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The Impact of Effective Conviction and Public Punishments on Crime Increase and Recidivism

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ABSTRACT

One of the central concerns of criminal law and criminal policy governing the imposition of penalties is the creation of deterrence and the enhancement of mechanisms to control the increase and recurrence of crime. Accordingly, the present study, conducted using a descriptive-analytical method, examines two significant factors—effective conviction and the public enforcement of punishments—and evaluates their impact on the escalation and repetition of criminal behavior. The core objective of this research is to address the fundamental question of how final criminal convictions and the public execution of penalties influence crime rates and recidivism. The findings indicate that effective conviction, along with collateral consequences of punishment, through expanding the scope of penalties to include certain civil, political, and economic deprivations, has been successful in establishing social order and ensuring societal protection against the risks of crime and its recurrence. These measures have demonstrated substantial deterrent effects, contributing to the prevention of crime escalation and reducing offenders' propensity toward reoffending. Conversely, the public enforcement of punishments has not achieved the expected level of deterrence. On one hand, it tends to generate feelings of resentment and vengeance in offenders; on the other hand, through the process of labeling, it deprives them of opportunities for rehabilitation and reintegration. Furthermore, the loss of social status resulting from public punishment increases the likelihood of criminal escalation and recidivism.

Keywords: *Effective conviction, collateral consequences of punishment, public enforcement of penalties, crime increase, recidivism.*

Introduction

From the perspective of the philosophy of punishment, alongside aspects such as retribution and the infliction of suffering, deterrence—both general and special—has always been emphasized. This means that one of the purposes of enforcing punishments is the reflection of their effects into the future and their influence on the process of crime reduction and the prevention of recidivism. Therefore, within the body of criminal law, strategies and measures have been devised in reliance upon which one may hope for crime reduction or the prevention of reoffending. Two key matters in this field are, on the one hand, the public enforcement of punishments and penalties and, on the other hand, final criminal conviction. The examination of these two issues and their impact on the increase, decrease, or repetition of crime constitutes the principal issue and concern of the present study.



In light of the foregoing introduction, this study proceeds along four fundamental lines of inquiry:

First, it addresses the question of what effect a final criminal conviction has on the increase or decrease of crime. In other words, if a conviction does not become final and definite, and—by reason of mitigation, deferment, suspension, and the like, or by reason of delay in proceedings, the inadequacy of criminal sanctions, or explicit statutory provisions—is not regarded as a final criminal conviction and is not recorded in the individual’s criminal history, what effect will this have on the possibility of increasing crime.

Second, it must be determined what effect a final criminal conviction, as explained above, has not only on the increase or decrease of crime, but also on the process of recidivism by the same offender.

Third, this study examines the question of what effect the public enforcement of punishments and penalties—meaning that a number of people are present at the place of punishment at the time of its execution and witness the offender’s punishment—has on the increase or decrease of crime. This concerns general deterrence.

Fourth, it must be determined what effect the public enforcement of punishment, where the punishment is not life-taking, such as execution or qisas, has on the offender himself and on the possibility of his own recidivism. This concerns special deterrence.

In examining the above four concerns and issues, the intention is to evaluate the body of criminal law, judicial opinions, practical legal practice, and the laws relating to final criminal conviction and the public enforcement of punishments, alongside criminological theories in this area, so that the gap in previous research may be addressed and the full range of effects of final criminal conviction, on the one hand, and the public enforcement of punishments, on the other hand, on crime increase or recidivism may be comprehensively examined.

1. The Concept of Public Punishments

Attention to the meaning of the two terms “publicity” and “in public” is important. Some researchers, with reference to the apparent meaning of these two expressions, have stated that “publicity” means the manifestation and disclosure of a matter in a particular place without creating any obstacle to the presence of people in that place, while “in public” refers to places of public passage such as squares, alleys, bazaars, and city centers (1).

With this description, it may be said that the public enforcement of hudud in the Prophetic tradition and in the practice of Imam Ali also differed spatially from the present condition, in the sense that the place for the public enforcement of hudud was not in the middle of the street or marketplace, but rather in a designated location within the city, whereas the current public enforcement of punishments in public urban spaces such as intersections, squares, or places of public gathering occurs in such a way that the gathering at the location may occur accidentally, casually, and with spectators of any age or sex.

In this sense, the public enforcement of punishment can no longer be understood as a general summons or invitation to the public to attend the place of execution and watch how punishment is inflicted on convicts. On this basis, the public enforcement of punishment should logically mean the open execution of a criminal judgment in a place where there is no barrier to people’s presence. In the execution of punishment, there is no need for a public announcement inviting the unconditional attendance of spectators, nor for moving the punitive ceremony to locations designed for the general presence of citizens without regard to psychological capacity or indicators such as age and sex, especially the presence of children and minors. In such a case, the primary effect of punishment—namely, preventing the repeated commission of crime or sin—not only is not secured, but may even embolden certain observers and witnesses predisposed to offending (2).

