

نشریه علمی

## قرآن و معارف دینی

«مقاله پژوهشی»

# تعارض ضوابط جرم انگاری قانون مبارزه با مواد مخدر با آموزه‌های قرآنی

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### چکیده

قانون گذار در قانون مبارزه با مواد مخدر مصوب ۱۳۹۶، با تعیین نمودن مجازات‌های سنگینی چون اعدام، کیفر را به‌عنوان سیاست جنایی حاکم بر جرایم مواد مخدر قرار داده است. نص قانون مبارزه با مواد مخدر، «افساد فی الارض» و «کمیت‌گرایی» را به‌عنوان ضوابط جرم‌انگاری مفروض دانسته است. در همین راستا، سوالی که مطرح می‌شود این است که: براساس چه مبنایی ضابطه «افساد فی الارض» و «کمیت‌گرایی» در قانون مبارزه با مواد مخدر مقرر شده است؟ با تدبر در آیات و روایات می‌توان دریافت که حتی اگر جرایم مواد مخدر، مصداق افساد فی الارض دانسته شود، برای احراز نمودن جرم افساد، معیارهای کیفی چون گستردگی عمل ارتكابی، ورود خسارت عمده به افراد و جامعه و استمرار در انجام آن، از ارکان اساسی معرفی می‌شود. در حالی که قانون گذار با مبنا قرار دادن کمیت مواد مخدر مکشوفه، درصدد تفسیر و رفع ابهام از معیارهای کیفی مذکور می‌باشد. در این نگارش با استفاده از روش توصیفی-تحلیلی و با تکیه بر منابع معتبر اسلامی، این نتیجه حاصل شده است که برای احراز جرم افساد، ملاک‌های کیفی و میزان تأثیری که آن فساد بر روی افراد و جامعه می‌گذارد، مورد توجه می‌باشد و رویکرد کمیت‌گرایی مبنای شرعی و قرآنی ندارد و با فلسفه جرم‌انگاری مستقل افساد فی الارض که همان از بین بردن ریشه فساد و تباهی در جامعه و حفظ نظام اجتماعی است، منافات دارد.

### واژه‌های کلیدی

افساد فی الارض، کمیت‌گرایی، قانون مبارزه با مواد مخدر، آموزه‌های قرآنی.

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# Quran and Religious Enlightenment

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## ORIGINAL ARTICLE

### Conflict between the Criminalization Rules of the Anti-Narcotics Law and Qur'anic Teachings

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#### ABSTRACT

In the Anti-Narcotics Law approved in 2016, the legislator has made punishment as the governing criminal policy for drug crimes by determining heavy punishments such as death. The text of the anti-narcotics law has considered "Corruption on earth" and "Quantitativeism" as the criteria for criminalization. In this regard, the question that arises is: On what basis are the rules of "Corruption on earth" and "Quantitativeism" prescribed in the anti-narcotics law? By considering the verses and traditions, we can understand that even if drug crimes are considered as an example of corruption on earth, in order to establish the crime of corruption, qualitative criteria such as the extent of the committed act, major damage to individuals and society, and the continuation of it, are introduced as its essential elements while the lawmaker is trying to interpret and clear the ambiguity of the mentioned qualitative criteria by placing the quantity of discovered drugs as the basis. In this writing, by using the descriptive-analytical method and relying on reliable Islamic sources, it has been concluded that in order to determine the crime of corruption, qualitative criteria and the extent of the impact that corruption has on individuals and society are considered, and the approach of Quantitativeism has no Shar'i and Qur'anic basis and it contradicts the philosophy of independent criminalization of corruption on earth, which is to eliminate the root of corruption and destruction in society and maintain the social order.

#### KEYWORDS

Corruption on Earth, Quantitativeism, Anti-Narcotics Law, Qur'anic Teachings.

