency is done in two ways: the first way is that the government uses its power to take restrictive measures in order to control potential delinquents through law enforcement and security institutions, which is called official supervision. .

Another method is non-governmental supervision and care, which is carried out by the people of my community. People's surveillance, which is considered today by the criminologists of some western countries, has existed for a long time in the form of enjoining the good and forbidding the evil in the criminal policy of Islam. Of course, it should be noted that the control and supervision of people in the society should not lead to the violation of the privacy of people, and this requires that the control and supervision be based on regulations.

What is meant by denying or making it difficult to commit a crime is the risk of identification and the risk of arrest, which is done by increasing surveillance in society in two ways: 1-official surveillance and 2-informal surveillance. The official supervision that takes place in society by official institutions, the most important of which is the police force; Like the informal supervision that takes place through the civil society, they are considered as examples of enforcing good and forbidding evil in the society in order to prevent crimes and deviations.

The first speech: the plan to improve social security

The plan to improve social security was started following the approval of the Supreme Cultural Council, as the "Law on Implementation Solutions for the Development of the Culture of Chastity and Hijab" or "The Plan of the Chastity Society", which was approved by this council on December 13, 2014. In this resolution, in addition to enumerating many duties for various institutions and organizations, twenty one duties have been considered for the police force, among the duties assigned to the police force, it is possible to determine the legal limits and standards of chastity and the standards of modesty in the society, to warn people who are modestly veiled. And dealing with them, serious control and supervision of observing the legal limits and rules of chastity and hijab in the society, impounding cars whose occupants do not observe Islamic affairs, preventing the activities of departments that can promote corruption, etc.

If the police force observes abnormal cases such as noise pollution, disturbance to the honour, finding hijab in the car, they will enter the license plate number of the car and then these people will be contacted to come to the police on a certain date. If these people do not obey the police order, the violation of the said car will be registered and when transferring the car license plate or selling the car or when receiving service for the car, these people will be identified and dealt with. (Muhadith, 2013, 40).

There are criticisms to this plan which are discussed below:

1 -The law enforcement force of the Islamic Republic of Iran, in the form of this plan, has created prohibitions, restrictions and implementation of unwritten punishment. With this plan, this institution, without legal documents and according to its own judgment, considers all kinds of coverings as examples of crimes and deals with citizens. In the event that according to the principles of the constitution, including articles 36, 37 and 166, an act is considered a crime and punishable if both the act itself and its punishment are specified in the law.

2- The issue of not observing hijab is not included under the title of unchastely mentioned in this plan,

because the title of a major sin should not be used to deal with a small sin. Compliance with the necessity of hijab is a jurisprudential ruling, and therefore the title of moral security for this issue is It is not correct.

3 -Punishing the driver of the car for discovering the hijab by the passengers is against the principle of personal punishment.

4- According to the law, the police has the right to deal with an obvious crime if the police is present at the crime scene and the crime is public. However, in this plan, the police does not take any action to prevent the occurrence of a crime and only registers the car number, which is outside the scope of dealing with obvious crimes. The fact that the officers do not have the right to deal with the car driver means that their job is to place the agent undercover, which is evident in the conflict with the public handling of the crime by the police.

Inconspicuous agents are basically used in some crimes such as espionage and actions against the security of the country, and the existence of these agents in crimes against chastity, especially if these people want to enter the privacy of people and their job is to investigate crimes against chastity, is an example of spying and haram. The use of secret agents in the matter of veiling brings this corrupt result, which causes suspicion and skepticism among citizens and deprives people of confidence, which is against the main goal of this plan, which is to create security in the society. (Mohammed Soroush Mahalati, 2014).

In this plan, if the accused considers the report untrue, because he is not aware of the reporter's identity, he cannot file a complaint against him. In addition to being flawed from the point of view of Shari'ah, this work creates the basis for corruption, because it places the officers in an irresponsible territory where none of the citizens have the right to protest and complain. Certainly, the Islamic State is responsible for moral and religious issues in the society, but the current conditions of the society and the experience of the failure of these plans show that such measures are not effective. Therefore, there is a condition of non-corruption in the actions of enjoining the good and forbidding the evil, the implementation of such plans may cause people who avoid the hijab to become anti-hijab people in the society, that is, in practice, people who are tolerant in observing the hijab with such wrong dealings become people who are against the hijab. Transferring the task of dealing with deviations in the society in the form of broad powers to the police force will lead to the deprivation of the civil society's right to deal with these issues. This issue can lead to a non-community approach in criminal policy, which is one of the characteristics of the criminal policy of authoritarian governments (Rahmani, 2014, pp. 177-178).

