

Dignity -Based Punishment in the Democrat Model of Criminal Policy

Amir Mehdi Azizi^{1*}

Seyed Mahmoud Mirkhalili²

Ali Hossein Najafi Abrandabadi³ 

Abstract

Punishment is the most obvious form of government interference in the lives of citizens. Today, criminal policy makers do not deny the need for punishment and use the law as a tool to combat crime by meeting standards. One of these basic criteria is human dignity. The application of this criterion in sentencing varies depending on various political approaches governments pursue their criminal policy. In this article, the situation of punishment in the democratic model of criminal policy is examined. Human dignity is sometimes considered by criminal policymakers as the principles governing punishment, in which case on the one hand it avoids severe corporal punishment and on the other hand it maximizes fair punishments, which requires punishment as a necessity. Sometimes, in the light of human dignity and human rights, it leads to qualitative and quantitative changes in punishment, which leads to the elimination of corporal punishment from the criminal arsenal, as well as the humanization of the negative punishment of freedom.

Keywords: *Punishment, Human Dignity, Criminal Policy Model, Democracy*

1. Introduction

Democracies of criminal policy, with their emphasis on humanistic ideas and individualism in the matter of punishment, have always considered human dignity as a precondition for any criminal policy. Human dignity, although in the past was only present in the teachings of religions and philosophical writings, but today it is in the center of global attention and is reflected in international documents and constitutions of countries. Democratic governments have dramatically placed human dignity at the forefront of sentencing, and punishment in the light of the principle of dignity is a limitation for the legislature of imposing

*1. PhD Student in Criminal Law and Criminology, University of Tehran, Farabi Campus, Qom, Iran. (Corresponding Author: a_azizi1363@yahoo.com)

2. Associate Professor, University of Tehran, Farabi Campus, Qom, Iran.

3. Professor of Shahid Beheshti University, Tehran, Iran.

unnecessary and inhumane punishments. Today, human dignity is considered as one of the foundations of social order as a new strategy of criminal policy and is reflected in the penal system of criminal policy models. The individual is far more penetrating and guaranteed in the deterministic layers of the punishment strategy. It is obvious that governments without the intellectual presupposition and philosophical ideology cannot achieve the goals they seek from the execution of punishment. Therefore, the extent of government intervention in controlling the behavior of citizens and its prohibition through criminalization and punishment depends on the type of political system and ideology governing the political structure of that government. The importance of justifying punishment stems from the fact that the "human being" as a part of the body of society, is considered in the context of the goals of punishment in the field of punishment. Therefore, one of the most important basic criteria in sentencing is the observance of "human dignity", which is called "dignity-based punishment."

2. Methodology

This research is a descriptive-analytical method using written and documentary sources; On the other hand, due to the lack of internal resources, the data has been collected mainly using external source.

3. Results and Discussion

Democracies of criminal policy, with an emphasis on humanistic and individualistic ideas in sentencing, have always considered human dignity as a precondition for any criminal policy. Human dignity, although in the past was only present in the teachings of religions and philosophical writings, but today it is in the center of global attention and is reflected in international documents and constitutions of countries. So that by anticipating and approving it in international documents and obliging member states to comply with the content of this principle in domestic regulations, it has gained transnational validity and member states in their constitutions, which is the manifestation of legal recognition aimed at protecting the individual. And his rights are enacted, in order to guarantee and observe human dignity in punishment, they have given it foresight and supra-legislative validity. The role of human dignity in the new strategy of criminal policy can be examined from two dimensions. "Human dignity" is sometimes considered as a criterion of punishment by criminal policymakers, and sometimes in the light of human dignity and the achievements of human rights and criminology, it has led to changes in punishment in terms of quality and quantity throughout history and in the name of human rights as A "rightful" person is viewed as a human being and creates a change in punishment, which is a historical, historical and temporal phenomenon; Therefore, in the light of attention to the inherent dignity of human beings, various types of punishments, including imprisonment (imprisonment) have become more humane and prisoners have the basic rights as a "rightful" human being, as well as a trace of corporal

punishment. It is not seen as flogging and amputation, and it is in the light of the protection and guarantee of the inherent human dignity that these punishments, in different periods of history, have disappeared from the criminal arsenal today.

In the other dimension, the "principle of human dignity", as a criterion of punishment based on orbital dignity, causes the avoidance of unnecessary punishments. In other words, if punishment is imposed without the necessity of necessity, it deals with the criterion of human dignity and is not prescribed. Which in this model is based on the teachings of liberal thought and attention to freedom and individualism. Human dignity also acts as a limiter of inhuman punishments in the matter of punishment, which in this sense prevents governments from imposing some inhuman and cruel punishments in dealing with the dignity and honor of human beings. Consequently, the compliance of punishment with human dignity, even before it is considered necessary, is considered by democratic systems. The human requirement of considering punishment in the eyes of the democratic model is that the existence of guilt is a condition for the imposition of punishment on human beings, and on the other hand, the equality of individuals in punishment and the absence of degrading features should be observed.

4. Conclusions

One of the main results of this study is that punishment as a manifestation of government authority is closely related to the political and ideological system of each country, so that the "theory of punishment" is derived from the "political theory" of governments. Thus, the application of the criterion of human dignity in sentencing differs depending on which political approach governments pursue their criminal policy. The model of democratic criminal policy inspired by the liberal political system, based on its specific components such as "individualism", "freedom", "rule of law" and "minimal government intervention" has had a significant impact on the "theory of punishment". Therefore, human dignity as a divine gift should not be subject to the decision-makers and norm-makers of the legislative system, and under the pretext of committing a crime, punishments should be determined and executed that are inherent in dealing with dignity; This principle has penetrated into all layers of criminal justice and its observance is necessary at every stage of the criminal process (sentencing, sentencing and execution of punishment).

Selection of References

- Craig, Eduward, Routledge (1998), **Encyclopedia of philosophy**, U.S.A, routledge.
- Delmas Marti, M. (2016), **The Great Systems of Criminal Policy**, translated by Ali Hossein, Najafi Aberandabadi, Mizan Publishing, third edition, Tehran.[In Persian]
- Feldman, D. (1999) Human Dignity as a Legal Value–Part 1.

- peter laslett (1988), *Two treatises of government and the revolution of 1688* section iii of jasl etts ediforial ivtroduction to go hn locke . cunbridge university press.
- Peyvandi, G.R. and Mirbod, At in the theory of liberalism in the light of the principle of harm, in: *The principle of minimum criminal law*, Mizan Publishing, first edition, Tehran. [In Persian]
- Rostami, H. (2014), **Criminalization and Punishment in the Light of the Principles Restricting Freedom in Liberal Theory**, *Research Journal of Criminal Law*, Fifth Year. [In Persian]
- Spiegelberg, H. (1970) **Human Dignity: A Challenge To Contemporary Philosophy**, New York, Gordon & Breach.
- Sultanfar, Gh., Shambiani, H. and Azmayesh, A. (2017), *The Impact of Ideologies on the Receipt and Expansion of the Realm of Criminal Law*, *Iranian and International Journal of Comparative Law Research*, Year 10, Issue: 37.[In Persian]

Citation:

Azizi, A.M., Mirkhalili, M. and Najafi Aberandabadi, A.H. (2022). "Dignity -Based Punishment in the Democrat Model of Criminal Policy", *Criminal Law Research*, 13(25), pp. 177-204. DOI:10.22124/jol.2022.19832.2155

Copyright:

Copyright for this article is retained by the author(s), with first publication rights granted to *Criminal Law Research*. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution License (<https://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits unrestricted use, distribution, and reproduction in any medium, provided that the original work is properly cited.

