The theoretical basics of paying attention to offender’s personality in criminal judgment process in terms of Islamic legal system

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Abstract

Today, paying attention to criminal’s personality in criminal judgment process is an important issue respected by legal schools especially Islamic legal system since the aims of criminal justice system cannot be positivism with considering offender’s personality as the first actor in criminal judgment process. In teachings of legal schools especially Islamic laws, a radical principle is to remedy and re-integrate the offender. The most important theoretical basics in considering offender’s personality in Islamic penal law include human dignity, justice – oriented outlook to offender’s personality, keeping the interests of the society and social order. Hence, penitence is highly emphasized as an affecting factor on offender’s re-integration. Therefore, in present paper, we study the approaches by such schools as classic, positivism and social defense and then we contemplate on the approach adopted by Islamic legal system.

Keywords: offender’s personality, criminal judgment process, criminal justice system, Islamic legal system

1. Introduction

In past criminal systems, only crime and punishment were considered while the themes and factors which played role in crimes were ignored. The only aim was to punish criminal and even children were punished like adults. By the emergence of different schools and a biological, sociological and anthropological attitude toward offender and his/her behavioral factors, new theories and approaches were generated. Some of these attitudes considered offender as an entity different from other people who has lost his/her freedom due to a set of internal and external factors. According to this attitude, offender is someone who commits a crime because
of unexpected internal and external factors and the only way to protect the society is to eliminate him/her like a microbe from human body. Some schools have considered treatment since they consider offender as a patient who should be treated. According to this view, offender is someone that ruling class sees his/her behavior in contradictory to its interests. There are other attitudes toward offenders to which there are no room to be expounded here. According to different schools, it becomes clear that each school has a special attitude toward human with different basics. Hence, varied and different theories and insights are mentioned about offender.

In Islamic attitude, human has an excellent position and status and the Divinity has deployed messengers to conduct them. If someone breaches Divine rules and commits the acts forbidden by the Divinity, he/she has breached the rights of other people, has broken social order, is considered as sin and punishments are considered for both in this and the next world. Hence, in many cases, punishment in next world is emphasized by Holy Quran and narratives by the Prophet and Imams. Obviously, such aspect of punishment in Islamic School can play a vital role in preventing crimes.

Likewise, this world punishment has different kinds in Islamic penal laws and all of them are aimed at destroying corruption, social health and remedying the offenders. Additionally, Islam has special attention to offender so that it is attempted not to punish offender. Therefore, different ways are considered such as victim’s satisfaction through compromise, penitent and offender’s reintegration. In such cases, the punishments mentioned as “tazir” are removed in Islam. Furthermore, it is recommended to cover sins and if it is revealed and any right is breached, it should be compensated fairly. Briefly, Islamic criminal policy is devised so that human dignity is always retained and in reacting to offender, his/her personality is respected. In other word, if someone commits acts against religious and common principles, his personality is considered and different moods of personality are respected in Islamic Penal Law.

**Personality**

As men have different appearances, they have unique internal traits and are not identical in terms of human ethics. By such human ethics, behaviors and moods, individuals have different statuses in society with different attitudes and insights.

After renaissance and at the beginning of 156th century, initiatives were taken to recognize personality and its traits while no remarkable actions were made before 19th century. Since then, many scientists studied the relationship between human
physical construction and moods (or what we call personality today). For instance, in 1874, Czar Lombroso published “criminal man” book. Therefore, since long time, scientists attempted to study and identify human personality and the relationship between physical structure and moods.

Personality equal with Persona which means “mask”. It refers to the masks used by actors (players” in ancient Greece and Rome. Implicitly, it means that the personality is like a mask on face of someone to make h-m/her different from other people.

Some believe that an individual has rights and assignments and personality is to describe the competency of such rights and assignments. However, it is lawmaker who determines who has the right, assignment and personality (Ghanavati, 1998: 65).

Likewise, personality is defined as a distinguished trait by which people are seen with exogenous or endogenous personality (i.e. aggressor, etc.).

