

In the Name of God



دانشگاه مفید

Abstract of Papers

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Toward More Human Punishment

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This paper is an attempt to clarify the meaning of “inhuman punishment” included in Article 5 of the Universal Declaration on Human Rights.

Two approaches can be followed to attain the above goal: first, since the term “human” is used in the phrase, anthropological questions can be posed and human being “as it is” and “as it ought to be” can be studied and in this way the meaning of inhuman punishment can be expounded. This approach is unproductive and in fact leads to considering inhuman punishment ambiguous and the article embodying the phrase becomes unclear. For there is no agreement on the nature of man to serve as the basis of a legal study. Furthermore, general principles and rules of interpretation as well as those concerning the interpretation of criminal laws would not be in accord with such an approach.

In the second approach, regardless of philosophic and anthropologic questions, recourse has been had to ordinary and natural meaning of human being and human in order to establish that inhuman punishment is one which a typical man considers to be incompatible with human dignity.

Then invoking doctrines which contributed to the prohibit on of inhuman punishment, it is tried to demonstrate the role of factors such as being “severe”, “corporeal”, “evident” and “humiliating” in defining inhuman punishment.

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Meanwhile, the question of variability or constancy of the concept of inhuman punishment is touched upon and it is argued that the meaning and examples of such kind of punishment vary according to changes in intellectual and cultural circumstances of human society.

After laying bare the concept of inhuman punishment, the bases of its prohibition is dealt with and the role of divine religious teachings (Judaism, Christianity and Islam) in laying the foundations of prohibiting such punishment is studied. Here, the emphasis of Islamic precepts on the element of "humanness" of punishment is developed more. And finally the necessity of practicing jurisprudence in Islamic penalties to secure the element of humanness in punishment is highlighted.