

Legislative Criminal Policy of Islamic Republic of Iran in Confrontation with Non-Observance of Canonical Hijab

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Abstract

Non-observance of Hijab has been the major concern of the individuals worrying about Islamic Republic of Iran. The old and ineffective legislative criminal policy and absence of a proper output from the government has added to the issue and the efforts have just resulted in specification of punishments for the individuals. Thus, the main issue is that why this legislative policy has not been able to be effective and promising in the face of such a phenomenon? This is while scrutiny in the well-known criminological theories and field research performed in the scientific articles enables clever actualization of this old wish of the government and worriers through repairing the current legislative policy. To achieve this goal, the criminal legislation route should be, in the first place, tangibly shifted in its inclusion from certain persons who just consume the values generated by the socially superior persons towards the very constructors of the values and, in the second place, legislative and criminal strategies drawn on the sure criminological principles should be thought of in line with the elimination of causes considering the expansion of bad hijab that, as evidenced in the prior studies, has come about following the satisfaction of the individuals' inherent need for social confirmation thereby to bear witness to the paling of the effect without its corrupt sequence (which is the very creation of gap between the government and the people); an example of such strategies can be enforcement of the non-discountable and unchangeable pecuniary punishments on the stores and offices that do not dismiss the women with bad hijab from their environment. This study has been conducted based on a fundamental method and it is a theoretical research; in terms of nature, the study method is descriptive of analytical type.

Keywords: hijab, social confirmation, legislative criminal policy

INTRODUCTION

Observance of hijab is amongst the necessities of Islam and an explicit order of the Holy Quran and hijab's non-observance cannot be justified and excused by any reason^[1]. In general, there are ten ĀYĀT in the holy Quran covering the concepts of hijab and decency and five ĀYĀT are specifically dedicated to clothing^[2].

There is also a relative consensus regarding the Islamic government's responsibility in the area of Hijab^[3-7].

The government's method of confrontation with hijab in Iran has a very turbulent background^[8]. In this regard, Will Durant has the following words about the Iranian's preliminary clothing: "Iranians realize it against courtesy to leave body parts except two hands naked and, due to the same reason, they are covered from head to toe with hat or turban or garments"^[9].

In Pre-Islam Iran, even the royal court's women had more clothing than the general public and the clothing was envisioned as a value in the society. It was after the entry of Islam into Iran that the Islamic hijab culture which was

simpler than the pre-Islamic clothing also entered Iran. During Qajar Era, the clothing undergoes a change with the Qajar king's trips to Europe and expediting a group of students for education therein. This change was more accelerated with the coup in 1920 and Reza Khan's power takeover and establishment of a westernized government in Iran that realized Islam as the cause of its laggardness. In this period, one can witness unprecedented attacks against the women's hijab and spreading rumors and doubts about it and

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cultural activities parallel to the removal of hijab and finally hijab unveil in 1935. This process was softly kept on during Muhammad Reza Shah's period. It was with the victory of Islamic Revolution and 98% of the people's vote for Islamic Republic that the former hijab-removing policies encountered a severe failure ^[12].

It has to be stated that the hasty interventions after the Islamic Revolution's victory and the awkward tastes that imposed the color, material and size of the clothes and the coercions to which the people, particularly, the adolescents, were subjected caused the formation of complexes that were shouted out with the first opening of orifices in the cultural space in the reconstruction and, especially, reformation governments and showed up in the form of various kinds of bad hijab and promiscuity ^[10]. Moreover, lack of paying attention to women's aesthetical senses in these policies and negligence of the production of Islamic clothing and lack of innovation in this regard are enumerated amongst the factors given rise to the spreading of hijab's non-observance. Thus, the issue of the contemporary Iran is no longer solely hijab but its issue of the day falls in the area of the current micro-cultures and, in fact, it is the transition from bad hijab to no hijab ^[11].

Therefore, it has to be concluded that Hijab has become more important than just a mere religious and jurisprudential issue in Iran. In fact, the issue of hijab has been gradually transformed into a social and political contest.

There are numerous and valuable books written with various approaches in this period of time. But, considering this scientific richness, no practical assistance has been provided to the qualitative and quantitative advancing of hijab's observance. In fact, the highest service of the works, articles, books and past projects has been slowing the speed of bad-hijab convoy for a short while. But, the hijab's issue is still inflicted with enforcement challenges in the legislation and planning leave alone proper measures in practice; this is while the issue's importance is not hidden from anyone because bad hijab has injured the collective conscience of a large number of the social classes ^[12]. It is necessary in this regard to explore the roots of bad hijab with an individual's need for confirmation being one of them. It can be explained that the need for other's confirmation in the social relations is of a great value in the cultural structure for every person and the human beings are presented in all the levels of the human community and they are either confirmed or disconfirmed by the others ^[13].

