

Criminal Law of Women in Qajar Era Namely in Naser-ad-Din Shah Era (1264-1313)

M. Khezri^{1,*}, A. Rahimi-Sadegh¹

¹Department of Women Studies, Baft Branch, Islamic Azad University, Baft, Iran

Received: January 5 2014

Accepted: February 18 2014

ABSTRACT

The present study investigated the criminal law of women in Qajar namely in Naser-ad-Din Shah era. The present study investigated the criminal law about the role of women as criminal or providing factor in Qajar era. It is obvious that only the specific rules of women are considered. The study method was library and the research was done from the documents, books and newspapers of the mentioned period. The results of the study showed that there are some apparent mistakes in Islamic criminal law. For example, regarding the position of men and women in their criminal law, there are some differences. Based on the exact quality of courts in Qajar era, it can be said that in this period, criminal law and procedures were like the previous years and the courts in the capital were divided into religious and common courts. The present study referred to the ups and downs and changes of criminal law of women in Naser-ad-Din Shah era as it was mentioned by historians.

KEYWORDS: Iran; Qajar; Naser-ad-Din Shah; Women; Criminal law

INTRODUCTION

One of the obvious signs of civilization and culture of any nation is their commitment to legal rules and this establishes a system based on public order, determining the obligations of the members of the society, development of economy and defense, labor division, facilities, opportunity, power and wealth among people. Thus, true understanding of human civilization history without considering the economic system basics of previous nations is not possible. Although legal system and law is a sign of civilization, the type of rules and the structure of legal system of each civilization show the rank of civilization and it reflects the civilization of a nation. Thus, legal system and law history is the main part of civilization history and being aware of civilization and evolution or its collapse requires the correct understanding of legal organization and various law institutions in the historical periods. The studied legal system in law history was the structure of the society and showed the enforced rules to create public order and keeping the legal benefits of the society and people and on the other hand, the structure of the courts and courts dealing with the claims and legal complaints and courts to punish the criminals and punishments are explained.

But social abnormalities and violence lead to delinquency and punishment. In fact, in Qajar era, it was not possible that punishments are not revealed as they were. If the severe punishments on that time couldn't reduce the delinquency and crime, it prevented the crime increase. Here, committing crime and punishment of women in Qajar era are discussed and due to the poverty and ignorance or some national instincts animosity and envy and anger were shown. Also, the present study deals with the punishments of opposition to religion and government on that time.

Social conditions of Iran

Iran society in Qajar era was a cultural or pre-industrial society. The distinct feature of such society was the wide basis of agriculture and the dominance of a small group on illiterate population. The strong elite group were living in cultural, commercial and government area cities. In this group of elites, there were a few literate people and the relationship between various sections was no good. The central government applied non-centrality policy as widely in their legacy domain for the benefit of their followers at local level. King was at the top of elites and his government was dictatorship. The king considered the country his personal domain and he knew himself the supporter of Islam and shadow of Allah. The companions of the king called him the center of the world and no one could disagree with king requests. Opposition or any riot against the king was considered enmity with God. Thus, the king was the only source of power that could appoint and dismiss officers of the government. He was the only executive power and the authorities of the government didn't have the real responsibility and they were victims (Willem Floor, 1986, 19-20). Political system was managed by the followers of government. This was a personal promise systems to each other based on bargaining and their trading in political field. The people by the aim of their supporters could improve their condition or they observed the justice establishment. In addition by being dedicated to a personal group, it can creates political or legal position and it could have belonging feeling and identification of

the opportunity of developing the social relations and receiving economic resources. The supporter is not the only social progress or freedom. The main supporters of this society that can be described well due to having a corrupted system were mostly the family of Qajar. Then, the chiefs of nomads, top religious authorities and the families their power was mostly dependent upon their property (Willem Floor, 1986:20-21). Lady sheil wrote in this diary as:

Iran is the country in which people with having the qualification or the ability of participating in a plot to achieve their goal, they could attain their favorite position and the lack of any important position doesn't prevent any person to achieve high positions (Lady sheil, 1983, 196).

Thus, central government focused on a duty as collecting tax, ignoring other duties as fulfilling public needs, restoring order or delegating these duties to local rulers.