Therefore, the main concept of personality is a social and facial image by which the role played by a person in the society is shaped. However, different perceptions on personality concept show clearly that overtime, the meaning of personality is expanded from its initial concept. Currently, personality refers to a radical and sustainable trend on human; in other words, personality is an organized unit with relatively fixed and sustainable characteristics which distinguish someone from others. Positivism school has considered personality in its physical and mental concept and believes that any transformation in personality depends on changes in an individual physically and mentally. In other words, personality refers to bio-mental structure of a person or a set of internal factors in addiction to social ones. The opinions raised in this school are admired by biologists (Mazluman, 2003: 143).

2. Basics and aims of respecting offender’s personality

One of the most important aims of punishment in penal law is to remedy and rehabilitate the offender and justice execution. In Islamic law, punishment is seen as the last way to execute justice, crime re-commission prevention, remedy, rehabilitation and society’s health.

Concerning the importance of justice execution, crime re-commission prevention, remedy, rehabilitation and society’s health, the importance of present paper is clarified since without recognizing and respecting offender’s personality, it is too difficult to execute justice, to rehabilitate the offender and to achieve society’s health. To the same reason, studying theoretical basics of legal schools and Islamic legal
system as well as their approaches on offender’s personality is necessary and addressed here.

1.1. The basics of respecting offender’s personality

Basic means the pillar (Amid, 1996: 1078) and foundation by which something is backed up (Dehkhoda, 1998: 4094). It is a norm in an official theory which clarifies the clear and unchangeable status of its members. In some definitions, it is mentioned as establishing and justifying pillar of obeying the law. In Islamic laws, justice execution, security and social health are seen as the basics of resecting offender’s personality expounded in below.

1.1.2. Respecting offender’s personality and human dignity

Undoubtedly, one of the most important basics is to respect offender’s personality a human dignity since human is the superior creature to whom even angels submit and the angel who did not submit human was exiled by the Divinity.

Considering such status of human, one should not ignore the human dignity of an offender. One of the reasons of punishing the offender is to return him/her to his Divine nature. On this basis, when someone commits an offence, one should not forget that human is created as the Caliph of Allah in penal or non-penal reaction and. As possible, one should consider a way in responding the offenders which return them to their divine nature and they can fine the route of human perfection. Obviously, punishing an offender without precise and adequate recognition of him/her might have reverse effects and it may not only lead him/her to perfection routes but also put him/her more in the way of dwindling.

2.1.2. Justice – oriented glance at offender’s personality

One of the basics of respecting offender's personality in Islamic law is equality and justice execution. There are varied verses in Holy Quran on the importance of justice. There are also many narratives in relevant books cited by Imams. Holy Quran asserts that the goal of sending Prophets have been to establish justice. “We have sent our messengers with proofs, and sent them with the book and the scales, so that people might establish the scale (of justice)” (Chapter 57: AL-HADID (THE IRON)).

In another verse, it tells the Prophet: “judge between them with fairness. Allah loves the just.” Chapter 5: AL-MAEDA (THE TABLE)).

It is also emphasized in verses 29 (AL-ARAF), 135 (AL-NESA), 90 (AL-NAHL) and 8
(AL-MAEDA). It is also highly emphasized in narratives. The Prophet says that one hour of justice execution is superior to sixty years of praying (Mohammadi Rayshahri, 2004).

Since justice execution is important in Islam for conducting all affairs and there are many orders in this regard, it is necessary for us to do our best to execute these orders in all issues. One issue in which justice execution is specially respected is judgment and verdict issuance. The first step for issuing and executing a far verdict is that we have adequate recognition on all aspects of the issue and, undoubtedly, one of these aspects is offender’s personality since with recognizing offender’s personality, it is not possible to execute justice. Similar treatment with people without considering their competencies, capabilities and virtues is a kind of tyranny. Justice means that despite of people’s equality against law, their competencies and mental moods should be considered and since all people are not the same, similar treatment with them without considering their personalities would not lead into justice. Human wisdom and consciousness do not accept that all people should be published without considering their mental and physical moods, feelings, individual/social conditions and personalities (Abhari, 1998: 108). After executing the justice against offender or the accused specially paid attention by religious lawmaker, one should respect his/her personality.