In other words, it is evident that one of the most important instruments by which the human beings demonstrate their real position to the others is the status of their clothing and outfits ^[14]. According to Rogers, since the human beings give superiority to their popularity over their real needs, they slowly begin their censorship so as to become well-liked ^[15]. In line with this, some believe that the women's need for staying beautiful and enhancing their fascination is more than

the men's ^[16]. Thus, it seems that Iran's legislative criminal policy should adopt a pattern of legislation in accordance to the regulations governing the criminology that, meanwhile eliminating the existent regulations' flaws that have occasionally led to the bad-hijab persons' opposition to the government and the decline of its legitimacy amongst the people, offers solutions by steering the people with an approach to governmental management and simultaneously through a nongovernmental execution (about which no researcher has presented any justificatory and privative materials even in partial manner). In this article, after the study background was presented, the proofs indicating the permissibility of the government's intervention in the area of hijab are dealt with in legal-political, sociological, cultural and Islamic and human terms; then, the current regulations on canonical hijab's non-observance are reviewed followed by their criticism through the use of sociological and criminological theories. In the end, a novel applied solution drawn on the well-known criminological principles will be offered and suggested.

STUDY BACKGROUND

In order to write this study, various articles with relevant subjects were scrutinized and studied and except one article that was titled "criticizing Iran's criminal policy in relation to bad hijab, the rest of the articles have subjected the factors and reasons of bad hijab in Iran within the format of library and, sometimes, field research.

The journal of Revolution's Message [Payam-e-Enghelab] speaks of the reference groups in the cultural evolutions in an article called "hijab, routes taken and left untaken"; Ali Karimi realizes weakness in faith and indecency and improper beliefs and craving for staying fashionable and showy and demanding diversity in clothing, inferiority complex and other cases of the like as the root and sub-structural and super-structural reasons of bad hijab in an article.

In an article about bad hijab, Hasan Mo'meni and Dr. Kalantari dealt with the reactions of the subjects to the social confirmation within the format of a survey research in Ahwaz. They concluded that bad hijab is a response to the social confirmation by others. So, the result of this study is one of the present study's sparkles for criticizing Iran's criminal policy in confrontation with bad hijab.

Sayed Mojtaba Emami and Mesbah Al-Hoda Bagheri Kani and Sajjad Lotfi used the Q-methodology in a study under the title of "typology of policy-makers and executives' mentalities regarding the management of confrontation with bad hijab in Iran" and came to believe that discrepancies and exercising of personal tastes in the face of bad hijab is the primary factor giving rise to failure in this regard.

In a study called "Islamic Republic of Iran and the issue of bad hijab", Muhammad Javad Javid and Esmat Shahmoradi defended the government's right in confronting bad hijab from the canonical and legal perspectives.

In an article on the “FATEB police’s confrontation with the individuals violating the ethical norms”, Davud Do’agouyan concluded in a survey research that prevention is more effective than confrontation; of course, the confrontation intended by the foresaid research differs from that intended by the present study’s authors.

In an article named “a contemplation over the sociological elaboration of Hijab”, Muhammad Hussein Sharbatian realizes bad hijab as stemming from the underlying layers of the society but showing up on the overlying layers; in an article “a critical framework for studying the policies in relation to hijab in Islamic Republic of Iran”, Sayed Majid Emami proposes the theory and paradigm of the Iranian society’s normalization and return to the customs.

Study theoretical framework:

Hirschi’s theory of social ties realizes violation of norms as the result of the weakness and breaking of the ties connecting an individual to the society. Hirschi assumes that all the individuals potentially tend to evade the law but most of them can take control of their behaviors because they are afraid that their illegal behaviors may damage their relations with their friends, families, neighbors, teachers and employers ^[17,18]. Thus, if this fear is institutionalized in the society, the non-observance of hijab would be naturally not the choice.

Ryckman’s theory elucidates norm-violation by personality concept. From the perspective of Ryckman, the more the human beings’ superego which is the internal manifestation of the ancient values and optimal perfections of the society tends towards the ethical conscience, the more the individuals adapt themselves to the social values ^[19]. Eric Fromm, as well, knows norm-breaking as the result of the human beings’ failure in reaching the ideals ^[20]. As for the non-observance of canonical hijab, it is only sufficient for the society members’ superego to view hijab’s observance as a value. Alport realizes norm-violation as the result of the human beings’ detrimental motivations in the course of their life. He believes in a lot of importance for the social motivations and realizes their effects on the behaviors as being more intensive than those of the primary needs and motivations such as sexual instincts and aggression ^[19].

Emile Durkheim, as well, believes that if the carnal forces are unharnessed and the individuals only pay attention to their internal wishes and not their interests, the social life would face abnormality ^[21]. Thus, the gap in the match between the carnal wishes and society’s norms should be somehow bridged in regard of the canonical hijab’s nonobservance so that its logical result can be observance of the canonical hijab.