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## Introduction

The jurisprudential rule of "Maintaining the Islamic System" is one of the rules governing public order in society. In the Anti-Narcotics Law, the lawmaker prescribes the death penalty for some of the perpetrators of drug crimes, regarding "Corruption on earth" in order to maintain the social system. In other words, some of the perpetrators of drug crimes have been recognized as corruptor on earth in jurisprudence texts and the death penalty has been prescribed for them. Execution is the most severe punishment against criminals under the chapter of Ḥudūd. Since there are difficult results based on Ḥudūd, while counting the number of Ḥudūd crimes, the conditions of their proof have also been taken into consideration by the holy legislator. Despite the difference of opinion regarding the independent criminalization of "Corruption on earth", the legislator in Article 286 of the Penal Law approved in 2012, in order to prevent disruption in society and maintain the social order, considers the independent criminalization of "Corruption on earth" and has explained the material and spiritual element of the crime of "Corruption on earth" in the aforementioned legal article. In order to criminalize corruption on earth, the legislator in Article 286 of the Penal Code pays attention to the scope of the committed act and its effect on the individual and the society. In fact, by setting the criteria of the extent of the committed act and the wide scope of that act in order to consider the person corruptor, the legislator shows that in the criminalization of corruption on earth, the effect of that act on the social system is considered.

Now, the basic question is that by referring to Qur'anic verses and traditions related to the subject: Firstly, what criteria should be met in

order to be recognized as a corruptor? Secondly, is the sentence to death based on the amount of drugs found in the anti-narcotics law compatible with Qur'anic teachings?

In this research, an attempt is made to examine the Qur'anic documentation of the criminalization of corruption on earth and the conditions for obtaining it, and then, the correctness or incorrectness of the title of corruption on the perpetrators of drug crimes is discussed. At the end, in a comparative way, the quantitative criterion of the legislator in drug crimes is examined with Qur'anic teachings.

## 1- Research background

In relation to the anti-narcotics and anti-corruption law, which is one of the topics related to the issue, a separate research has been conducted, the most important of which are mentioned below:

1. Bagheri, Ebrahim, "Topicology of Moharebeh and Corruption on the Earth in Islamic Jurisprudence and Law", Pasokh Magazine, fall and winter 2018.

In this article, the author has only examined the views and the relationship between the two crimes of war and corruption; while the current research, in addition to the concept of corruption on earth, has examined the criteria for identifying the corruptor and, in addition, has criticized the criminalization criteria of the Anti-Narcotics Law with a comparative approach and based on Qur'anic verses.

2. Akbari, Abbas Ali, "Examination and criticism of the criminal policy governing drug crimes in Iran with an emphasis on the 2018 amendment", Criminal Law Research Journal, Fall and Winter 2013.

This researcher has also made the criticism of the criminal policy based on repression and

punishment as the focus of his discussion, and he notes that such an approach has not been favored by criminal policies. However, the current research, citing the Qur'anic verses, has raised the challenges in the criminalization rules of the Anti-Narcotics Law.

## 2- Execution in the anti-narcotics law

Despite the amendments made in the anti-narcotics law in 2016, the death penalty is still visible in this law. In the aforementioned law, due to the fact that the perpetrator is corruptor on earth, in some cases, the lawmaker has considered the death penalty for the perpetrator. The articles of the anti-narcotics law that are related to the discussion are:

Article 8- If anyone tries to import any narcotics into the country including heroin, morphine, cocaine and other chemical derivatives of morphine and cocaine or lysergic acid diethylamide (LSD), methylenedioxymethamphetamine (MDMA or Oxtacey), gamma Hydroxybutyric acid (GHB), flunitrazepam, amphetamine, methamphetamine (glass) or other narcotic drugs or non-pharmaceutical industrial psychotropic substances, whose list is approved by the Islamic Council, or if he attempts to manufacture, produce, distribute, send, buy or sell, or expose for sale, or keep, hide, or transport such drugs according to the proportion and according to the amount of the material, he will be punished as follows.

1) Up to five centigrams, from five hundred thousand Rials to one million Rials fine and twenty to fifty lashes...

6) More than thirty grams, execution and confiscation of property resulting from the same crime

Article 45 - The perpetrators of the crimes that are punishable by death or life imprisonment in this law, if one of the

following conditions are met, they are corruptors of earth and sentenced to the death penalty and confiscation of property caused by narcotics or psychotropic substances. Otherwise according to the case "Subject to execution", they are condemned to imprisonment of the first degree up to thirty years and a monetary penalty of the first degree to twice the minimum amount and "Those subject to life imprisonment" are condemned to imprisonment and a monetary penalty of the second degree and in both cases they are punished by the confiscation of property resulting from drug and psychoactive crimes:

A- Cases where the perpetrator of the crime or at least one of the partners has used a weapon during the commission of the crime or carried a firearm or a hunting weapon with the intention of confronting the officers.