The government positions were sold with the highest bid. Collecting tax was considered in the contracts and kings surrounding areas were sold but only the wealthy people were not corrupted. A full troop of customers, kinship and other followers benefited from their supporters position. They were considering as the officers of executing the duties of supporters or they were tax contractors but the kings couldn't transgress the custom borders. The people affordability was limited and it was based on their patience to tax receiving officers (Willem Floor, 1986:21-22).

Ignoring the natural limitations, there were other tools for temporary avoiding extortion as resorting to some of the clergymen that were influential intermediaries as available for all people and they were close to the court experts.

The power of clergymen was dependent upon the following factors:

First: As a shield between people and government supported people and they were intervening between them.

Second: Imitating was the basis of the claim of legality and legitimacy of the power of clergymen. As kings were not jurists, the follower following the jurists supported their decisions (Willem Floor, 1986:22-23).

Third: The courts from Safavid to constitutionalism revolution (1285 AH) were presented to the clergymen.

Since the formation of Safavid era (907 h.gh) to Reza Shah Government, Iran legal system continued as stationary to Shia jurisprudence and the custom rules of court and financial affairs. The legal procedure and hearing process were done as non-centralized by the local rulers and chiefs of nomads and tribes and clergymen and Ulama also managed them (Seyed Hasasn Amin, 2003:388).

Any decision about the disputes of tax or crime that was taken by these officers. Any judgment that is done based on current tradition and very simple is called common law (Orf) and it is run by common law courts. But civil disputes including the personal benefits or governance, inheritance, marriage or divorce were resolved based on Quran and Sunna. In any state, the sharia court was consisting of some experienced religious Ulama in legal and sharia affairs. The Sharia court under the supervision of Imam Jome investigated about the claims of people. In the villages, the disputes were resolved by a Mola who was appointed as a judge (Ernest Orsel, 247).

Criminal law

In Iran, punishment is not defending the stability of the society against those threatening it and it is a retaliation act and some rules are considered based on the severity of the punishments. Many Mirghazabs were at the service of kings and rulers and they were his companions in the travels and expeditions. Punishment was done with a nod or sometimes in the presence of the king (Polak, 1989:227). In Iran, although there is a set of rules, none of them are executed. As the factors destructing the power of law as spite, various stimulation of corruption and influence are active and for distinguishing the good and evil, various benefits are considered instead of the law articles (Lady sheil, 1983:116).

Different kinds of punishments

Regarding penal law, there are major types of punishments in Qajar era:

a. Hodud (divine punishment)

"Had" is the punishment that is defined in Sharia, such as stoning (Rajm) for adultery, 100 lashes for fornication, cutting four fingers for robbery. Polak as the physician of Naser-ad-Din Shah wrote about HAD: "According to Iran penal law, if the owner of the property forgave the robber, the robber is released. Otherwise, his fingers or both hands are cut. Theft punishment is such as a string is put into his nose and Justice expert took him to the street and he was taken out of the city and this was controlling theft (Polak, 1989:323).

b. Tazir

"Tazir is the punishment that is not defined in Sharia and it is determined based on the special conditions. Thus, in Qajar era, numerous Muslim Ulama as judges, clergymen, jurists and Sheikholeslam interpreted Quran and formulated a complete set of civil law based on quranic rules (Lady sheil, 1983, 117).

c. Retaliation

If a person kills another one by purpose, the parents of the killed one can kill the murderer or compromise and get blood money (Dieh). In Iran, there is eye for eye, teeth for teeth and taking life to take life yet and the criminal is given to the parents of the victim to retaliate and the criminal by paying money as blood money satisfy the claimant

and be released of punishment. If the claimant and his parents don't want to punish the criminal, he was given to Mirghazab of the government and by getting money, he did this. If the criminal committed murder, he cut his head and if one of the organs was injured, his ear or nose is cut or his eyes are taken out (Heinrich Brugsch, 2010:562).

d. Blood Money (Dieh)

If a person kills another one accidentally, he should pay dieh.

In Iran blood has price and it should be paid in cash to the parents of the murdered. Blood price for young, men and women is equal. In accordance with religious rules in Islamic countries, the hairs being removed of the mustache have price and its price is determined based on the camel price (Charles James Wills, 1984:212).