Merten’s theory of pressure realizes norm-violation as a dependent variable created by the social structures ^[21, 22]. From Merten’s viewpoint, the individuals lacking the required tools for achieving the cultural goals and, in the meantime, having their minds filled with cultural goals use illegitimate methods for accomplishing valuable objectives

and this results in breaking of the norms. Therefore, it is enough to manage the society’s intended goals in accordance to the suggestion made in this study so that bad hijab can be simply managed accordingly.

The preferred association theory by Sutherland expresses that all the behaviors can be learnt and such learning is acquired through interaction with the other individuals in a process of communications ^[23]. The best resort for correcting Iran’s legislative criminal policy can possibly be this theory because this deviation of the today’s modern world is more than anything else born out of the virtual environment’s preferred or differential associations.

Finally, Roger’s theory of social confirmation is expressive of the human beings’ inherent need for confirmation by the others and, since this need is given a high priority, it leads to the self-censoring in an individual ^[16]. Thus, according to this theory, the change in the society members’ tastes in their confirmation of the individuals having or not having hijab will surely bar the actualization of such a deviation.

Theoretical foundations of hijab and governmental policies:

Requiring the observance of hijab through legal compelling and coercion based on the Islamic canon with the establishment of the religious government even in the case of the non-Muslim minorities has become a human right issue. In sum, the answers that have been so far presented in the books on hijab and dealt with by the officials and researchers can be divided into three sets:

1) Legal-Political Proofs:

The investigation of the legal-political proofs: due to the legal and not necessarily canonical matters, observance of hijab is legally required and, considering the majority’s vote for the Islamic government, observance of the dominant values and publicizing them are amongst the general public’s rights. Therefore, the legal requirement of hijab, albeit without religious document and proof, possesses the democratic premises laid on the foundation of the rule of law. The problem in this reasoning is that it can be considered as a dual basis for using the majority’s democratic want as a criterion and pivoting about the public interests and rights. That is because it becomes like a double-sided sword in this case used by the laic government of France for prohibiting hijab. In other words, showing a legal visage of the hijab’s requirement or prohibition can be both perceived based on the public will. Thus, the law can be fluid here because the people’s taste may change in a period of time and the requirement to hijab’s observance or non-observance may resultantly change and the general public may will the opposite at any moment. In such a situation, the rulers should respect the want of the nation’s majority and make revisions in the foundations of requiring to the hijab’s observance or non-observance. Thus, based on this scale, government is considered as the symbol of the public intellect to safeguard the general public’s interests and, since the majority wants so,

it has to respect their command. Thus, it seems in case of the Islamic Republic's defense of this reasoning that it has to sooner or later await a change in the general public's demand because the individuals observing hijab are not necessarily defending the hijab's coercion as documented in the general deductive statistics. In this perspective, hijab has become the subject of legal compulsion due to legal matters.

2) Sociological-Cultural Proofs:

Investigation of the sociological-cultural proofs: hijab has become the subject of legal but not canonical requirement due to the cultural matters. It means that the society's norm defends hijab due to its consideration of hijab as a morality which has been historically exercised in Iran's culture and it has been due to the sociological matters and the necessity of veneration of Iranian traditions, habits and customs in the area of vernacular culture that hijab has been introduced as a subject of legal coercion. In this approach, efforts have been made to look at hijab through the cultural and historical lens thereby to legitimize the current legal compulsion of hijab's observance based on the society's historical background. Here, the issue is more of the aforesaid double-sided sword meaning that it is exactly based on the laic nature of France's culture in contrast to the cultural nature of hijab in Islam that the French government realizes hijab's prohibition as a legitimate law because the transition from a society to another is conditioned to the acceptance of the host culture and the guest culture cannot be contradictory to the host culture; as an example, the observance of hijab by the Muslim citizens of France is realized as a sort of insult and offence to the dominant culture. In this situation, it is the dominant culture that is right and socialization somehow entails the migrant and guest individuals to be always obedient to the dominant culture and avoid producing of the conflicting culture or micro-cultures. Every cultural issue is consequently relational and relative hence changeable and, considering the foresaid interpretations, hijab can culturally become the subject of legal requirement even though not being the inherent trait of the human beings.

Therefore, based on these explanations, hijab's observance can be rendered necessary in Iran and it can be considered completely justified due to its historical and cultural background and age.

3) Canonical Proofs:

A) Consensus:

The first proof is consensus. Some jurists have reached consensus ^[24] or resolved discrepancies ^[25] regarding the permissibility of Ta'azir Punishment for leaving any obligation undone or perpetrating any forbidden action and, most surely, it seems a convincing proof.