Weapons in this clause are cold weapons and ammunition subject to the Law on Punishment of Arms and Ammunition Trafficking and Possessors of Illegal Weapons and Ammunition approved on 6/7/2010.

B- If the perpetrator has the role of leader (subject of Article 130 of the Islamic Penal Code approved 2/1/2012) or has a financial supporter or an investor, or has used children and adolescents under eighteen years or lunatics to commit a crime.

C- Cases where the perpetrator has a record of a definite sentence of death or life imprisonment or imprisonment for more than fifteen years due to committing the crimes under this law.

T- All the crimes under Article (4) of this law provided that it is more than fifty kilograms and the drugs under Article (8) of this law provided that it is more than two kilograms and regarding other crimes under Article (8) if it is more than three kilograms. The implementation of this clause towards the perpetrators,

defendants and criminals before this article becomes effective depends on having one of the conditions of clauses (a), (b) or (c).

By examining the text of the anti-narcotics law, we find that the lawmaker orders the death penalty for corruption. Since conditions are necessary to establish corruption on earth, the legislator has set the quantity of narcotic drugs as a criterion for the realization of corruption on earth in paragraph D of Article 45, and based on the amount of narcotics discovered, the perpetrator is sentenced to death penalty.

### 3- What is *Ifsād fī al-Ard*?

"*Ifsād*" comes from the rhythm *If'āl* and the transitive infinitive of "*Afsada*" and from the root "*Fisād*". "*Fisād*" is an infinitive from the root "*Fasada*". From the lexical point of view, "*Fisād*" means sedition and chaos, ruin, destruction, wickedness (*Farāhīdī*, 1414, 7: 231), aggressive taking of wealth.<sup>1</sup> (*Firouzabadi*, 1420, 277)

*Rāghib Isfihānī* writes about "*Fisād*" as follows: "*Fisād* is an exit from moderation it does not matter whether this exit from moderation is a little or a lot, and "*Ṣalāḥ*" is the opposite of *Fisād*, and the word "*Fisād*" is used in the soul and spirit and unbalanced bodies and things." (*Rāghib Isfihānī*, 1943, 37)

By considering the verses of the Holy Qur'an, we can see that the definition provided by *Rāghib Isfihānī* is a comprehensive definition and includes all examples of "*Fisād*". Because in spite of the fact that *Fisād* in the verse (Corruption doth appear on land and sea because of (the evil) which men's hands have done, that He may make them taste a part of that which they have done, in order that they may return.) (*Rūm*: 41) means "Famine" and in the verse "As for that Abode of the Hereafter

We assign it unto those who seek not oppression in the earth, nor yet corruption. The sequel is for those who ward off (evil)." (*Qaṣaṣ*: 83) means "Taking another's property by aggression" and in the verse "If there were therein gods beside Allah, then verily both (the heavens and the earth) had been disordered. Glorified be Allah, the Lord of the Throne, from all that they ascribe (unto Him).) (*Anbīyā'*: 22) it means "Invalidity and decay", but the root of all of them is a departure or exit from moderation.

"*Ifsād*" is higher than "*Fisād*" in terms of severity and ranking, and the meaning of "*Ifsād*" is any type of action that disrupts the blessings of a society, such as public peace, and makes the society deviate from its normal path. In fact, the prevalence of "*Ifsād*" is more compared to "*Fisād*" and in a sense; it is the thing that disrupts the process of the society towards interests. But "*Fisād*" is at a lower level and does not cause much disruption in the process of society, but rather has a personal aspect and a person only destroys himself with his thoughts and behaviors. Therefore, it is something that happens inside a person (*Habibzadeh*, 2017: 174). The act of using drugs by a person is corruption, and if he promotes using drugs among others and destroys a society by smuggling drugs and distributing them widely among people, his action becomes corrupt and also criminal. Most of the punishments and heavy *Ḥudūd* are for the times when the corrupt behavior is corrupting.

### 4- Perpetrators of drug crimes, examples of corruption on earth

In the Islamic Penal Code approved in 2012, the crime of corruption on earth is criminalized independently. Since the perpetrator of drug crimes is not proven to be corruptor, the death

1. A'rāf: 56, Baqarah: 85 and 11, and Shu'arā: 152 and 220

penalty will not be determined for him. Now the question that is raised is, on what basis are the perpetrators of drug crimes considered corruptor?

