

Feasibility Study of Utilization of Modern Criminal Institutions in Islamic Prescribed Punishments (Hodud)

Hossein Khodayar

Student of Ph.D. of Criminal Law and Criminology of Allameh Tabataba'i University, Tehran, Iran
Email: hossein.khodayar@gmail.com

&

Dr. Rahim Nobahar

Associate Professor, Faculty of Law, Shahid Beheshti University, Tehran, Iran
Email: r-nobahar@sbu.ac.ir

In traditional view in Islamic jurisprudence, Prescribed Punishments (Hodud) are often understood as unchangeable and inflexible. This, in its turn, has led the modern criminal institutions not to be applied in prescribed punishments. Indeed, while modern criminal entities are welcomed in discretionary punishments (Tazirat), they have been hardly welcomed in Hodud. The result has been a more differential system of punishment containing had and Tazir with different laws and rules. Having chosen an analytical-critical methodology, this paper shows that even inflexibility of prescribed punishments is not a cause for modern criminal entities not to be applied in them. Reliance upon unconditionality (Itlaq) of the evidences related to prescribed punishments is not a sufficient and convincing argument to put prescribed punishments far from the modern entities. Also this paper shows that impermissibility of postponement of Had and its cancelation, as insisted in religious texts, is not inconsistent with criminal concepts like deferment of judgement, suspension of punishment and prohibition of double punishment.

Keywords: Modern Criminal Entities, Prescribed Punishments (Hodud), Cancellation of Had, Postponement of Had, Prohibition of Double Punishment.