In Article 355 of the Criminal Procedure Code, the legislator has prohibited the presence of persons under 18 full solar years of age as spectators in criminal trials except where permitted by the court. Yet presence at the scene of punishment, especially observing the final moments of a criminal's death, is far more severe and intense than attendance in court. Although the legislator has not established an express prohibition in this regard, the principle of priority and reason dictate that under conditions of public execution, this prohibition and restriction should also be applied by the officials responsible for executing the sentence (3).

The Concept of Recidivism

Another general aggravating circumstance in punishments is the status of recidivism. Recidivism is the description of the acts of a person who, by virtue of a final and enforceable judgment issued by one of the courts of Iran, has incurred a criminal conviction and subsequently commits another offense that entails a severe criminal conviction.

At times, an offender repeatedly commits a specific crime; for example, he commits fraud several times. In such a case, the aggravation of the offender's punishment is due to the fact that he has acquired the habit of committing a particular offense, which is dangerous to society, and thus the legislator imposes a more severe punishment upon him. This is called specific recidivism. However, where the offender, in committing subsequent crime or crimes, has not developed a habit of committing one specific offense but instead has committed different crimes, punishment is still aggravated because the offender has generally acquired a habit of delinquency. This form is called general recidivism (4).

One of the most important distinctions between plurality of crimes and recidivism is precisely the existence of a prior criminal conviction, which constitutes an essential condition for the realization of recidivism (5).

In other words, in plurality of crimes, the offender commits several criminal acts and is then apprehended, whereas in recidivism, the offender commits one crime, is arrested, and the court renders judgment against him, but before the execution of that judgment he once again commits another crime, whether similar or different. The important point is that the rules of recidivism are contingent upon the issuance of a conviction judgment, not its execution.

Article 137 of the Islamic Penal Code provides: "Whoever, by virtue of a final judgment, is sentenced to one of the ta'zir punishments of grades one to six, and from the date of finality of the judgment until restoration of status or the lapse of the limitation period for execution of punishment commits another ta'zir crime of grades one to six, shall be sentenced to the maximum punishment up to one and one-half times that amount."

As can be observed, the provisions relating to recidivism, like the rules of plurality of crimes, do not apply to ta'zir offenses of grades 7 and 8. Moreover, under Article 138 of the Islamic Penal Code: "The provisions relating to recidivism do not apply to political crimes, press crimes, or crimes committed by children."

It should also be noted that the conviction judgment must have been issued by an Iranian court. Criminal judgments issued by foreign courts, even if enforced, have no effect for purposes of recidivism unless, pursuant to bilateral or multilateral agreements or international conventions, the Iranian state recognizes within its territory the effects attached to foreign criminal judgments. Moreover, in order for the matter to fall within recidivism, the prior conviction must substantively be a ta'zir conviction. Thus, a prior conviction to punishments such as hadd or qisas is never effective in aggravating the punishment for a new crime.

An issue that should be mentioned here concerns grade 6 ta'zir crimes. As inferred from Article 25 of the Islamic Penal Code, convictions to ta'zir punishments of grades 1 to 5 carry collateral consequences, while grades 7 and 8 are, in principle, outside the rules of recidivism. What remains is grade 6 ta'zir punishment, which lacks collateral consequences. Accordingly, no period for restoration of status has been provided for it so that one might conceive of recidivism during that period. Therefore, if the prior criminal conviction is of grade 6, the commission of a new crime will not result in the realization of recidivism.

The rules of recidivism for non-ta'zir offenses such as hudud operate somewhat differently. In hadd punishments, unlike ta'zir punishments, application of the rules of recidivism depends upon the execution of the prior punishment rather than the issuance of judgment. For example, if a person commits the offense of drinking alcohol and, pursuant to Article 265 of the Islamic Penal Code, undergoes 80 lashes as a hadd punishment—that is, the punishment is executed—then upon committing the offense of drinking alcohol again, the rules of recidivism apply to him, and ultimately at the fourth stage he is sentenced to death.

Another difference between hudud and ta'zir punishments in recidivism is that, in hadd punishments, unlike ta'zir punishments, the second criminal act must be exactly the same as the initial crime in order for the conditions of recidivism to be met. In the above example, for recidivism to be established, the second offense must also be drinking alcohol. In other words, if a person commits drinking alcohol and is punished in court according to law, and before execution of the hadd lashing commits a hadd theft, his conduct consists of two hadd offenses that are punished separately and do not fall under the rules of recidivism.

The punishment for recidivism, pursuant to the latter part of Article 137 of the Islamic Penal Code, is the maximum punishment up to one and one-half times that amount. For instance, if an individual is tried in court for committing a crime and is sentenced to four years' imprisonment, and before execution of the judgment commits another crime whose statutory punishment is three to six years' ta'zir imprisonment, the trial judge may sentence him to nine years' ta'zir imprisonment.