By examining the verses related to examples of corruption, it can be found that verse 205 of Surah Al-Baqarah can be a document for determining examples of corruption and, in the discussed issue, a document for the legislator. According to the holy verse, "And when he turneth away (from thee) his effort in the land is to make mischief therein and to destroy the crops and the cattle; and Allah loveth not mischief." The destroyers of the generation are examples of corruptor on earth (Qarā'atī, 1383, 1: 320).

The commentators have expressed different opinions regarding the meaning of the phrase "And to destroy the crops and the cattle." According to Allameh Tabataba'i's opinion, because the continuity of society's life depends on nutrition and production, the enemy seeks to destroy the infrastructure of these two vital pillars (Tabataba'i, 1994, 2: 92). Some commentators have interpreted "Ḥarḥ" as agriculture and "Nasl" as animal husbandry (Ālūsī, 1415, 1: 491; Tabari, 1419, 2: 185; Ibn Qutaybah, nd: 74). Accordingly, destroying the infrastructure of agriculture and animal husbandry of other communities shows the corruption of the Jews. Based on a narration from Imam Ṣādiq (AS), it is considered that cultural corruption is intended in the verse (Faiz Kashani, 1415, 1: 240; Ālūsī, 1415, 1: 491).

According to the above-mentioned content, it is clear that the commentators have expressed various interpretations for the words "Ḥarḥ" and "Nasl". In general, it can be said that drug crimes have a subject departure from the verse. Therefore, the examples of corruption on earth should be identified, and if there is any doubt whether a person is an example of corruptor on

earth or not; the principle is that he is not corruptor. In drug crimes, it is not possible to determine the death penalty for everyone; because some of the perpetrators operate in an organized manner and cause the destruction of many people, and some of the perpetrators buy and consume drugs because they are addicted to drugs without infecting other people. It may be argued that since the commission of drug crimes destroys the economy and the human race, therefore, drug crimes have no departure from the Verse. In response, it can be stated that not all the perpetrators of drug crimes can be considered corruptor, but in order to be considered corruptor, some conditions must be met, which we will discuss below.

### **5- Criteria for verifying corruption on earth**

In order to state the criteria for determining corruption on earth, following the verses of the Holy Qur'an and hadiths, we are guided to the following points:

#### **5-1- Qur'anic proofs**

Among the basic conditions for the realization of corruption on earth, which can be observed by meditating on the verses of the Holy Qur'an, are:

##### **5-1-1- Trying to spread corruption**

Allah says in verse 32 of Surah Mā'idah: "For that cause, We decreed for the Children of Israel that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind. Our messengers came unto them of old with clear proofs (of Allah's Sovereignty), but afterwards lo! Many of them became prodigals in the earth." He considers murder to be legitimate in two cases: 1. to carry out retribution 2. Corruption (Fazel Lankarani, 1422: 639;

Mu'min, 1415: 400) According to the opinion of some jurists, only the title of corruption on earth is sufficient to justify the verdict of murder and they have documented this verse for murder of the corruptor on earth. And they argue that if there were other restrictions intended by the holy legislator, he would have stated them. Therefore, except for the condition of trying to corrupt, which is mentioned in the next verse, there is no need to meet other conditions and restrictions for killing a corruptor person.

This argument can be criticized because, according to the opinion of famous jurists, it is permissible to assign and restrict the Qur'an through single news, which is surrounded by definite evidence, because this has been the way of Muslims since the beginning of Islam. As an example in the discussion of self-retribution, we have received several narrations from the infallible imams (AS) that are bound by the Qur'anic application for example, in a hadith, Imam Ṣādiq (AS) says: "A father is not retaliated for the murder of his son" (Ḥurr Āmulī, 1409, 29: 77-78). As a result, in the topic of retribution, generalities are mentioned in the verse, but in order to obtain details, conditions and restrictions we should refer to hadiths. Therefore, it is not possible to apply the concept of corruption in the Qur'an without paying attention to other verses and traditions.

To clarify the concept and conditions of corruption on earth, it is necessary to examine the phrase used in the verses. There are two possibilities regarding the meaning of "On earth" in verses 32 and 33 of Surah Mā'idah: "The only reward of those who make war upon Allah and His messenger and strive after corruption in the land will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled

out of the land. Such will be their degradation in the world, and in the Hereafter theirs will be an awful doom."