Different types of punishments

There are three types of punishments and tortures: 1- Smacking the feet for small crimes as drunk, assault and battery and dispute. 2- being imprisoned in the basement of the king for failed attempt of killing the king and riot or other big crimes. 3- Cutting head or hand for robbery and nightly burglary of the houses or shops or other crimes (Carla Serena, 1983:133).

In this period, punishment is divided into small and big punishment:

The offenders and other people who commit crime are punished by Darughe of the city and in the villages, the chiefs of the villages punished the offenders (Charles James Wills, 1984:82).

Regarding those who commit small offences the punishment was as a chain was on his neck and they were behind the windows of the prison and people were seeing them. These people were poor and they were beginning to the passer by passing there and the prisoners didn't prevent them and they allowed them to beg freely and they took the begging money as their share from these prisoners (Heinrich Brugsch, 2010:273).

Severe punishment of chaining was done about those who committed bigger crimes. The offender was fastened to a wooden cross and a string was passing through the cross and its one end was attached to a hanger in the ceiling of Charsugh, cross was taken up to the ceiling of Charsugh and the prisoner was kept for a long time (Heinrich Brugsch, 2010:273).

Sometimes, the nose or ears of the offender were cut and they were wandering all over the markets that others take example. People were punished in the market and townships in the presence of people. In Charsugh and junction of the markets, the local Darughe built a place for themselves called "Paytakht (capital)" and there was a basement prison beside it and one end was open and for punishment, the criminal was taken out of prison and he was punished. Capital punishment and cutting head were done in Mohamadie square (definite capital punishment). At the center of this square, there was a big platform made of brick and a big beam was built on the board. This board and platform were used for capital punishment of offenders by Mirghazabs. Mostly, the offenders head were cut by Mirghazabs and their body was hanging by a string from the hanger above the beam and they were there for a long time that all people see them (Heinrich Brugsch, 2010:272). Iranians were cool during the capital punishment and men, women and children without any grief and discomfort were watching cutting the head and execution of criminals (Heinrich Brugsch, 2010:591). Other common tortures in this period were cutting ear, taking out the eyes, smacking, Sham Ajin, covering the body with gypsum, maim, Ashkalak execution (a kind of torture that they put wood between the fingers of the accused and press that the tortured confesses to his crime), punishment of drunken person and etc and some of them are mentioned. The events as murder and plunder in Tehran caused that Naser-ad-Din Shah ordered to arrest and execute the drunken person as most of the murderers and criminals were those who committed crime as drunk (Heinrich Brugsch, 2010, 591). Other punishment is falak (smacking by rod). Iranians believe that smacking with rod is necessary to restore order. Robbers including the hooligans and brigands are punished by rod without considering any personal status. But Iranian people don't know smacking by rod as their disrespect and their problem is only the pain of the rod. It was possible that by smacking, a person was disabled, paralyzed, fainting or even were dead (Charles James Wills, 1984:43). Some of the punishments were very terrible and the offenders were hanging from the wall or they were covered by gypsum and in Shamajin, the offenders were nailed to the wall as alive or on the ground, their hands or feet were nailed and they were creating holes in the body and some candles were burning in these sites. As alive a person was covered by gypsum and they were put into the soil and only their heads were revealed. No food was given to them and they were dead after awhile (Carla Serena, 1983:135).

In Iran, it is common that at the end of year, some of the prisoners were released. At the end of year except the temporary offenders, all of the criminals without any money were taken out to be punished by rod and then they were released (Charles James Wills, 1984:288). It was possible that criminals to be executed are forgiven by king and sometimes king forgave them some minutes before capital punishment. The king on his birthday had mercy on people and was stating that next Sunday, he will see people. On this day, any person with any complaint or any person whose right was violated could enter the palace freely and talk with king and immediately his problem was solved. This act prevented tyranny and crime to some extent (Heinrich Brugsch, 2010:259-260).

In Iran, the offender should his money or clothes to Darughe and then his feet and neck are chained and in a small place that is mostly similar to animals place is imprisoned (Charles James Wills, 1984:83). In Iran, in Qajar era, there were three types of prisons: private, Tehran ruler prison and Anbar Shahi prison.

Most of the private prisons were in the house of wealthy people and it was made to punish their servants and slaves. Ruler prison was for the drunk, battery and robbery crimes but Anbar Shahi prison was for the criminals who attempted to kill the king and riot against the king (Carla Serena, 1983:132-133).