B) Conduct Ways of the Immaculate Imams (peace be upon them):

The second proof is the immaculate Imams' way of conduct. It has been seen that some of the violators have been punished in this regard by one of the immaculate Imams (peace be

upon them). This shows that the principle of punishing the violators for their perpetration of prohibitions and not performing the obligations is permissible and legitimate ^[26] and, because the immaculate Imams (peace be upon them) never take illegitimate measures, this proof also seems persuading.

C) Islam's Efforts for Protecting the System:

The third proof is the Islam's effort for safeguarding the social system. Islam has shown extreme effort for safeguarding the social system in such a way that it has given up the enforcement of its verdicts due to their causing of disruption in the social system. In the narrations, as well, attention has been clearly paid to the issue of the social system's disorder. It has also been the basis of the jurists' works in jurisprudence. So, if a thing leads to the social system's disorder, it has been declared forbidden or, better said, deserving punishment. Therefore, if a permissible action is found causing social system's disorder, punishments can be specified for it. Resultantly, the specification of punishment for the sins that cause the system's disorder is primarily permissible. This proof has been briefly mentioned in the words by Ayatollah Khou'ei ^[26]. Thus, considering this exception, as well, punishments can be specified for bad hijab under the conditions that it causes disorder in the social system.

D) Islam's Effort for Verdicts' Enforcement:

The fourth proof is the Islam's effort for the actualization of the goals and enforcement of its verdicts. In the same way that the canonical ruler and the founder of Islam have made efforts for announcing its goals and verdicts, it has also made extreme endeavors to actualize its goals and enforce its verdicts. So, in the same way that the Imamate institution has been assigned to the interpretation and clarification of the religion, it has similarly commissioned it to the actualization of the goals and enforcement of its verdicts with placing a lot of stress thereon. The Eminent God has made so much emphasis on the issue of imamte as ordered in the following words "Yā Ayyoha Al-Rasūl Balleq Mā Onzela Elayka Min Rabbeka Wa En Lam Taf'al Fa Mā Balaqat Resālahū Wa Allah Ya'asamoka Min Al-Nās Enna Allah Lā Yahdi Al-Qawm Al-Kāferin" (Holy Quran, SŪRAH MĀ'IDA, ĀYA: 67); it has also been stated in credible narrations that "Banā Al-Islam Alā Khams: Alā Al-Salah wa Al-Zakat wa Al-Sawm wa Al-Haj wa Al-Welāyah Lam Yonād Bi Shay'en Kamā Nūdi Bi Al-Welāyah" (SŪRAH MĀ'IDA, ĀYA: 67). It has also been mentioned in a Razavi Narration that "Al-Emāmeḥ Zamām Al-Din W Nizām Al-Moslemin Wa Salah Al-Donyā Wa Ezz Al-Mo'menin Enna Al-Emāmah Oss Al-Islam Al-Nāmi" ^[27]. For more information on the other proofs that show the Islam's extreme efforts for enforcement of verdicts, please refer to the following source: Zia'eifar ^[28]. Furthermore, the forging of institutions like government, enjoinder of good and prohibition of vice and litigation is clearly indicative of Islam's efforts for the enforcement of its verdicts. The prerequisite to this intensive effort is the permitting of the punishment specification for public

opposition in such a way that punishments have been set in the canon for many public sins like non-observance of fasting, drinking wine and so forth. For more information in this regard, please refer to Hussein Ali Montazeri, “Derasat Fi Welayah Al-Faqih”^[29] and Sayfollah Serami, “litigation, a governmental institution”, especially page 85 on^[30].

E) Axiom of Mercy:

The fifth proof is the mercifulness maxim. It is one of the verbal axioms of Imamiyyeh religion^[28]. Based on this maxim, as it is deemed expedient by the God’s mercifulness, benevolence and compassion, the prophets have been appointed and Imams have been installed to set the ground based on the God’s mercifulness for the performance of the obligations and desertion of the prohibitions^[28].

Based on the foresaid maxim, the Islamic government is required to devise wise strategies and make well-calculated plans to pave the way and provide the necessary conditions for the fulfillment of this divine command and ethical norm. In the same way that it is rendered expedient by this mercifulness to invite everyone to observe hijab and exercise chastity and even prevent pretending to have bad hijab, the government can stipulate regulations and specify punishments for preventing bad hijab and unchasteness thereby to help people perform their worshipping and obedience to the God and stay away from sins.