My speech: The law of protecting those who command the good and those who refrain from the bad In Article 31 of the Law on Islamic Punishment approved in 1983, one of the justifying factors of the crime was enumerated the command of good and the prohibition of evil. In this article, it was stipulated that "if the act is committed as a command for good and forbidding evil, this act is not considered a crime". In other words, the legislator was trying to provide criminal protection to the perpetrators of good and evil and to remove the criminal description from their actions. In this law, the conditions of enjoining good and forbidding evil were not stated in such a way that it could justify the criminal act. The result was that this article was subjected to many criticisms and even the judges did not want to implement this article. The argument of the opponents was that this article does not have sufficient clarity which is required by the criminal law and this may cause the rights of individuals to be violated and people to abuse this divine duty. Also, another argument was that ordinary people are only obliged to do the linguistic thing and its practical stage is one of the duties of the government. These criticisms and objections caused this clause not to be included in the law on Islamic punishment approved in 1991 and subsequent laws, and although this duty is a religious duty that forms the seventh and eighth branches of the Shia religion, it is not a criminal liability (Asghari Marzidara and Mirian Hosseinabadi, 2015, pp. 18-19) until a law was approved under the title of protecting the good and evil commanders as follows. An urgent plan to support those who enjoin what is good and forbid what is evil was previously announced in the Islamic Council on 2/3/2013 and 20/4/2016 under the title, the plan to enjoin what is good and forbid what is evil, which of course These plans did not come to fruition. On 01/04/2013, once again, the MPs presented a plan with the

title of "supporting the leaders of the good and the bad of the bad", with two terms of urgency, and finally, with the approval of its urgency, it began to be dealt with in the joint committee of the parliament. The Islamic Council approved this plan with amendments in the public meeting dated 9/18/2013 and sent it to the Guardian Council in the implementation of Article 94 of the Constitution to comply with Sharia and the Constitution. In this council, 14 objections were made to it, and after reviews and amendments and back and forth between the Guardian Council and the Parliament, it was approved on 1/23/2015, and on 2/2/2015, the Guardian Council approved it, and on 9/2/2014 was communicated to the president by the speaker of the parliament. However, the president did not announce the resolution to the official newspaper and expressed his opposition, but according to the law, the Speaker of the Islamic Council was responsible for announcing it to the official newspaper.

The president, according to his authority in the constitution, in a letter to the Supreme Leader, demanded to stop the implementation of this law to investigate its flaws; An action that was worthy of a jurist president. The leadership also referred the letter to the Power Dispute Resolution Board, which is responsible for investigating disputes between the three powers, and finally, the law was implemented. During the legislative period of the Islamic Council, some plans have been approved without comprehensive examination in terms of sociology and social pathology. Among the laws that have been approved by the parliament in this regard, is the law of protecting those who command the good and those who avoid the bad (ISNA news agency, 2014).

Although this law, by spreading the good and the bad in the society, strengthens the supervision of each other and the prevention of crime; But the title of this law as well as its content proves that a comprehensive law has not been established regarding what is good and what is bad. This law is facing many criticisms.

The third topic: Criminal reactive responses

One of the legal criminal policy tools of any country by which the government forcibly supports its basic values is criminal or repressive responses, which are in fact the most visible, evident and oldest way of fighting the criminal phenomenon. The right to punish is one of the inherent rights of governments and one of the components of governance, because basically, punishments have a public and impersonal aspect, and leaving the right to punish to the civil society causes inequality among the members of the society. Therefore, the choice of the right to respond to the crime is considered a big choice that is related to the political system of each country. These types of responses are within the scope of criminal law and criminal procedure and fight crimes with appropriate punishment mechanisms. Repressive measures are implemented in society when prevention of antisocial behavior is not possible. In that case, the punishment specified in the law will be applied to the criminal or violator in compliance with the legal procedures (Shahinpour, 2014, p. 224). These actions, by taking advantage of the role of intimidation and deterrence of punishments, will reform the criminals and the effects of the implementation Punishment affects the delinquent tendencies of other people, and as a result, general prevention is also provided (Department of Education of the Judiciary, 2017, p. 204).