Just as the conditions of plurality of crimes do not preclude mitigation, recidivism also does not conflict with mitigation of punishment. Through the application of mitigation, as in plurality of crimes, where the legal punishment has a minimum and maximum, the court may set the offender's punishment at the average between the minimum and maximum; and where the punishment is fixed or lacks a minimum, the court may reduce the offender's punishment by up to one-half of the prescribed punishment. However, an exception that prevents mitigation has been provided in Note to Article 139 of the Islamic Penal Code: "Where the offender has three or more final convictions falling under the rules of recidivism, the provisions relating to mitigation shall not apply."

The Effect of Public Enforcement of Punishment on Crime Increase and Recidivism

In what follows, the effects of the public enforcement of punishments on the process of crime increase and recidivism are examined specifically.

Approaches Supporting the Impact of Public Enforcement of Punishment on Crime Increase and Recidivism

In this section, the approaches that support the positive effect of public enforcement of punishment on the process of crime increase and recidivism are first examined.

Its Effect on Intimidation, Deterrence, and the Prevention of Crime Increase and Recidivism

It should be stated that through the public execution of punishment, potential offenders imagine for themselves the humiliating spectacle of punishment, and this very matter causes them not to yield to temptation and not to commit offenses. In line with this view, the public execution of punishment in society causes potential offenders who intend to commit crime to experience fear and anxiety upon seeing punishment, thereby dissuading them from offending because they witness its disgraceful consequences. In juristic texts as well, some jurists have referred to the notion of prevention or aversion in the sense of refraining, and they have left the judge free to publicly enforce hudud in accordance with considerations of expediency.

In the eighteenth century, Filangieri, in his work *The Science of Legislation*, stated that the existence of punishment is justified in keeping people away from crime through displaying the suffering and torment that would befall them if they offended.

Some believe that the public enforcement of punishment is inconsistent with the purpose of punishment, which is the reform of the offender, and that it has a negative psychological impact on the offender and destroys the ground for his honorable return to society.

However, this argument is not complete, because first, the purpose of punishment is not confined to the reform of the offender; punishment may also have other objectives, including deterrence and the taking of warning by the offender and others. Shaykh al-Mufid states in *al-Muqni'ah* that when the Imam or his deputy wishes to lash the male and female adulterers, he should call the people to attend the place where the hadd is to be carried out, and once the people gather, he should execute the hadd in their presence so that anyone who sees them will be deterred from doing the like, and so that they may serve as a lesson for others and an admonition for the rest (6).

Accordingly, it cannot be said that the public enforcement of punishment is inconsistent with the purpose of punishment. If the public enforcement of hudud had been contrary to the purpose of punishment, it certainly would not have been carried out publicly in the practice of the Infallibles. Can it be said that, at that time, public enforcement of punishment was not inconsistent with the purpose of punishment and did not have a negative psychological effect on the offender, but that at present public punishment is inconsistent with the purpose of punishment and has a negative effect on the offender? Such a claim is clearly unsupported, because the endurance of pain, suffering, and physical and mental torment also existed at the time of the Lawgiver and, owing to the smallness of the social environment, one could even say that the psychological suffering was greater.

Second, what punishment does not have a negative effect on the offender? Do punishments such as amputation, imprisonment, crucifixion, non-public flogging, and the like not adversely affect the offender? Naturally, every punishment is bitter for the offender and has a negative effect, and it complicates his return to society, although in public punishment this adverse effect is greater. Yet for this reason punishment cannot be suspended altogether; if this basis were accepted, most punishments would have to be abolished, and the negative effects of such abolition would clearly be much more severe. For this reason, no one has committed himself to such a view except a very small number, such as Gramatica, whose position was not accepted even among his supporters and led to a split within the social defense movement (7).

Third, on what basis has it been proven that public enforcement of hudud is inconsistent with the reform of the offender? On the contrary, supporters of the public enforcement of hudud maintain that one of its effects is the reform of the offender; if an offender is punished publicly, it prevents him from repeating the offense, because the

assumption is that human beings are rational calculators who assess the costs and benefits of their conduct and then decide. If the offender knows that the cost of his act is greater than its benefit, and that he has already experienced that cost once, this will certainly affect his decision-making. For this reason, some criminologists state that if punishment is sufficiently unpleasant and repugnant, the offender will not repeat the crime (8).

Punishment, Reform of the Offender, and the Reduction of the Risk of Crime Increase and Recidivism

Some criminologists believe that the public enforcement of punishment leads to the purification and reform of the offender, because after enduring punishment as expiation for his sin and after the public becomes aware of his wrongdoing, he seeks reform, follows the right path, and may not commit the offense again (9).