F) Existential Philosophy of the Religious Government:

The sixth proof is the existential philosophy of the religious government. The government philosophy in the common law-based communities is solely establishment of social order^[31]. Muslim scholars, as well, have posited this existential philosophy. As an example, please refer to the following source:^[32, 33]. Some Muslim scholars have explained this issue in explicating the order by Amir Al-Mo’menin Ali (PBUH) that “Lā Bod Li Al-Nās Min Amir Barren Aw Fājer”^[34]. However, in Islamic mindset, besides establishment of order, government’s existence also has another philosophy and it is setting the ground and preparing the conditions for the accomplishment of the goals and values and enforcement of the religious verdicts. The Holy Quran, as well, mentions fulfilment of prayers, paying of Zakat, enjoinder of good and prevention of vice amongst the outcomes and natural gifts of the believers’ empowerment one example of which is the taking of the government’s control in their hands: “Al-Lazina En Makkanāhom Fi Al-Arz Aqāmū Al-Salah wa Atū Al-Zakat Wa Amerū Bi Al-Ma’arūf wa Nahaw An Al-Monker wa Li Allah Āqebah Al-Omūr” (SŪRAH HAJ, ĀYA, 41). The great prophet of Islam (may Allah bestow him and his sacred progeny the best of His regards) expresses some goals of the Islamic government in the form of its recommendations to the governors and functionaries^[35].

Amir Al-Mo’menin Ali (PBUH), as well, enumerates enforcement of the religious teachings and fulfilment of the divine limits as one of the goals of power takeover:

“Allāhomma Ennaka Ta’alamo Ennahū Lam Yakon Al-Lazi Kāna Minna Monafesatan Fi Sultan Wa Lā Eltemāsa Shay’an Min Fozūl Al-Hotām Lāken Le Nared Al-Ma’ālem Min Dineka Wa Nazher Al-Eslāh Fi Belādeka Fa Ya’aman Al-Mazlūmūn Min Ebādeka Wa Taqāma Al-Mo’attalah Min Hodūdek” (Imam Ali (PBUH), sermon 131, paragraphs 3 and 4).

In addition, his highness has been quoted elsewhere in the following words: “Allāhomma Ennaka Ta’alamo Anni Lam Ared Al-Amrah wa Lā Oloww Al-Molk wa Al-Riyāsah; Wa Ennamā Aradto Al-Qiām Bi Hodūdek Wa Al-Adā’a Li Shar’ek wa Waz’e Al-Omūr Fi Mawāze’ehā Wa Tawfir Al-Hoqūq Alā Ahlehā Wa Al-Mazā Alā Minhāj Nabiyyek; Wa Ershād Al-Zāl Elā Anwār Hedāyatek”^[34]. For more information on the objectives of the government from the perspective of Amir Al-Mo’menin Ali (PBUH), please refer to the following source: Bayzun,^[36].

Therefore, it is rendered expedient by the existential philosophy of the religious government to enforce the religious verdicts and goals because the existential philosophy is the very ultimate goal on which the existence or nonexistence of verdict is dependent. The prerequisite to this existential philosophy is building culture and stabilizing the favorable norms in the first place and justification of this right for the government to have the right to confront through resorting to the law. Put it another way, this proof assigns the duty of cultural ground-setting to the government in the first place and, in case that this option fails, the government is obliged to resort to legal and penal confrontation.

G) Narrations on the Specification of Punishment for Sins:

The seventh proof is forging punishment for every sin. It can be discerned from some narrations that the God has specified punishments for violating any obligation or perpetrating any prohibition. As a specimen, it is stated in some credible narrations that “Enna Allah Tabārak Wa Ta’ālā Lam Yad’o Shay’an Yahtāj Elayh Al-Ummah Ella Anzalahū Fi Kitābehi Wa Bayyenah Li Al-Rasūlahū Ja’ala Li Koll Shay’en Haddā wa Ja’ala Alayhe Dalīlā Yadollo Alayhe Wa Ja’ala Alā Man Ta’addi Zāleka Al-Hadd Haddā”^[37,38].

The contents of this narration signify that the God has set a criterion and a framework for everything and should a person violate the framework, s/he will be subjected to a punishment and, of course, the resort to this narration depends on its clarity; however, it is not necessary to prove the clarity of the narration to the deniers rather it only suffices to prove the narration in short for them as it is also claimed by some. For more information, please see^[39].

The approximation of the reasoning to this narration takes the following form: hijab and veil are amongst the frameworks introduced in the obligatory divine regulations and orders in the same way that this same meaning is also understood from the ĀYĀT in the holy Quran, as well. In many of the cases

that the Holy Quran expresses the obligatory verdicts, it subsequently adds “Telka Hodūd Allah”. Some of them are obligatory and if a person falls short of observing such obligations as stipulated in the Holy Quran, s/he deserves chastisement and punishment as rendered expedient under the narration “Wa Ja’ala Alā Man Ta’addi Zālek Al-Hadd Haddā”. When the divine punishment has been set, the government naturally has the right to enforce it either because the Islamic ruler is the sure organ for the performance of this duty as also opined by some jurists or because the legitimate Islamic ruler has been appointed by the God and installed for the enforcement of the divine verdicts as also stated by some other jurists. For example, see Musavi Khou’ei, (no date), v.1, p.225.