Although in many societies all people were identically responsible till recent years and there was no difference between wise and mad and adults and children and even in some European countries even animals were not protected from punishment, in Islam, paying attention to offenders’ personality – in terms of spiritual, physical, economic, cultural status and conditions of committing the crimes – is respected in adopting the laws.

Is the punishment of a mad-man without wisdom is identical to a wise person who commits a crime? Is the punishment of a child who steals something is identical to a mature adult? Is the punishment of someone who has committed a crime like theft under huge pressure and without his will is identical to someone who has conducted such crime without any pressure? Is it fair to treat identically with someone who repents his behavior and submits to competent authorizes and attempts to eliminate or reduce the impacts of the crime and someone who persists on crime commission and there is no sign of his repenting?

Obviously, the responses to all above questions are negative and Islamic Penal Law does not consider it fair to execute identical punishments for all people and it is issues special verdicts based on committed crime, personality and moods. For instance, in administration of Mamoon as the Abbassi Caliph, his officers brought someone for theft. Imam Reza (PBUH) was also there. The man had the sign of
praying on his forehead. When Mamoon watched him, told: “damn to a beautiful appearance and be work! Should they bring you with such beautiful appearance for stealing? He told, I did not the job willfully. I had to do that.” To the same reason, Imam ordered to release him (Ebn Babuyeh, 1999: 237).

We can see clearly that Imam considered offenders’ personality and moods in issuing his verdict not to punish him. Undoubtedly, he should be punished if these issues were not considered.

2.1.3. Offender’s personality and social order retain

Another basic issue in respecting offender’s personality in Islamic penal law is to keep social discipline and security as well as the interests and health of the society since keeping social system and health is particularly important and to the same reason, if someone disorders social system and jeopardizes society’s health, special initiatives should be taken. For instance, he should be imprisoned to protect the society from such persons.

When we refer to jurisprudential books, we can see that jurisprudents like Yahya Bin Saeed Helly have emphasized on respecting offender’s personality in retaining social order and security in Al-Jame Al-Sharaye book: “Imam imprisoned incompetent physicians, non-capital dealers and corrupted scientists in order to protect the religions, life and properties of people” (Ebn Babuyeh, 1998: 31).

In Imam Ali’s words, offender’s personality is respected and three groups that have posed the highest losses against the society and have disordered social order are competent to be punished since these three groups are more danger than other criminals.

In translating the book Al-Hayat, Mr. Hakimi says: “according to such divine foundation, it is necessary that Islamic community aware its task against corrupted scientists, speakers and clerks who ignore Divinity and support power owners and those ones who become religious leaders of Islamic community without necessary competition (and such competency is, inter alia, the greatest types of corruption and is seen as political and social blasphemy in Islamic laws). As it is the task of Imam to imprison corrupted scientists to protect the interests of Islamic community and religious facts, it is also necessary for other classes to leave such incompetent scientists and speakers and clerks to keep their religions and cut their relations with them to pave the way for elected, religious, believing, brave clerk who is aware of policies, conspiracies of enemies and can resist against them with evil goals and to return Islam to its dignity and Muslims can achieve excellent entity and wealth and religion and liberty and to prevent wasting Islamic values and to protect then belief
of youngsters and prevent them from materialism and blasphemy trap and Islamic nation can find a shelter against non-human flows of Christian imperialism and Zionist crimes and conspiracies. As mentioned, wisdom and objective considerations and health nature and certified narrations make such practice necessary (Hakimi, 2001: 588).

The late Ayatollah Golpayegani (1409 lunar year: 209) believes that it is necessary for Imam to imprison sinful scientists, uninformed physicians and capital-less dealers and it is the task of ruled in the period of Imam’s absence.