1- The earth is the place where corruption and sin are committed, and any sin committed on earth is called corruption on earth, even if it is a small sin and it is done away from the eyes of others and it only affects the same place where it was committed. 2. "On earth" means the extent of the action and the creation of corruption in a region of the earth (Tabataba'i, 1994, 2: 96-97).

God with the phrase "Do not act corruptly" in the holy verse: "And when Moses asked for water for his people, We said: Smite with thy staff the rock. And there gushed out therefrom twelve springs (so that) each tribe knew their drinking-place. Eat and drink of that which Allah hath provided, and do not act corruptly, making mischief in the earth." (Baqarah: 60)

He has forbidden the Israelite from creating corruption on earth. Regarding the meaning of the phrase "Do not act corruptly" we can understand that the phrase "Do not act corruptly" has different meanings such as "Do not seek", "Don't overwhelm", "The most corrupt", "Do not hit the ground" (Ṭabrasī, 1992, 5: 285) that this prohibition of corruption in the verse means that the corruptor on earth is trying to spread corruption on earth from one point to another in a rebellious and aggressive manner.

In Article 286 of the Penal Code, the lawmaker has stated the criterion of "Extent of corruption" for recognizing a person as corruptor, which is rooted in the holy verse and other verses that consider the extent of corruption to be the cause of corruption on earth. However, in the anti-narcotics law, the legislator did not pay attention to the quality of the criterion of "Extensive action" and

considered the quantity of narcotics as a criterion for the realization of corruption on earth. In fact, it can be said that the legislator in Article 45 of the Anti-Narcotics Law considers more than two kilograms for some drugs and more than three kilograms for some other drugs as a sign of widespread corruption. In other words, the legislator interprets the criterion of "Extent of corruption" stated in Article 286 of the Penal Code in the anti-narcotics law with the quantity of narcotics. Of course, such an interpretation is flawed, because the "Extensiveness" of the action is a qualitative criterion and it is not possible to determine the extensiveness with the quantity of exposed materials. From a rational point of view, it cannot be said that two kilograms of narcotics does not indicate the extent of the act, but two kilos and 10 grams of narcotics indicates the extent of the act. Maybe even two kilograms of drugs can infect thousands of people in the society, and its spread causes people to become addicted and it results to various crimes.

### 5-1-2- Continuity on corruption

Verse 33 of Surah Mā'idah: "The only reward of those, who make war upon Allah and His messenger and strive after corruption in the land, will be that they will be killed or crucified, or have their hands and feet on alternate sides cut off, or will be expelled out of the land. Such will be their degradation in the world, and in the Hereafter theirs will be an awful doom."

It is among the reasons of those who believe that "Corruption on earth" has been criminalized independently. They believe that the Hudūd mentioned in the verse are punishments for warring and corruptors, and they consider the attempt to corrupt the earth as the main reason for the punishments mentioned

in the verse, even if it is without the title of warring (Mu'min, 2012, 55-56)

Regarding citing the above-mentioned verse for the independent criminalization of corruption on earth, there is a difference of opinion, and most of them are of the opinion that the verse is intended to express the corruption of war, not absolute corruption (Golpayegani, 1412, 3: 316), even if we accept that the verse refers to the crime of "Corruption on earth" independently. The main issue is what is the condition for the realization of "Corruption on earth" according to the holy verse? "They try" is a present tense and the present verb indicates the insistence and continuation of the action. Therefore, if someone commits corruption once, he will not be included in the holy verse, but such work should be his job, and this concept is taken from the word "They try", because it is in the present form, so it implies continuity (Bagheri, 2018: 26).

In the holy verse: "The Jews say: Allah's hand is fettered. Their hands are fettered and they are accursed for saying so. Nay, but both His hands are spread out wide in bounty. He bestoweth as He will. That which hath been revealed unto thee from thy Lord is certain to increase the contumacy and disbelief of many of them, and We have cast among them enmity and hatred till the Day of Resurrection. As often as they light a fire for war, Allah extinguisheth it. Their effort is for corruption in the land, and Allah loveth not corrupters." (Mā'idah: 64)

Almighty God has described the corruption of Israelite with the phrase "and they do corruption on earth." According to the opinion of most commentators, the phrase "They try" refers to the hard and continuous effort of the Israelites (Faiz Kashani, 1415, 2: 50; Ālūsī, 1415, 3: 394; Ṭabarsī, 1992, 3: 341).