H) Priority or Parity Comparisons:

The eighth proof is the comparison of the priority or parity (priority of punishing). In the narrations, some sins have been specified with certain Ta’azir Punishments with their depravities being either lower or higher than bad hijab like masturbation^[40], two men’s sleeping under a cover or blanket^[40], kissing another person of the same sex out of lustfulness^[40], eating the meat of the animal which has not been canonically beheaded or eating pig meat^[40], eating blood^[40] and storytelling in mosques.

Therefore, when such sins like sleeping of two persons of the same sex under a blanket (two men or two women) or eating of the meat without first canonically slaughtering the animal deserves Ta’azir punishment, having bad hijab justifies the permissibility of punishment primarily based on the priority comparison or at least equally based on parity comparison. Although this proof does not prove the generalities like the prior, it is different from it in the idea that the prior proof is laid on the foundation of the generality justification but this proof is based on the understanding of the parity or specificities’ priority about the cases the Ta’azir punishment of which has been specified in the text. However, non-observance of hijab is the absolute must for the justification of the specificities of the case.

I) Annulment of the Properties from the Specified Cases:

The ninth proof is the cancellation of the properties of the specified cases. In the narrations, Ta’azir punishments have been specified for some sins in various areas. Some of them are solely the violations of the God’s rights such as masturbation and some others are the breaching of the people’s rights like mockery^[40] and insult^[40] and peeping^[40]. Some of them are major sins and some others are minor sins like sleeping of two persons of the same sex under the same blanket or covering^[40] or the gathering of stranger men and women in a house^[40]. Some of them are sins that cause the disordering of the society’s order like embezzlement^[40], usury^[40] and false testimony^[40]. Some of them are also solely individual sins like sexual intercourse with one’s own wife during menstruation^[40] or when observing fast^[40], masturbation^[40], drinking the blood of the dead^[40]; it is also

stated that the immaculate Imams (peace be upon them) have sentenced some perpetrators to Tā’zir punishment for the perpetration of some abominable actions^[37, 41].

It can be concluded based on the above exemplifications that sins and misdemeanors are the criteria of the Ta’azir Punishments’ specifications with none of them having any specificity; neither the dead sins nor their being related to the abuse of the people’s right and even nor their connection with the social order’s disruption though the jurists have resorted to this proof. As an example, Mohaqqueq Ardabili has the following words in this regard: “Al-Zāher En Kolla Mā Yūzi Al-Moslem Bi Qaire Haqq Bal Kolla Zanben Qaira Mawjeb Li Al-Hadd Mawjeb Li Al-Ta’azir Li Annahū Lā Khosūsiyah Lahū Bi Al-Mokhātab Bal Bi Al-Lafz wa Al-Kalām Fa Enn Sababahū Kūnahū Ma’asiyah Wa Zanban Fa Yo’khaz Aynamā Wajed”^[42]. He continues with resorting to miscellaneous narrations^[42]. However, the aforesaid explanation denies all the details and specificity contingencies of each of them. The authors have not seen the aforesaid explanation that denies all the details in the words of any other jurist. It seems that the advantage of this explanation is its very generality and denial of any specificities’ contingency without which the aforesaid reasoning cannot be envisioned as absolute.

J) Proofs of Prevention of Vice:

The tenth proof is the prevention of depravities and corruptions. One of the necessary verdicts of Islam is enjoinder of good and prevention of vice as implied in many of the ĀYĀT and narrations. In the narrations^[40] and utterances of the jurists^[25, 29], various ranks have been mentioned for enjoinder of good and prevention of vice with one of them necessitating interfering with other norms (physical involvement) and, because such an intervention may cause chaos^[43], its necessity or the permissibility of such a rank has been conditioned by the jurists to the permission by the Imam and Islamic government^[44] or originally as a duty and authority of the Islamic government^[41]. Therefore, the expediency of the enjoinder of good and prevention of vice is generally that it is also necessary but its fulfillment is amongst the duties and authorities of the government that either takes actions personally or allows others to do so. Of course, some Shiite jurists have stated that the Imam’s permission is not a prerequisite^[45] and this proof truly appears more convincing *inter alia* the other proofs and it is also backed up by logical and intellectual substantiations, as well.

Iran’s legislative criminal policy regarding non-observance of canonical hijab:

After the Islamic Revolution, the legislator has appended a note to the article one of the Islamic Penal Code of Law for specifying the crime of canonical hijab’s non-observance for which a legal mandate has also been stipulated. In the forthcoming section, this legal article will be very shortly viewed within the study’s scope to subsequently criticize it so as to criticize Iran’s legislative criminal policy in this regard.