Restoring order and punishment of criminals was the responsibility of the chief of village and Darughe. In Iran, states and villages were divided into many regions and there was a chief in every town to manage the people (Jackson, 1978:267). There was a Darughe in each market and there were some people who were the police of the market. Kalantar was the great chief of Shahrebani (police station) and police in each city. Kalantar officers were distributed in all the townships and all parts of the city and they restore order and they mostly focused on hooligans and prostitutes (Heinrich Brugsch, 2010:273).

Legal authorities in each state were under the supervision of the king. Indeed, each city is run by a ruler and he is responsible for managing the city and restoring the order and they are the chief of common law (Orf). Beside, Sharia court, there is common court and it is applied by King, judges and Divankhane. Custom law is not called law as it is not based on procedures or special rules. It is based on immediate needs, government benefits or will. Most of the political crimes are custom law as: resistance to king power or rulers, propagating rumors against the government, embezzlement, violating the police rules as corruption in streets, drunkenness, etc (Polak, 1989, 226-227). In a country in which there is no organized justice court, where as a person talks, the totalitarian king before any research punishes that person, or immediately the punishment is executed and taking shelter meant the support for those their personal security was threatened (Polak, 1989:323).

Mostly the criminals taking shelter to these places are mostly forgiven and rarely even the criminals of heavy crimes after going to holy places are forgiven (Carla Serena, 1983:158). From the past, wanted people (the people prosecuted by government as murderer or civil criminals as bankrupt) by going to the house of jurists or holy places (Hazrat Masume shrine, Abdolazim shrine, etc) and other places as embassy (England and Russia embassy) and Establ Shahi were protected against the government officers (Seyed Hassan Amin, 2003, 400).

Criminal law of women

The most important problem of the study about criminal issues of women in Qajar is the lack of direct resources on women. Although in most of the resources, indirectly it is referred to some points, the following resources are used in the present study:

- 1- Khaterat Etemad Al-Saltane newspaper was on information of women life namely the behavior of the people in contact with them were described (Mohammad Hasan Khan Etemadolsaltane, 1966).
- 2- Research of claims, the set of the documents of people complaints to the research of claims center that was directly presented to the King and in this document, the complaints of women and women issues are considered (The written documents, Tehran University, Central library).
- 3- Statistics of Darolkhelafe of Tehran and some documents of social history of Tehran in Qajar era. This book is including 3 statistic documents from Naseri era to the early Mozafari era (Mansure Etehadie, 1989). Most of the resources were on social condition and women status in the society. It can not be expected that in this way the general legal and social status of women and the behavior of the community with the women in various classes can be understood as these documents don't give an outline of general status of women in the society.

Etemadolsaltane considered women and as he focused on king and court, he wrote mostly about various wives of king and high-income women but other women and their life style were also presented in the newspaper and imprisonment of women by Kurds of Kermanshah (Etemadolsaltane, 1966:74), women gathering against shah (Etemadolsaltane, 1966:91) or superstition of some of the women (Etemadolsaltane, 1966:406) or not giving the legacy of the women who had no child of their husband (Etemadolsaltane, 1966:437) or the attack of drunken polices to a woman in the street (Etemadolsaltane, 1966:564) were some examples.

The second source of this report is based on the documents of complaint research center that ordinary people wrote letters to the government and raised their problems and they wanted their rights. Most of the complaints were from poor people. Most of the complaints were common, they were about a family and it encompassed women. For example, in some cases the women were complained about as they are guardian of minor children, their wage is cut and sometimes men were complaining against their wives. From Zanjan, Mola Abdolhossein wrote a letter as "my wife, the daughter of Heidar Gholi Khan Anguran, his brothers doesn't give her share of inheritance (Mansure Etehadie, Bita. 33).

Generally, women complaints were a few as women on that time didn't consider any rights for themselves and they were silent to the tyranny but it is interesting to say that people, men or women were brave enough to present their complaints. The reason was such that king wanted to be aware of the events and he responded directly to the

complaints and was encouraging them. Mostly the claim was referred to the court or sharia or sometimes he wanted to research and establish justice.