Criminalization is one of the strategies that have always been considered in preventing and fighting crime after the emergence of governments. The institution of criminalization constitutes the first pillar of legislative criminal policy, which explains a large part of the scope of legislative intervention in the field of public policy. This institution carries within itself the concept of crime, which is called "current act or omission for which punishment is determined in the law". The concept of criminalization is a selection-evaluation process during which the legislator assigns a criminal description to an action or behavior. Based on this, criminalization is an afterthought and based on infrastructural sciences such as social sciences, legal philosophy, political philosophy (Ahmadi, 2016, pp. 30-31).

In this way, the legislator first defines a value hierarchy according to the importance and value of different areas of the social system, and therefore if he feels; An action or behavior causes an attack on these values, it is considered criminal for them (Kunani, Ansari and Mandani, 2014, p. 79).

Enjoining good and forbidding evil covers some crimes and deviations, in such a way that if these crimes occur, this duty will take advantage of the guarantee of reactive actions contained in the laws and regulations to deal with these crimes. takes action It should be noted that in this research, there is

no scope to examine all the crimes that can be dealt with by commanding good and forbidding evil. Therefore, some crimes that are important for some reasons; which includes the criminalization of veiling, and the criminalization of perpetrators of good and evil.

The criminalization of veiling is important because the duty of enjoining what is good and forbidding what is evil is limited to the issue of hijab among the general public, and people think that this practical duty does not include dealing with the issue of veiling. For this reason, it is worth investigating this matter.

Of course, it should be noted that the possibility of committing crimes on the part of the commanders, whether good or bad, when they go beyond the limits of their legal duties; There is. The crimes that may be committed by the perpetrators include insult, illegal arrest and other crimes against individuals.

First speech: criminalization of veiling

In the Islamic Republic of Iran, the hijab has gained a symbolic and political function, rather than being of interest from a religious point of view. For this reason, several institutions in the past years have enacted legislation in this regard within the scope of their duties or beyond it, and some of these approvals were mentioned. In addition to these approvals, the criminal legislator has criminalized this issue in the note to Article 638 of the Islamic Penal Code. In this regard, another law entitled Law on how to deal with violations and punish sellers of clothes whose use in public is against Sharia or offends public modesty has been established. Article 2 of this law, which is devoted to executive guarantees for the violators of this law, has taken into account that if domestic producers, importers, sellers and users of clothing, are subject to criminal response, which is a warning and guidance, i.e. Don't prevent your actions by saying good and bad things. Therefore, as it is clear, this law has paid attention to the steps of enjoining good and forbidding evil. It should be noted that in addition to criminal responses, measures and guarantees of non-criminal executions have dealt with the issue of veiling, which is examined in the non-criminal reactive response section.

There are two main theories regarding the criminalization of hijab. The first point of view is based on the opinion that the criminalization of veiling is useless considering its cultural aspect. Experts of the second point of view believe that the criminalization of obscenity and the existence of a guarantee of proper implementation will reduce obscenity. Therefore, the reason for the spread of this issue in the society is the lack of law and lack of guarantee of implementation regarding this issue. The experts of the second point of view announced and proposed the protection plan for the protection of chastity and hijab on 7/16/2013 with the aim of revising the existing laws in the field of hijab and chastity in the 9th parliament of the Islamic Council. This plan involves expanding the scope of government interventions in cultural and social affairs, intensifying formal and informal control measures and new criminalization's or intensifying existing punishments. The purpose of the present project is to implement the good and forbidding the evil in practice with the phenomenon of showing bad veils in vehicles, offices and government organizations. What makes it necessary to review and criticize this plan is the prediction of some individuals and institutions resorting to the command of the good and the prohibition of the evil and the possibility of interfering in the work of organizations and executive institutions to implement the command of the good and the prohibition of the evil (Mahmodi Janaki, 2015, p. 585). This plan has many criticisms, which are stated below:

1 -In this plan, no attention has been paid to observing the levels of enjoining good and forbidding evil, in such a way that the first response in dealing with the crimes of this plan is to enjoin good and forbid evil in practice, and to enjoin good and forbid evil in language. did not pay attention

2 -Wearing a hijab has turned from something against Islamic values into an abnormal act that is subject to traffic violations. This reduces the value of hijab. The consequence of this will be that people who have the financial ability to pay a fine will be able to remove the hijab.