1) The Note to Article 638 of the Islamic Penal Code of Law (Passed on 30th of July, 1991):

Article 638 of the Islamic penal code of law asserts that “if a person pretends to the performing of a forbidden action before the public eyes and in public places and passageways, s/he will be punished and additionally sentenced from ten days to two months of incarceration or up to 74 whip strokes; in case of perpetrating an action that does not essentially deserve punishment but is found having injured the public chastity, s/he will be sentenced to incarceration for a period from ten days to two months or up to 74 whip strokes”.

The note to this article also stipulates that “the women who appear on the passageways and before the public eyes without canonical hijab can be sentenced to imprisonment from ten days to two months and/or fifty thousand to five hundred thousand Rials of pecuniary punishment”. The contents of this note are like those of article 102 of the Ta’azir Law, passed in 1983, with its difference being the transformation of punishment from lacing to pecuniary punishment. Since the judge is obliged according to article 3 of the law on the method of receiving some of the incomes in favor of the government in the incarcerations below 91 days to transform incarceration to fine, the imprisonment punishment in this article lacks subjectiveness.

Criticism of note 2 to article 638 of the Islamic penal code of law:

At present, with the existence of this note, a large number of the women who do not cover their body organs are included by the criminalization circle of this note with the explanation being that the well-known idea of the jurists will be determinant considering the legislator’s silence regarding the boundary between hijab and bad hijab in accordance to the constitutional law and the absence of a definition for canonical hijab is surely due to its clarity and vividness because, as viewed by the canon and jurisprudence, the definite limit of the women’s Islamic hijab when facing a stranger is covering of all the body except the face and the two hands and that from the wrists to the tip of the fingers^[24].

Considering the clarity of the Islamic hijab’s definition, many of the jurists have mentioned the same definition by the jurists in the jurisprudential books for Islamic hijab under the note to the article 638 of the Islamic penal code of law^[46]. The realm of this criminalization seems to be relatively vast and the legislator is unlikely to be able to achieve its goal, i.e. the very observance of ethics and religious and common values by the members of the Islamic society, by such a vast criminalization and, by the same token and reversely, it is by the inclusion of a vast spectrum of the individuals through such criminalization and their consideration as a criminal that the legislator practically would cause an unethical atmosphere contributing more to the non-observance of the canonical virtues, especially Hijab. Additionally, such a vicious sequence means increase in the

number of abandoned rules, i.e. the regulations that are not put into effect in spite of their enforceability and enforcement possibility in the courts and the other executive institutions^[47]. Therefore, two kinds of hijab’s non-observance can be separated: the first is the on-observance of canonical hijab which is contradictory to the public chastity and ethics such as putting on robes along with tights, nakedness of the calf, failure in full covering of the hair and showing decorated and ornamented hair and others of the like.

Thus, the non-mentioning of such a constraint as the public chastity’s injury is amongst the other shortcomings of this note. This constraint has not been mentioned in the note to this article unlike the contents presented underneath the article 638 of the Islamic penal code of law and the sole non-observance of the limits of the canonical-jurisprudential hijab by a woman suffices her being envisioned as a criminal whether her action causes the injury of the public chastity or not. The reason for such a separation and strictness in regard of bad hijab as compared to the other sins is not clear; put another way, although the legislator has specified lighter punishments for bad hijab in contrast to the other sins, the non-mentioning of this constraint causes the exertion of a sort of adventitious strictness the vicious consequence of which is desertion of the law^[48].

Another serious criticism that can be imposed on the foundation of Iran’s legislative criminal policy is the identical confrontation with all the individuals with bad hijab; this is while it has to be seen who are the individuals sourcing the social values and behaviors? Who are the individuals generating the social values and behaviors? It has to be seen in criminological terms that who are the society’s reference groups that are imitated as opined by Sutherland? The reference group is the cohort with which the others compare themselves and appraise their own selves with its standards and, as stated by Sutherland, copy them. In fact, the human beings compare themselves with a group of individuals and eventually incumbently start copying their models for various reasons like the need for veneration and honor as well as for public norms’ pressure^[10]. This imitation is the result of the modern socialization of individuals like cinema stars in their private lives and the general public’s copying of their models such as in their clothing. In this process, the individuals take measures in line with acquiring values and standards of another person who is in a superior position in terms of fame or wealth or social relations. The first persons who have the ability of becoming a source of value generation are undoubtedly the prominent movie and TV artists, physicians and outstanding and well-known professors in the today’s society and they are recognized at least by their names or faces as well as the politicians like the individuals working for the government, congress and judicature. This approach perfectly matches with Sutherland’s differential association and Hirschi’s social control theory^[17].