Makaremi Shirazi believes majority are those ones who can be justified and conducted through cultural, training and educational ways. Therefore, they need neither punishment nor violence. In other word, good deeds are familiar with the sole of human. It means that the Divinity has put it inside human as an attraction of goods works and to the same reason, cultural and intellectual justifications is adequate for majority of the people. However, there is a minority in any society which is not obliged to law and even enjoys law breaching and honors it. These individuals are dangerous for any society.

Likewise, some Sunni jurists say that the method by Imam Ali (PBUH) was that he imprisoned a corrupted person among a tribe and consumed his properties for himself if he had assets and if not, he supplied his costs through Beitolmal (treasury): the society will get rid of him and his costs should be paid through Beitolmal (Mohammad Al-Salabi, 2005: 430). Here, we can see that Imam Ali (PBUH) respects offender’s personality not crime. Therefore, he treats more seriously with those ones with more dangerous personality in order to protect the society from their risks. According to above points, it is clear that the reasons to respect offender’s personality in Islam Penal Law include: human dignity, executing justice and society’s health. On this basis, in Islamic penal law, it is too important to recognize offender’s crime since without right recognition of offender’s personality; we cannot react properly and remedy the criminal, to execute the justice and society’s health.

1.2. The aims of respecting offender’s personality

In Islamic laws, respecting offender’s personality is too important in different aspects such as justice execution, awareness of risky mood, social adaptability, predicting an individual’s actions and behavior in future and his/her compatibility power. Also, we need to respect and recognize offender’s personality in selecting the best plan to remedy and control a criminal. Therefore, the aims of respecting offender’s personality include criminal justice execution; assessing delinquent’s personality and
his/her moods; selecting the best plan to remedy, treat and control the results. We address them in several parts.

1.2.1. Justice execution

As mentioned, in Islam, justice is a pillar and backbone for human survival and it is too important. Without considering offender’s personality in Islamic Laws, it is impossible to achieve criminal justice. Similar treatment with people without considering their competencies, capabilities and virtues is a kind of tyranny. Justice means that despite of people’s equality against law, their competencies and mental moods should be considered and since all people are not the same, similar treatment with them without considering their personalities would not lead into justice.

In Islam, justice is an important social value with a higher status. As mentioned before, Holy Quran has announced the main aims of prophets to establish justice and equality (Nahl Chapter: 90).

Holy Quran introduces retaliation as an implication of justice (Abhari, 1998: 108). Imam Ali (PBUH) believes that justice execution as humanity life (Mohammadi Rayshahri, ibid: 1838). In Islamic laws, anyone who commits an offence against religion should respond. No one is protected; so Holy Quran reads: “whosoever does evil shall be recompensed for it, and he will not find for himself, other than Allah, a guardian or helper” (NESA CHAPTER: 123). Considering the importance of justice in Islamic laws, one of the aims of respecting offender’s personality is justice execution since the necessity for justice execution is to recognize offender’s personality. Also, in addition to offender's personality, one should analyze crime nature, crime commission factors as well as temporal and spatial conditions and then to determine punishment for the crime. A small interference in identifying above points would injure the consciousness and feelings of the society since referring someone as crime without any reason would impact on all aspects of his life and its extension can impact on the society. However, if the offender is sonly studied a person out of internal/external factors and his/her life, crime nature and motivation to commit the crime as well as the vole of stimulations by plaintiff and offender, we can never execute justice.

It is due to respect offender’s personality that in Islamic criminal laws, someone who has not married and has satisfied his sexual instinct is somehow in adultery that someone who is got married and has extinguished fire of lust legitimately and the punishment of adultery is more excessive than non-adultery (Gorji, 1986: 62).

Therefore, justice clarifies that when deciding on conviction award and determining the punishments, offender’s personality and his/her conditions such as age, gender,
family status, socio economic conditions and mental moods should be considered in addition to committed crime (Mohseni, 2003: 29).