Reform of Society and the Reduction of the Risk of Crime Increase and Recidivism

Montaigne, in his well-known formulation, states that the person who is executed is not reformed; rather, other members of society are reformed through the execution of the criminal. In the shadow of the public enforcement of punishment, especially enforcement at the place where the crime was committed, one may hope that the sense of insecurity and disturbed order produced by the offense will disappear and that conditions will return to their former state.

Moreover, the public enforcement of punishments closes the door to abuse, discrimination in the law, and unequal execution of punishment for influential, powerful, or wealthy individuals, and it absolves the judiciary—especially judges and officials responsible for execution of judgments—from accusations of bribery, favoritism, and other unlawful abuses. For if punishments are carried out behind closed doors, suspicion arises that in the execution of punishment against certain individuals justice may not have been fully observed, and such a pessimistic view of the judicial system leads members of society to distrust and suspect it. This line of reasoning is also reflected in writings emphasizing the role of public proceedings in strengthening public confidence in the health and efficiency of the judicial system (10).

Making Punishment Public and the Reduction of the Risk of Crime Increase and Recidivism

It is evident that one of the objectives of punishments is their symbolic effect. This means that the manner and extent of punishment, and the degree of the reprehensibility of the criminal act, are reflected to society and may, over time, influence judges and members of society with respect to each particular offense.

Society is harmed by the crime that has been committed, and therefore those who inflict harm should not be immune from public humiliation and censure. This humiliation is the penalty for disregarding the rules that society respects and whose sanctity it preserves. The violation and non-preservation of the social sphere results in offenders being punished, and at the same time, by distancing and isolating them from society and erecting a barrier between them and other members of society, they are admonished and the record of their lives is impaired.

Establishing Public Order and Tranquility and Reducing the Risk of Crime Increase and Recidivism

The founders of the French Neo-Classical School believed that punishment should bring calm and consolation to public opinion and that the offender, during the execution of punishment, should be admonished and come to understand the consequences of his wrongful acts. The imposition of punishment should be communicated to the

public so that awareness of it may produce the threatening effect of punishment and so that the public may witness the seriousness of the criminal justice system in confronting offenders. Therefore, in some cases, it is appropriate for judicial authorities to notify the public in advance so that punishment may be executed in their presence. Accordingly, the execution of punishment—especially at the place where the crime was committed—may itself secure public safety and tranquility, restore the disturbed order produced by crime to society, and create a sense of security and calm among those who witness the punishment.

Approaches Opposing the Impact of Public Enforcement of Punishment on Crime Increase and Recidivism

The following section addresses opposing approaches, which hold that public enforcement of punishment has no deterrent or preventive effect on crime and, on the contrary, causes crime increase and recidivism.

Labeling Resulting from Public Enforcement of Punishment as a Cause of Crime Increase and Recidivism

Supporters of labeling theory have also addressed the effect of the label on the person who is labeled. This aspect of labeling views the label as a causal factor that produces deviant behavior. This may occur in two ways: first, the label may attract the attention of those who apply the label and cause them to observe and follow the individual's labeling; second, the label may be internalized by the person himself and lead to the acceptance of a self-concept of deviance. Either of these two processes may reinforce deviant behavior and produce a “professional deviant.”

Among the issues created by labeling is the subsequent reaction. Persons who have been labeled become more visible because people pay more attention to them. This increased visibility often causes their conduct to be observed more closely and more carefully, making deviant behavior more likely to be detected. More importantly, those working in occupations directly related to deviant processes, namely actors within criminal justice, when they have once focused upon an individual, observe that individual more closely and more carefully. In other words, labeled individuals become clients of the criminal justice system, and like any successful business, that system keeps close track of its clients. Those who have once been labeled—for example, persons on conditional release or former offenders—can hardly escape becoming the object of further attention, and their subsequent conduct is likely to be identified and labeled again (11).

Where a primary label is likely to be distributed among persons with lower-class characteristics, such attention reinforces the image of those persons as deviants. Persons identified as “deviant” have less opportunity for propriety in the ordinary world around them. This means that conventional avenues to success are often cut off and unlawful avenues appear as the only remaining path. Labeling theory argues that the lower class is damaged by the process of labeling and bears the title of deviant that remains through the current of labeling. As an example, some people commit crime because they have very few lawful opportunities to obtain the things advertised on television. Young African American men in many inner cities in the United States experience unemployment rates of 40 to 50 percent. There is virtually no job, and no one hires them. Some who were previously arrested for theft are arrested again and sentenced to imprisonment. In overcrowded prisons, there is no craft other than working in a license-plate factory. After release, the individual's opportunities to obtain lawful employment have not increased; indeed, they may have decreased. Employers who would not hire him before are now even less inclined to do so. In short, for the individual there may remain no path other than a return to crime (12).

Where punishment is executed non-publicly, the convicted person merely endures bodily harm and his dignity and social position, and those of his family, are less exposed to harm. By contrast, the public execution of punishment, through the label it attaches to him, damages the convict's honor and dignity and increases the risk of recidivism because of the loss of social standing (13).