3 -Experiences regarding the intensification of punishment in the improvement of veiling show that this approach has not been successful. An example of that was the parliament patrol, which, considering the expenses, did not have much effect on the situation of bad veiling.

4 -This plan has formal flaws and challenges, including the lack of clear logical connection of the plan's materials and the disproportion of some of the considered punishments to the violation issue.

5 -In this plan, there is no specific task for the cultural institutions of the society, such as radio and television, the Ministry of Culture and Islamic Guidance, Education and Culture, the Ministry of Science, Research and Technology, and the Islamic Propaganda Organization regarding enjoining what is good and forbidding what is bad in the field of chastity and hijab. All the tasks are assigned to the law enforcement and security institutions of the society.

6 -This plan has negative national and international effects that should be taken into consideration. The approval of this plan in the current environment, despite the actions of ISIS, causes a kind of extremist mentality. On the other hand, considering that one of the political cases of our country at the international level is the case of violation of human rights, the approval of this plan and its implementation under these conditions will create the basis of increasing international pressure against our country.

7 -Nationally, this project, especially after the acid attack in Isfahan, causes the spread of political and social inflammations in society and a pessimistic attitude towards the duty of enjoining good and forbidding evil.

8- According to past experiences, using financial and economic pressures such as deducting salaries from people who do not wear hijab, will not be successful in spreading hijab culture. According to the above-mentioned content, there is no acceptable evidence that increasing the punishment for indecent exposure leads to the improvement of the situation of indecent exposure. Rather, on the contrary, increasing the punishment regardless of the infrastructure and the wishes of the society may have the opposite result. However, this plan has not been approved so far and expert opinions have been made on the rejection of this plan. But the possibility of approving this plan is not out of mind. Due to the fact that there were many objections regarding the establishment of the law on the protection of rulers, whether good or bad, but the fundamentalists of the parliament finally passed this plan.

The second speech: Criminalization of those who are aggressors by commanding the good and forbidding the bad

Drafting laws is one of the most obvious manifestations of conflict in society. Because some sections of the society only support their own interests by establishing the law. One of the examples of this type of criminalization, which provides only the interests of a few in the name and at the expense of public interests, is the law of protecting those who command good and those who do evil. Examining the social and historical causes on which the said plan was proposed shows that the goal of the early designers was only to provide material support to those who were injured or martyred in the pursuit of this divine duty. However, a detailed review of the deliberations of the Islamic Council and the discourse of criminal policy officials shows that the purpose of this law is to apply a strict control approach in society (Mirmojidi, Habibzadeh, Farjiha and Omid, 2015, pp. 155-156).

As it is clear from the title of this law, protection measures have been considered for those who enjoin good and forbid evil, so that they have more protection in case of crimes against these people. In this area, special protections for the good and the bad are briefly examined:

The first support: It is the intensification of the punishment of people who resist and commit crimes against the commanders, whether good or bad. This issue is foreseen in Article 7 that the punishment of these people cannot be reduced, suspended or postponed. In the note of this article, it is also stated that this crime has a general aspect and even if the private plaintiff passes away, the punishment of the general part of the crime will be implemented.

The second support: Article 9 of the law deals with the criminalization of obstruction and interference against the commanding officer for good and forbidding evil. In such a way that "natural or legal persons do not have the right to create obstacles against the implementation of the good and the prohibition of the bad." Any type of obstruction and disturbance that is recognized as a crime according to the law; In addition to the prescribed punishment, it will result in a sentence of penal servitude or a monetary penalty of the seventh degree (imprisonment from 91 days to 6 months or a monetary penalty from 10 million Rials to 20 million Rials). Of course, it would have been better for the legislator to specify the state or sovereign legal entities in this article and take the side of the citizens more.

The third support: speeding up the processing of the case of this category of people. According to

Article 11, "the judiciary is obliged to allocate special branches in order to speed up the handling of crimes under this law". Also, according to the note of the same article, "those who command the good and those who refrain from the evil are subject to judicial protection under Article (4) of the law on judicial protection of the Basij approved on 10/1/1371 by the Islamic Shura Council."