1.2.2. Remediing the offender and his/her reintegration

One of the most important aims of respecting offender’s personality in clinical criminology is to evaluate offender’s personality in different aspects such awareness of dangerous conditions and social adaptability, behavior prediction, future actions, compatibility power and planning to prevent crime relapse. During an international conference in Rome (1985), the principles of clinical criminology were expressed by Italian criminologist, Di Tolio:

1. studying delinquent’s behavior in all aspects using medical, psychological and social inspections that have a multidimensional nature
2. evaluating offender’s personality his/her risky conditions
3. formulating remedy and treatment plan which should be undertaken by offender’s
4. pursuing remedy and treatment plan and controlling its results

It is seen that clinical criminology is organized medically in science junction with specialized and technical aspects found meaning conceptually which moves constantly from a group toward an individual and vice versa. It works with both scientific concepts (personality) and concepts that show value medicines (risky mode) with an independent ethical aim (Najafi, 1998: 44).

In Islam, recognizing offender’s personality is particularly important for judge. Hence, he should fully aware of psychological principle, motivations of crime commission, emotional and intelligent and behavioral factors scientifically. Undoubtedly, such awareness would have profound impact on his decision making. Judge’s familiarity with offender’s personality constructing factors is a good guidance to determine the reason of crime commission and to issue a proper verdict for prevention or treatment.

Right evaluation of offender’s personality and crime amount plays a vital role in punishment since one aim of penal lawmaking in Islam is to remedy individuals and society (Feiz, 2010: 383). In other words, remedying and treating criminals which is seen as a legal aim of modern laws for which many authors have theorized is also considered an important goal in Islamic Penal system so that so that if such goal is met without punishment, this punishment is canceled. Holy Quran reads: “i would
rather you bear my sin and your sin and become among the inhabitants of hell. Such is the recompense of the harm doer” (AL-MADEEH: 29).

Also it is mentioned in verses 54 of ANAM, 16 of NESA, 89 and 160 of Al-OMRAN and 5 of NOOR Chapters. Obviously one can achieve this important goal when there is a precise recognition of offender’s personality and without such recognition, it is impossible to remedy and treat criminals. As the result, convicting a criminal and delinquent without recognizing his/her personality and social factors is far from fair and justice (Kaynia, 2005: 60).

One way for judge to achieve offender’s personality is to open a personality case alongside criminal one and taking the opinions of experts in different science fields.

Personality file contains full information on offender’s individual and familial background as well as the opinions by medical science and social workers. By this file along with criminal file and by studying it, the judge can achieve information on offender’s personality, considers the share of different factors in forming criminal phenomenon, finds crime impetuses, considers the best initiative for offender by paying attention to individual differences and takes proper decision to eliminate or mitigate the impacts of such factors by identifying crime factors. He prescribes a medicine which remove offender’s pains; he is like a physician who may kill the patient if he/she cannot diagnose the illness. The necessity to remedy and treat the offender is that the judge can recognize his personality so that he can take a decision to treat him/her otherwise improper decision would lead into reverse results and maybe one of the important factors in increasing the crimes and relapses is wrong decisions by judiciary which cause the growth of inferiority complex and revenge sense among criminals. Therefore, one of the aims of paying attention to offender’s personality is to create a rational relationship between committed crime and his/her punishment so that the losses of punishment can be higher than the benefits of crime commission and the offender has no earning in committing the crime again.

As mentioned before, one should not that the conditions of offender and delinquent as well as his traits are changing. It is realized and helps the judge has full recognition on offender’s personality, spiritual and mental moods and crime factors led into delinquency. Then, the judge can evaluate these aspects and considers proper ways to confront these factors and more importantly, to remedy and treat criminals.