The Elimination of the Conditions for the Offender's Rehabilitation and the Increase of the Risk of Crime Increase and Recidivism

The most important aim of social defense is the resocialization of the offender and the creation of conditions for reform and rehabilitation. One of the arguments presented by opponents of public enforcement of punishment is that it destroys the personality, dignity, and credibility of the offender, and that this humiliation makes him bolder, so that he no longer fears public punishment because he sees his social standing as already lost. As a result, critics believe that the public enforcement of punishment not only fails to create conditions for the offender's reform and rehabilitation, but in some situations may even be criminogenic.

The Creation of Feelings of Revenge and Resentment in the Offender and the Increase of the Risk of Crime Increase and Recidivism

By publicly enforcing punishments in society, we effectively sow the seeds of resentment and revenge within the offender and drive him toward more abnormal forms of behavior. It must therefore be acknowledged that punishment carried out publicly and without the benefit of psychological and sociological study not only fails to eradicate the roots of criminality, but is itself crime-producing. For this reason, it has been said that punishment should not be a reaction against evil, because it is both unjust and criminogenic (14).

Crime Increase and Crime Production Resulting from Public Enforcement of Punishment

Watching horrifying scenes of executions and the flogging of offenders dulls people's emotions and ultimately stimulates them to commit crime. It also causes them, when committing horrifying crime and violence, to carry out their acts with full composure and without any sense of remorse, regret, or conscience. In addition, in some cases the public enforcement of punishment leads other potential offenders to become familiar with the tricks and methods of committing crime used by professional criminals. When the offender is punished in public and walks firmly and with head held high toward the gallows—and especially when the press, through journalistic hero-making, portrays him like the hero of violent films—these matters can lead ignorant individuals and persons suffering from severe emotional deprivation to commit similar crimes merely in order to gain fame and notoriety.

Some criminologists who oppose the public enforcement of punishment believe that public bodily punishments lead to rebellion, public unrest, and agitation of the people against the ruling establishment, and that countries which have prescribed punishment in this form have experienced more disorder. They therefore maintain that the public execution of punishments causes the uprising of the relatives of the convicted person, other individuals, and society, because, unlike the judges and law enforcers, they know the offender's personality well and are fully aware of the cause of his offense, and thus consider the execution of such punishment against him to be contrary to justice. It should nevertheless be noted that experience has shown such conflicts and disturbances to arise more often during the public punishment of political offenders rather than all offenders.

Inconsistency with the Principle of the Personal Nature of Punishment

It appears that the public enforcement of punishment is inconsistent with the principle that punishments are personal, because it tarnishes the familial reputation and dignity of those around the offender. As a result, society's view toward them changes, and such perceptions create numerous problems—such as notoriety, employment problems, educational difficulties, marriage-related obstacles, and the like—not only for the offender but also for his relatives. Criminologists in this regard ask us to consider those close to him who will forever bear the stain of disgrace, amid selfishness, indifference, and bloodthirst, and to consider the blood-like stigma splashed upon his family, a stigma that cannot be erased (10). This may itself become a basis for future offending by those who have lost their social standing.

The Effects of Collateral Punishment on Crime Increase and Recidivism

This section examines the effects of collateral punishment, especially its preventive and deterrent effects on the increase and repetition of crime.

Apart from deprivation of social rights, which is the most important effect of collateral punishment, issues such as suspension, mitigation, limitation periods, parole, and pardon in relation to these punishments may also be discussed, but they will not be addressed here for the sake of brevity. Before beginning the discussion, the question may arise whether collateral punishment is enforceable only against the principal offender or whether other persons, such as accomplices, may also be subject to collateral punishment. In this regard, reference may be made to Article 126 of the Islamic Penal Code, which states with respect to the punishment of an accomplice: "Where no other punishment for the accomplice is prescribed in Sharia or law, his punishment shall be as follows: in crimes whose legal punishment is deprivation of life or life imprisonment, ta'zir imprisonment of grade two or three; in hadd theft and intentional amputation, ta'zir imprisonment of grade five or six; in crimes whose legal punishment is hadd flogging, thirty-one to seventy-four lashes of ta'zir flogging of grade six; and in ta'zir crimes, one to two degrees lower than the punishment of the committed crime."

Thus, it may be said that, since under Article 26 of the aforementioned law only deprivation of life, life imprisonment, qisas of limb or amputation, and hadd flogging entail collateral punishment, complicity in these crimes, given that the punishment of accomplices differs from that of the principal offender, is not subject to collateral punishment.