The fourth support: guaranteeing the payment of ransom for intentional or unintentional crimes against perpetrators and victims. According to Article 13 of the law, "in cases where a crime is committed against the person who is in charge of the crime and the victim is not identified, or if he is identified due to financial incapacity, he is unable to pay the dowry within the prescribed time limit, in the event of a demand for dowry from Against the victim or parents, as the case may be, after the final verdict is issued by the competent judicial authority, the ransom is paid from the place of note in Article (9) of the law.

Fifth support: according to Article 15, it is sacrificial to know the commanders and subordinates who are harmed and...

The third speech: Negative and restrictive punishments of freedom

In the note of article 638, which is established regarding the non-observance of Islamic hijab by women in the society; Imprisonment has been considered for these people. It should be noted that, in addition to being a crime, not observing the Islamic hijab may cause women in society to become victims of crimes such as molestation, sexual crimes, etc. Therefore, it is necessary for the women of the society to observe the religious hijab to some extent. Although the prevailing punishment in the "law on handling violations and punishing sellers of clothes whose use in public is against Sharia and injures public morals" is a fine, but according to Article 6, if the violators of this law are legal entities, the CEO or responsible manager A legal person is considered a criminal and is sentenced to prison. According to the note of Article 7 of the Law on Protection of the Good and the Forbidden, which declares the crimes against the good and the bad as public crimes, if the plaintiff forgives, the imprisonment prescribed in Article 614 of the Islamic Penal Code (Punishment and Deterrent Punishments approved in 1375) applies to the criminal. According to Article 9 of the Law on Protection of the Righteous and the Forbidden, "Creating any kind of obstruction and disturbance that is recognized as a crime by law; In addition to the prescribed punishment, it leads to a sentence of imprisonment or a monetary penalty of the seventh degree...", which is here for such a person imprisonment or a monetary penalty. It should be noted that in the case of legal entities, in addition to the administrative punishment according to the law on dealing with administrative violations, depending on the case, they will be banned from one or more professional or social activities permanently or for a maximum period of 5 years.

Conclusion

In addition to social and economic policy, any society also requires having a criminal policy, which explains the views and policies of policymakers and community officials regarding ways to prevent, control and deal with the criminal phenomenon. It is a desirable and considered criminal policy that reduces crimes and deviations in the society by applying preventive and reactive measures and ensures order and security. Islamic criminal policy has prepared various mechanisms to reduce crimes and deviations; One of the most important of these tools is to enjoin what is good and forbid what is evil. The duty of enjoining the good and forbidding the evil by creating a sense of responsibility and spirit of cooperation among the members of the society, prevents the occurrence of crimes and deviations. In this way, the basis of this duty is the social responsibility of individuals and the impact of one person's deviation on the life of all members of the society. If fulfilling an individual's desire leads to the violation of accepted social norms and values, society members are obliged to prohibit the imperfect person, which prevents the occurrence of crimes and deviations. Enforcing what is good and forbidding what is bad causes social and situational prevention of crimes and deviations. This duty is effective in both types of social prevention, including growth-oriented and community-oriented social prevention. In this way, by using different institutions such as family, peers, school, etc., this duty makes the child familiar with the norms and values in the society, which leads to growth-oriented social prevention. This duty, by applying educational measures and programs

and making changes and interfering in the social environment, they influence the social environment around people, which ultimately leads to the elimination or reduction of crime-causing factors in the society, which provides community-oriented social prevention. 559. On the other hand, this duty is effective in reducing situations that expose people to commit crimes by reducing criminal attractions and denying or making it difficult to commit crimes through formal and informal supervision. which leads to situational prevention. In addition to the preventive role, this duty applies criminal or non-criminal reactive responses by applying the guarantee of appropriate executions in case of crimes and violations.

The inappropriate way of legislation and implementation of this duty by the government in the women's society has caused that the main mission of enjoining good and forbidding evil, which is the participation of people in order to reduce crimes and deviations in society, has not been realized. In such a way that the government has made the enforcement of the good and the prohibition of the evil a tool to intensify the control over various aspects of the citizens' lives, and the secret police, which is unfortunately used in the plan to improve social security, is used to enforce the good and the forbidden of the evil in Society uses. The implementation of this duty in the society with such a process, over time, will cause the people to reject this divine duty and the rule of authoritarian criminal policy in the society.

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