Thus, it seems due to the undeniable effect of this class on the society’s culture that the exertion of similar punishment on

the ordinary individuals and this class is not fair. So, the legislator should set the amount and type of the reference group's punishment in a tangibly and preventively different manner (with a comprehensive and exclusive definition of this spectrum) from that of the ordinary individuals. For instance, he can use the punishment like boycotting the work in cinema for a certain period of time for these artists and, in case of recidivism, he should not fear permanent deprivation as a preventive and balanced punishment and, on the other hand, he should extremely avoid punishing individuals under the cultural harness (ordinary persons) at least in the style of the note one to the aforementioned article.

The other general shortfall that is visible regarding the way of treating the individuals with bad hijab and, in legal terms, in Iran's legislative criminal policy is the direct confrontation of the law with the individuals who do not observe canonical hijab. In more clear-cut terms, the government adopts two methods for fighting against canonical hijab's non-observance; one is direct and the other is indirect confrontation with the violators. The former causes the decline of the government's legitimacy and agreeability in the general public's mind and the second one is devoid of such a defection and it does not also cause labelling some persons as criminals; it is interesting to know that so far and in the course of forty years of Islamic Revolution, use has been only made of the first method and no article or book (at least as far as the authors know) has spoken of the second method which is an accomplishment made in this research. The succinct investigation of the note to article 638 of the Islamic Penal Code of Law has imagined and conjectured the government's immediate confrontation with this class as the solution to the reduction of bad hijab whereas the smallest success has not even been surely observed in the reduction of such deviations in practice. Following this objection to Iran's legislative criminal policy, the authors decided to suggest a substitute note; this suggestion can (and it has to) be legislated as an independent legal article: in special and applied manner, the legislator should oblige every vocational unit, including physicians, lawyers, retailer occupations, owners of service-providing and manufacturing jobs and distributors, public and private parking lots as well as all the buildings used by the sub-branches of the executive branch and legislature and judicature, to prevent the entry of the bad-hijab persons from entry and require the unit officers to the immediate expelling of them from the vocational or governmental units in case of their uninformed entry; so, the details of expelling the individuals with bad hijab should be exactly defined in legal terms and a considerable cash mandate should be set for rendering this ruling non-discountable or non-suspendable and non-postponable for such a misdemeanor.

In order to achieve this goal, the legislator is obliged to present a comprehensive and exclusive definition of bad hijab. It has to be done in such a way that the small island of the penal law is left meager and unexpanded and sins and crimes are considered equal. For example, the clothing contradicting the general public's chastity and ethics should

be envisioned as an example of bad hijab such as wearing button-less coats along with tights, leaving the calf naked, showing head's hair from behind the scarf or head cover, leaving the hair uncovered on the front more than what is commonly considered normal in the society and tight coats in such a way that it is commonly considered stimulating.

In line with this, specialized law enforcers and judges should be appointed for this issue and any people-delivered report that can be judicially substantiated and result in conviction deserves a considerable percentage of the penalty fee as the reward.

It is more logical to try such a crime directly in the penal courts of two localities and, as exercised in crimes against the public chastity, the public prosecutor office can be skipped to facilitate the trial. According to social confirmation theory, it is necessary to spend the income obtained from the fines of this crime indirectly on subsidies for purchasing Islamic clothing like chador and long overcoats and other garments of the like.

This method is good in that the government never takes direct measures for fighting against the individuals with bad hijab rather the people themselves cause the isolation and separation of them; in other words, no individual with bad hijab is arrested so that the government's legitimacy and agreeability can be doubted and declined.

It is also necessary that the individuals who are considered as influential on the society's culture as recognized by the judicial authority such as artist and TV and Radio news presenters, politicians and famous national athletes to be temporarily prevented from their occupation and field of work for six months to one year in case of having bad hijab as defined in this law and the recedivists can be subsequently subjected to permanent deprivation of their jobs.

As it is observed, the trace of the criminological theories like Sutherland's differential associations, Hirschi's social control, Roger's social confirmation and Merten's labeling as well as means and goals (of pressure) can be tangibly seen in the present study authors' notions.

CONCLUSION

Iran's legislative criminal policy should construct a pattern in its legislation that, meanwhile eliminating the flaws of the existent regulations that occasionally lead to bad-hijab persons opposition to the government and decline of the government's legitimacy amongst the people, offers a solution based on people's provocation with an approach to government's management but via nongovernmental enforcement. On the one hand, the criminal legislation route should be tangibly shifted from the inclusion of the general public that only consumes the values generated by the socially superior persons towards the very constructors of the values and, on the other hand, considering the expansion of bad hijab that, as stated in the prior research, is the

satisfaction of an individual's inherent need for social confirmation, there should be devised a legislative and criminal strategy based on the sure criminological principles parallel to the cause elimination so that the effect (bad hijab) can be paled without the continuation of its vicious sequence which is the very gap between the government and the people.

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