The Effect of Collateral Punishment on Preventing Crime Increase and Recidivism

Deprivation of social rights, as enumerated among collateral punishments, is one of the punishments restricting individual liberty and has long been designed on the legal-philosophical basis that, after undergoing a period of deprivation from social rights, the convicted person should strengthen within himself the opportunity for reform and return to society, while his dangerous condition is to some extent suppressed and diminished and society's sense of satisfaction is achieved with the passage of time. Therefore, through the adoption of this criminal policy, the legislator has facilitated reform and the prevention of emboldenment both of the convicted person and of public opinion. After the Islamic Revolution, however, the legislator—relying on certain Islamic criteria and elevated values grounded in full respect for the limits of individual freedoms—properly refrained for nearly sixteen years from

reintroducing this criminal policy, but after this period collateral punishment was once again returned to the list of punishments in 1998 (15).

Criminal policymakers, from the past to the present, have sought through various measures to respond to forms of criminality and offenders. Penal or reactive measures are the most traditional instruments of the criminal system, and criminal policy decision-makers, by assigning different functions to them, seek to protect and preserve the fundamental values of human societies as well as to prevent recidivism. Incapacitative functions are among the utilitarian functions of punishment and are accessible through a number of manifestations, including certain community-based forms. In this regard, the drafters of the Islamic Penal Code, by providing for collateral punishment, have embodied the incapacitative function within certain forms of community-based sanctions.

Prevention, incapacitation, or the deprivation of offenders' capacities are among the utilitarian functions of punishment and play an effective role in preventing recidivism. In light of this function, punishment seeks to remove suitable criminogenic opportunities and the capacities of offenders, thereby reducing their inclination toward reoffending. This function is based on the assumption that offenders, so long as they are subject to incapacitative measures, are unable to commit crime again, and thus the criminal justice system is confronted with a reduced amount of criminality (16).

Accordingly, incapacitation of offenders includes those punitive measures that render the circumstances and opportunities for the repeated commission of crime unsuitable. Therefore, the preventive function of punishment aims to prevent reoffending and reduce its frequency. These functions enjoy only limited support among philosophical-criminal teachings, yet public belief tends to regard them as the most effective function of punishment (17).

Today punishment appears in numerous and diverse forms, such as deprivation of social rights in collateral punishment, which seeks through its preventive function to control offenders. In this way, depriving offenders of social rights is one manifestation of society-oriented punishments through which criminal policy decision-makers seek to deprive offenders of capacity.

Thus, the Iranian legislator, taking into account that limiting or depriving offenders of certain human rights may be effective in preventing their recidivism, has provided for the deprivation of those rights for a fixed period among the forms of collateral punishment. In view of the preventive function of deprivation of social rights, such measures have been added to the list of punishments for the purpose of protecting society and reducing the probability of recidivism.

The preventive function of depriving certain offenders of social rights in collateral punishment appears in three spheres: deprivation of civil rights, political rights, and economic rights.

The Effect of Deprivation of Civil Rights on Preventing Crime Increase and Recidivism

Civil rights include a set of human rights in relation to one another and to society. Iranian criminal policy has included deprivation of certain civil rights as a collateral punishment for some crimes so that, by prohibiting the individual from exercising certain civil rights, the probability of reoffending may be reduced. In this way, these measures, by their preventive nature and characteristics, seek to deprive offenders of criminogenic opportunities. Examples of civil rights imposed upon an individual within the framework of collateral punishment include employment as a managing editor or editor-in-chief of mass media, the use of state insignia and honorary titles,

and the like. Nevertheless, the deterrent value of some of these deprivations within collateral punishment is seriously open to doubt.

The Effect of Deprivation of Political Rights on Preventing Crime Increase and Recidivism

Political rights, or the right of members of society to participate in political affairs, are among the prominent manifestations of human rights. Under this right, members of society may, as members of the polity, participate actively in the political sphere by standing for political office. On this basis, this kind of punishment deprives offenders, for a fixed period, of activity in or access to certain positions and offices that affect public order and security, because it distances offenders from situations conducive to offending. The assumption is that the possibility of some offenders occupying such positions greatly facilitates opportunities for crime.

For this reason, depriving certain offenders of access to these positions and distancing them from criminogenic situations renders them incapable of reoffending. Examples of deprivation of political rights within collateral punishment include deprivation from candidacy in presidential elections, the Assembly of Experts, the Islamic Consultative Assembly, and city and village councils, as well as membership in the Guardian Council, the Expediency Council, the Cabinet, or service as a Vice President.

The Effect of Deprivation of Economic Rights on Preventing Crime Increase and Recidivism

Economic rights, as one of the fundamental manifestations of human rights, include those rights through which human beings may freely have employment and engage in economic and commercial matters without restriction. Nonetheless, on criminological grounds and for the purpose of safeguarding public order and security, the legislator has in certain limited circumstances introduced, as a form of punishment, the deprivation of offenders from access to economic rights for a fixed period. In this way, criminal policy decision-makers, in view of the role of certain occupations in criminality, have sought through various punishments to reduce or eliminate criminogenic opportunities and consequently reduce the rate of offending. Thus, by providing for the deprivation of certain offenders from economic activities, the law both imposes restrictions and deprivations arising from crime and, on the other hand, seeks to reduce the likelihood that offenders will have access to occupational opportunities suitable for committing crime. Examples of deprivations from social rights that have an economic dimension include establishing, managing, or being a member of the board of directors of public, cooperative, or private companies, or registering trade names or educational, research, cultural, and scientific institutions (17).