There is a special attention to this issue in religious resources particularly in discretionary since it has no definite amount and its amount varies by offender’s conditions and traits and even it may need to use Beitolmal to remedy the criminal so the judge will issue the relevant verdict. For instance, if the reasons and factors of crime commission are singularity and poverty, it is emphasized that one should use
Beitolmal for delinquent’s marriage by which he can be remedied. Imam Sadiq (PBUH) asserts: “someone was brought to Imam Ali (PBUH) who was playing with his penis. Imam Ali beats his hand so that it became red. Then he found a wife for him from Beitolmal (Kelini, 1429 Lunar: 257). In another narrative cited by Imam Sadiq (PBUH), a woman who had committed adultery was ordered by Imam Ali (PBUH) to get marry so that her husband can control her and prevents her sins (Toosi, 1407 Lunar: 154).

It is clear that in both cases Imam Ali (PBUH) executed a special decision due to offenders’ conditions and this is a reason why one should consider offender’s personality and situation in taking any decision.

Likewise, if the reason of theft by thief is his excessive poverty, his punishment differs from someone to whom theft is a job and even the former may be not punished and highly discounted in punishment as done by Imam Reza (PBUH) (Ibn Babuyeh, 1999 Lunar: 237) in a dispute between Mamoon and needy thief. Therefore, one of the aims of respecting offender’s personality is a precise evaluation and recognition of offender’s personality and to identify crime factors so that we can take a proper initiative to remedy criminal. It is seen more in discretionary since the main aim is to prepare delinquent for a healthy life in society (Abhari, 1998: 119). So, the main consideration in discretionary is offender’s personality.

1.2.3. Defending the interests of the society and crime prevention

In divine religions including Islam, the main aim is to create a healthy society far from tyranny and corruption. Islam wants that human community is health, competent and full of kindness, security, convenience and discipline. Virtues should be tangible in society and social relations and ugliness, corruption and delinquency should be abandoned. Hence, in Islam penal law, special attention is paid to those criminals who threat society’s health and serious punishment are considered for those offenders who breach social values (ibid).

Breaching interests of the society and individuals leads into punishment and Holy religious lawmaker has defended these interests: religion, esteem, assets, origination and wisdom that are highly important and respecting them are necessary for all prophets (1412, lunar: 10).

It is also considered in words by Imam Ali (PBUH): Imam is obliged to imprison corrupted scientists, unwise physicians and unreliable carriers (to prevent losing the society) and he seriously curbed those people with very dangerous personality since they have negative impact on society’s order and interests (Helley, 1405: 568).
Therefore, one of the aims of respecting offender’s personality in Islamic laws is to protect social interests and preventing social damages. As mentioned, it is realized when offender’s personality and crime type is recognized and crime negative impact on society is identified and then proper guidelines are taken.

In his book “Tax”, Abu Yusuf says: “the method of Imam Ali (PBUH) was that when he found a wicked person in a group or tribe imprisoned him and if he had assets, Imam spent it for his costs and if he didn’t have money, Imam paid his costs through Beitolmamal (treasury). Imam asserted: “by this way, one should make him far from Muslims and spend for him through public treasury” (Najafabadi, 1409, Lunar: 189).

Davood Yusuf Khatib says that when someone curses, he will be preached if he is generous and if not, he will be imprisoned and if cursing is his habit, he is beaten and imprisoned.”

Considering above points, one can say that in Islam and for punishing a criminal, it is necessary to pay attention to offender’s personality, criminal remedy, crime prevention and society’s interests. By considering these points, punishment type is determined. One clear point in Islam is discretionary that its amount is not cleared and religious lawmakers would determine it by considering such criteria.

3. Conclusion

As human is a complicated, ambiguous and inseparable entity which cannot be easily recognized, it is also difficult to provide a precise definition on human personality. To the same reason, we can see that different connoisseurs have provided varied definitions on personality: personality is the talent to behave in different conditions or personality is a combined organization composed of human mental and physical traits including inner or acquired ones which introduce human identity and distinguish him/her from other society members. Based on such definition, personality is a single and undividable reality which determines human personal adaptability to environment and society.