Women complaints were two types. Some of the complaints were not different with the complaints of men and they were complaining against the tyranny and damages due to plunder. As saltanatkhanum from Orumie complained against Rajabali Mirpanje and Khosrokhan Sartip that his share of inheritance is not given and his sister Khavus was killed by knife. A 80- year old woman from Larijan said that her husband and two sons were working in Divan and after their death due to inability, she couldn't go to the king and ask for her wage. A woman from Bijar wrote that she is a poor maid whose property was stolen and the government officers didn't punish them (Mansure Etehadie, Bit. 34).

Another type of women complaints was dedicated to specific issues of women and it indicated the oppression imposed on women due their femininity. A woman from Nahavand wrote that her husband had two wives. She and her daughter were taken out of the house and after the death of her husband, another wife had a son and he took her property. A woman in Khorasan killed the second wife of her husband and she herself died after two days and it was a severe quarrel. A woman from Kordestan wrote that her husband threw her away from the house and he didn't give Nafaghe (money) and he didn't divorce her. A man from Semnan wrote one of the government officers deceived his wife that he will marry her and her wife took 100 toman from the house and it was said to bring his wife as he can not afford to marry another woman. From Sabzevar, a man said that in Kangavar mission, he divorced his wife who fell in love with a man and they took away his property (Mansure Etehadie, Bit.34-35).

There were active and hardworking women who run their family despite the problems as a woman from Shahurd wrote that she had 250 sheep and lamb grazing in Jajrom, Turkmanan took all the sheep and she and six minor children were hungry and poor. A woman from Isfahan said that some people hurt her and they don't obey her to do the activities (Mansure Etehadie, Bit.35).

Indeed, women status in the society in accordance with the documents, was not different from the status of women in other parts of Iran but some of the states were exception. One of the reasons is the comparison with other resources referring to women issue (Polak and Furie studied on women for many years and they are consistent with the content of these reports).

As it was said, women status was not different from men in terms of gender and it was due to the poverty, deprivation, anarchy and tyranny of the rulers but sometimes it was specific for a class of the society and it was referred to women gender and their weak position in the society.

In the first case, we can refer to theft committed by women or smacking of women with each other or women and men smacking each other.

A woman called Khanumjan stole some furniture from Sadeq and she was arrested or yesterday a person called Abdolhossein had quarrel with Nane Ismael and they wanted to smack each other but the police prevented them and they compromised (2 of Safar, 1304) (Mansure Etehadie, Bit.40).

But most of the problems of women were due to their femininity. Most of the reported disputes were about the dispute of husband and wife. Temporary marriage was cheap (2 Toman) and divorce was easy. It was said that Rajabali quarreled with his wife and complained to the chief of the town. They were sent to the main office and after research, they referred to divorce office and she was divorced (12 Zighade, 1304). Marriage age was low. As other resources showed in a report, a man married a girl and later he found that she was married already. Thus, he claims for the money he paid and they quarrel (19 Zighade, 1303). Men were smacking women and sometimes the wife who was hurt by his husband complained and in other conditions during the argument, wife was eating opium and always this didn't lead to death as neighbors were saving them but it was the sign of women depression and dissatisfaction (Mansure Etehadie, Bit.41).

Another argument between the wife and husband was that the wife without the permission of husband went outside and even sometimes she was smacked by the husband family due to this reason. Another reason of smacking was poverty and noting paying Nafaghe and women were complaining to the chief of township. In this type of poor or average-income families, children were vulnerable and some of them were lost or some of them were thrown into water or Abanbar, they were drowned or they were thrown out of the roof. In some cases due to smacking of wife and husband, child miscarriage was common. Another cases indicating the wife and husband relationship was that the wife was complaining against her husband or vice versa. Once a man complained that his wife poisoned him (Mansure Etehadie, Bit.42).

However, always women were not oppressed and sometimes the wife was smacked by her husband or he committed suicide or a woman had a boyfriend or an old woman who had a young husband. These cases were rare and mostly women were under the violence of men. Other criminal rules for women were the punishment of prostitutes and criminal women.

In Iran, after a woman commits crime, immediately she is arrested by Darughe or Amiran Ghazab and then the judge issues stoning verdict or throwing into the well and smacking by rod as she is died (Charles James Wills, 1984:85).