One of the effects of collateral punishment is that it is imposed upon the convicted person without being expressly stated in the text of the conviction judgment. This characteristic is readily inferred from the definition of this sanction. The absence of any express mention of this punishment in the judgment means that the convicted person may not become aware of it immediately upon notification of the decision; indeed, there may be convicts who discover the existence of such punishment only after enduring the principal punishment. For this reason, it may be described as a semi-hidden punishment (18).

The hidden nature of this punishment has caused doubt as to its conformity with the principle of criminal justice. The application of a hidden punishment that follows convicts like a shadow affects the totality of the convict's social life, creates the grounds for their social isolation, and as a result may increase their recidivism. Enduring the principal punishment, especially imprisonment, sufficiently limits and restricts the convicts' social rights; therefore, imposing

another punishment in the form of social limitations after the principal punishment has been endured may amount to a kind of double punishment.

For this reason, in some criminal justice systems, as part of judicial reform, efforts have been made to reduce the scope of collateral punishment. Another deterrent effect of the execution of collateral punishment on the convicted person lies in the prior execution of the principal punishment. This means that the convicted person must first endure the punishment stated in the judgment and then the collateral punishment—namely deprivation of social rights—is to be enforced. This characteristic is expressly provided for in Article 25 of the Islamic Penal Code. Accordingly, the commencement of collateral punishment is from the moment the principal punishment ends. If the principal punishment is executed, the beginning of the collateral punishment presents no difficulty. The question is what happens where the principal punishment, for whatever reason, is not executed, becomes time-barred, or during execution the remainder is halted due to the complainant's waiver, use of parole, or pardon.

In response to these questions, the legislator has provided in the notes to Article 25 of the Islamic Penal Code that in cases of pardon and parole, the effects of the criminal conviction are removed after the passage of the prescribed period from the time of pardon or the end of parole. According to Note 3 of Article 25, the convicted person is also deprived of social rights during the period of serving the principal punishment. Likewise, where the punishment becomes subject to limitation, this does not affect the collateral punishment, and the convicted person must still endure the collateral punishment; the commencement of the collateral punishment begins at the end of the limitation period applicable to the principal punishment.

The Role of Collateral Punishment in Deterring Crime and Recidivism

This section discusses and examines the effect of collateral punishments, by virtue of effective conviction, on deterring crime and preventing its increase and recurrence.

The Effect of Effective Conviction on Deterring Crime

Although it may be thought that imposing this punishment leads to the individual's social isolation and recidivism, and that punishment in the form of social deprivations after the principal punishment has been endured constitutes a kind of double punishment, one of the most important goals pursued by collateral punishment is to secure the defense of society against the danger of recidivism. By these measures, the legislator seeks to protect society against dangerous offenders, because the assumption here is that the presence of a person who has committed a crime in certain social, political, or civil positions, and his intervention in the decisive affairs of society, renders social defense vulnerable by reason of the dangerous condition he possesses.

Thus, the legislator attempts, through a preemptive measure, to keep such persons as far as possible away from sensitive occupations and offices within society. In this way, by providing for collateral punishments in the law, the major manifestation of which is deprivation of social rights, the legislator acts to prevent recidivism by neutralizing and excluding offenders from society.

In such cases, the assumption is that the presence of a person who has committed a crime in governmental positions, legislative institutions, and the like renders social defense vulnerable. Therefore, when such a dangerous condition is realized, the interest of preserving the security and welfare of society takes precedence over the individual's interest.

The Effect of Effective Conviction on Creating Order and Security in Society

The most important goal that may be identified for the imposition of punishment in positive criminal law is that society, by applying the punishments prescribed by the legislator for each criminal act, realizes order and security within the community. From the very beginning of its existence, every society has recognized rights and privileges for the persons living within it, while also obligating those persons to respect such rights. If someone refuses to respect the sanctity of the rights of others and infringes upon them, or in other words disrupts the order and balance established in society, society is obligated to react against such a person, bring him to account for his acts, and for a period deprive him of access to social rights, because the assumption is that such a person is not worthy of enjoying those rights.