An important point on Islamic laws is to recognize offender’s personality. Criminal justice cannot be realized if offender’s personality is not adequately respected, offender’s personality is not recognized and other factors such as criminal motivations and mental/spiritual moods of the criminal are not studied. Therefore, one can say that Islam does not have a single opinion for all delinquents and offenders and there is a radical difference between those ones who do not have a corrupted nature and look for realty but they commit mistakes and those ones with corrupted nature who look for false. Regarding Khavarej, Imam Ali (PBUH) asserts: do not kill them after me since someone who looked for right and has made a
mistake in his recognition is not similar to someone who looks for false and has achieved it. The most important basics include respecting offender’s personality, justice orientation and retaining social security discipline as well as social interests and, most importantly, remedying the criminals and their reintegration. In Islamic view, an offender has rights which should be regarded. The most radical manifestation of reaction against criminals by considering their personality is discretionary punishment posed by ruler in terms of the situation and social conditions of an offender.

Concerning punishment fitness with delinquents’ characteristics, Imam Ali (PBUH) asserts: “forgive the mistakes of distinguished persons because that no one will commit an offence through them otherwise Divinity’s hand is in his/her hand and would improve him.” Or “there are many sins that their punishment is to aware the offender of that sin.”

In Islam, offender’s personality is considered both in adopting the laws and reactions to him/her. In adopting the laws, religious lawmaker has considered offender’s physical conditions, offender’s personality and different conditions of the crime. The amount of punishment is determined by respecting offender’s personality and conditions, crime types, backgrounds and crime factors. Also, the ways of reconciliation, penitence, and forgiveness by victim and return to main route and prosperity are always open and in the case of penitence, repentance and return, the type reaction against offence will be highly changed. In fixed punishments (lashes, retaliation), however, offender’s personality is not considered albeit his conditions are paid attention by lawmaker. Besides, in Islamic Penal Law, by emphasis on the personality of all people and in order to defend their rights, different ways are used to adapt reaction to offenders’ personality and conditions. Individualizing legal, judicial and executive punishment is widely seen in Islamic law. Hence, one can say that Islamic law has been a pioneer in recognizing offender’s personality and adopting different ways to individualize the punishments.

References

1. *Holy Quran*

2. *Nahjolbalgheh*

3. *Isfahani, Hussein Bin Mohammad Raghef (1412 lunar year), Mofradat Alfaz Holy Quran, Lebanon, Darolelm*
5. Jafari Tabrizi, Mohammad Taghi, global human rights in Islamic and western attitudes
7. Hekmat, Saeed (1992), judicial forensic law, Gutenberg Publications
8. Helly, Meghdad, Kanzal El-Erfan, transalted by Bakhshayeshi, Abdulrahim Aghighi, Qom
9. Helly, Najmldin (1412), Nokat Al-Nahayat, Islamic Publications Office, Qom
12. Rahmdel, Mansoor (2008), the weight of determination in criminal affairs, SAMT Publications
13. Sheikh Toosi, Abu Jafar (1400), Dar Al-Kotob Al-Arabi, Beirut
14. Helly, Hassan (1414), Tazakar Al-Foghaha, Al-Beit Publications, Qom
15. Ghnavati, Jalil (1998), Islamic Laws System, Islamic Books Global Publication Center, Qom
17. Gorji, Abulghasem (1986), legal papers, Culture and Islamic Guidance Ministry, Tehran
18. Golpayegani, Mohaamd Reza (1409), Majma Al-Masayel, Dar AL-Quran, Qom
19. Majlesi, Mohammad Bagher, punishment, retaliation and blood money, Tehran, Islamic Works Publications Institute
23. Mohammadi Gilani, Mohammad (1999), Judge and judgment in slam, Tehran, Sayeh Publications


25. Mazluman, Reza (2003), criminology, Tehran, University of Tehran Publications


30. Vaziri (1976), criminal law transformation, Tehran, University of Tehran