Carla Serena said: When I was in Rasht, a terrible event occurred in one of the cemeteries. An Iranain women accused of having affair with an Armenian man was stoned in that cemetery (Carla Serena, 1983 :341).

In Shiraz, in a high hill, there was a deep pit and it was called death well. Mostly prostitutes were thrown into the well, but this punishment was not occurred during night. She was thrown in the death well in the presence of a big population (Charles James Wills, 1984:131).

Criminal women were those who killed their husband. In Iran, criminal women were not killed by knife or other tools and a woman was thrown into a bag and she was thrown from a tall tower into the ground that her body was crushed.

Lady Sheil said: The most interesting building in Tabriz was a brick building (70 foot) that was called Arg and it was built in the past. This building is used now to throw criminal women from the top of the building (Lady Sheil, 1983:31). Also, Dieulafoy during passing Kashan referred to a minaret that was used to throw prostitutes (Dieulafoy, 1999:231).

In the east namely in Iran, women are not punished severely and there are separated prisons for criminal women (Charles James Wills, 1984:136). Wills said about women imprisonment: The women who commit crime (great sin) are imprisoned in the house of jurists (Charles James Wills, 1984:287).

CONCLUSION

Indeed, talking about women criminal law in Qajar is very difficult as according to the documents in that era, true attitudes of criminal law rules of women is a task with many probabilities. Indeed, legal system and legal structure of Iran in Qajar era was based on Shia Emamie. In terms of organization and legal formation, the Qajar were obliged to follow Emamie jurisprudence based on separating Sharia legal hearing from custom law hearing.

In this period, punishment is divided into big and small punishment: As they were committing small crimes, they were punished by Darughe of the city and in villages by village chiefs. The people who committed great sins, severe punishment was applied as chaining, cutting ears, taking out eyes and murder. Regarding the criminal law of women due to the shortage of resources, the newspapers and documents in that period are mentioned.

Women complaints are divided into two types: Some of the complaints were not different from that of men and it is property plundering and tyranny. Other type of complaint was specific for women and the oppression imposed on them. Criminal law for women was due to poverty and deprivation. For example, the women committing robbery, another form is the punishment of prostitutes and criminal women. As they were aware of the crime, women were stoned or thrown into well in the presence of judge and kings. In Iran no severe punishment was considered for women.

Acknowledgment

The authors declare that they have no conflicts of interest in the research.

REFERENCES

- 1- Etehadie, Mansure, Woman in Qajar era. Humanistic sciences and cultural studies. Human sciences portal.
- 2- Etehadie, Mansure; Sadvandian, Sirus. 1989. Complaints investigation center of Amar Darolkhelafe, Tehran. Documents of social history of Tehran in Qajar era. Tehran.
- 3- Etemadolsaltane, Mohammad Hassan Khan. 1966. Memories newspaper. Attempted by Iraj Afshar. Tehran. Amirkabir.
- 4- Amin, Seyed Hassan. 2003. Iran law history. Tehran. Iran study encyclopedia.
- 5- Orsel, Ernest. 1984. Safarname, Translated by Ali Asghar Saeedi, Tehran. Zavar.
- 6- Brugsch, Heinrich. 2010. A trip to Sultan Sahebgheran court. Translated by Hossein Kordbache. Tehran. Informaiton.
- 7- Polak, Yakub Edvard. 1989. Safarname, Translated by Keykavus Jahandari, Tehran. Kharazmi.
- 8- Jackson, Wiliams. 1978. Translated by Manuchehr Amiri and Fereydon Badrei. Tehran. Kharazmi.
- 9- Dieulafoy, Madam. 1998. Safarname, Transalted by Bahram Farevashi. Tehran. Morvarid.
- 10-Serena, Carla. 1983. Safarname. Translated by Ali Asghar Saeedi, Tehran. Zavar.
- 11-Sheil, Lady. 1983. Safarname, Translated by Hossein Abutorabian. Tehran. Nashr No.
- 12-Floor, Willem. 1986. Introudction of Iran history in Qajar era. Translated by Abolghasem Seri. Tehran. Tus.
- 13- Mohit Tabatabayi, Mahmood. 1971. Justice court in Iran. Tehran. Vahid.
- 14- Wills, Charles James. 1984. Iran social history in Qajar era. Translated by Seyed Abdollah, Tehran. Zarin.