The Effect of Effective Conviction on Securing the Defense of Society Against the Risk of Recidivism

One of the most important goals pursued by collateral punishment is to secure the defense of society against the danger of recidivism. Through these measures, the legislator seeks to protect society against dangerous offenders, because the assumption is that the presence of a person who has committed a crime in certain social, political, or civil positions, and his intervention in decisive social affairs, renders social defense vulnerable due to the dangerous conditions he possesses. Therefore, the legislator seeks, through a preemptive measure, to keep such persons, as far as possible, away from sensitive occupations and positions in society. If offenders were able immediately after committing crime to re-enter society as though they had not offended and to play a role in public life, they might—because of weakness in moral virtues and social worthiness—harm the interests and welfare of society.

In this way, by providing for collateral punishments in the law, the major manifestation of which is deprivation of social rights, the legislator acts to prevent recidivism through the neutralization and exclusion of offenders from society. In reality, punishment in the form of deprivation of social rights, whether used as a principal punishment or as one of the most important manifestations of collateral punishment, is in any event essentially a neutralizing security measure.

The Effect of Effective Conviction on Special Deterrence

Another effect of collateral punishment, which also exists with respect to principal punishments, is special deterrence, because the offender, by being deprived of social rights, tries not to expose himself again to such punishment. This objective is very serious in systems in which eligibility for restoration of status is conditioned on not committing a new offense during a specified period, because the convict is at least during that designated time highly careful about his conduct so that he may obtain restoration of status (19).

The Effect of Effective Conviction on the Reform of the Offender

Society undertakes the reform of the offender through the physical, intellectual, and psychological education and training of the offender, whether through the suspension of punishment or the application of liberty-depriving punishments. Penal measures should not be limited to the issuance of a judgment requiring offenders to endure a certain amount of hardship and suffering. Today, scholars of criminal law and criminology believe that criminal judgments, before having a punitive aspect, must possess therapeutic, reformative, and educational dimensions. In pursuit of this idea, legislators in different countries have sought to include in their laws, alongside traditional

punishments, supplementary and collateral punishments and security and educational measures aimed at reforming offenders.

Conclusion

Among the concerns underlying this study was the search for an answer to the central question of what effect final criminal conviction and the public enforcement of punishment have on crime increase and recidivism. In this regard, the results of the study made clear that measures such as the public enforcement of punishment or effective criminal conviction can be effective in deterring crime and recidivism and, overall, may contribute to crime prevention and the reduction of crime, although while this proposition has been demonstrated with respect to effective conviction, it remains doubtful with regard to public enforcement of punishments.

With respect to the consequences where the offender does not face a final conviction, the study also showed that where the offender's conviction is not final, this emboldens the offender and increases the probability of crime and recidivism.

Ultimately, it must be stated that effective conviction and collateral punishments, by broadening the scope and reach of punishment to include certain civil, political, and economic deprivations, have been successful in establishing order and securing the defense of society against the danger of crime and its repetition. They have proved effective in deterrence and have contributed to preventing crime increase and reducing the offender's inclination toward reoffending. By contrast, the public enforcement of punishments has not been as successful in deterrence as might be desired; on the one hand, it creates feelings of revenge and resentment in the offender, and on the other hand, through the process of labeling, it deprives the accused of the opportunity for reform and rehabilitation and, by causing the loss of social standing, increases the risk of crime increase and recidivism.

In light of the text of the study on the one hand, and its results on the other, several proposals may be mentioned in order to clarify the matter under discussion more effectively:

First, given that the findings showed that the public enforcement of punishments has not been genuinely successful in deterrence and, on the one hand, creates feelings of revenge and resentment in the offender and, on the other hand, through the process of labeling deprives the accused of the opportunity for reform and rehabilitation and increases the risk of crime increase and recidivism through loss of social status, it is proposed, first, that public enforcement of punishments in ta'zir cases be abolished and, second, that even in hadd punishments, instead of occurring openly before the general public, enforcement should be conducted in a designated location and in the presence of pre-selected persons, so that both the requirement of publicity from the perspective of religious law is fulfilled and the execution does not make the path of the offender's rehabilitation more difficult or increase the risk of recidivism.

Second, it is proposed that the scope and examples of collateral punishment be broadened so that, with respect to different types of crimes and punishments, judges have greater flexibility to select the most appropriate collateral punishment—one having the character of special and general deterrence for preventing recidivism—while maintaining proportionality between punishment and offense and strengthening effectiveness in crime prevention. For example, where an individual commits financial crimes, even if, as a collateral punishment under paragraph (c) of Article 23 of the Islamic Penal Code, he is deprived of possessing a checkbook, this would not create much deterrence for him and would not prevent his subsequent financial offenses. Such a punishment would have neither primary nor secondary preventive capacity, because through commercial companies, corporate checks, or the

checks of other members and partners, he may continue financial crimes. However, if the scope of collateral punishment is expanded and, as the case may require, the individual is prohibited from establishing a commercial company, serving as a member of the board of directors of a commercial company, opening bank accounts, or entering into commercial contracts above a specified monetary threshold, one may hope that collateral punishment would become genuinely practical in the above example.

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Authors' Contributions

All authors equally contributed to this study.

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Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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