According to the explanations given, it is clear that those whose job is distributing, buying and selling narcotics and as a result of such activity, they ruin the lives of other people, they are considered corruptors on earth. In order to consider a person corruptor, the holy verse pays attention to the quality of the act committed and the continuation of the spread of corruption in the society, and does not refer to the quantity, while the legislator in the Anti-Narcotics Law considers the quantity of discovered drugs as the criterion for being corruptor on earth. Therefore, those who continuously distribute narcotics among the people of the society and by distributing narcotics facilitate the access of the users to narcotics and create the grounds for the person's tendency to use narcotics and eventually become addicted, are a clear example of the corruptor on earth because they gradually cause the destruction of society's members and the loss of the society's youth. However, by setting the quantity of drugs as a criterion, the legislator causes such people to carry less than the quorum set in the anti-narcotics law due to their knowledge of the laws, so that in case of arrest, a light punishment will be determined for them. And the corruption punishment is not determined for them, and after their release, they resume their jobs, while the real corruptors are the same people who cause the destruction of the society.

### **5-1-3-Major damage to the physical integrity of people**

In Article 286 of the Islamic Penal Code, major damage to the physical integrity of people and the spread of toxic and microbial substances are mentioned as the conditions for corruption on earth. One of the verses related to this condition is verse 205 of Surah Baqarah. God says in the holy verse: "And when he turneth away (from

thee) his effort in the land is to make mischief therein and to destroy the crops and the cattle; and Allah loveth not mischief."

Imam Kāzīm (AS) says: The meaning of generation is children, and the meaning of plowing is agriculture and cultivation (Majlisī, 1403, 9: 189).

In the holy verse, Almighty God describes corruption, which has been one of the ugly habits of the hypocrites. In fact, the hypocrites commit two types of corruption: one is the internal corruption that they caused due to their hypocrisy, and the other is the external corruption that was done by killing generations and destroying crops, and if the destruction of the generation takes place, the future generation will find deviation. In other words, hypocrites are affected by corruption both internally and externally. According to the appearance of the phrase, it is understood that the verse "They destroy generation and agriculture and Allah does not love corruption" refers to the previous sentence (corruption on earth) and it means that by destroying the generation and agriculture, corruption takes place (Tabataba'i, 1994, 2: 143). If the enemies first used war, now they use psychological pressure to infiltrate families and destroy the basic and important foundations of society from within. The prevalence of drug use is considered one of the most destructive social harms that threatens the society and firstly shakes the foundations of families and then affects a system, and as a result, such a problem is considered a serious obstacle to the development of the country and destroys the prosperity of various fields. According to this verse, those who, by means of spreading drugs, propaganda and cultural invasion, provide the basis for the destruction of mankind and destroy the family system, are the corruptors on the earth (Qarā'atī, 2004, 1: 320).

According to the above-mentioned content, it can be said that the legislator in the anti-narcotics law declares a person who has more than two kilograms of narcotics as a corruptor on earth because it causes the destruction of the generation and society. The question that is raised is: On what basis does the legislator consider more than two kilograms of drugs to cause the destruction of a generation? Does that mean that one kilo and nine hundred grams of drugs will not destroy a generation, but two kilos and five grams of drugs will destroy a generation? According to the discussions that took place in the comprehensive system of opinions of the Guardian Council, jurists believe that we cannot determine the quorum and the determination of the quorum should be done by experts. According to experts, two kilograms of glass can potentially contaminate around five or six thousand people in society. Therefore, the lawmaker has considered more than two kilograms as the standard for considering a person as corruptor on earth. The problem is that a person may have two kilos and five grams of drugs and have prepared it for his own personal use and his addicted family without polluting the society. At the same time, it is possible for a person to buy one kilo and nine hundred grams of narcotic drugs and distribute them all among the members of the society and infect about five to six thousand people and repeat this work regularly and such an activity is his source of income, so it is not possible to determine this amount of drug as a criterion. It is important to pay attention to the quality of the perpetrator's action, to what extent the committed action has caused the destruction of the society. The holy verse has not mentioned a number, for example, if a person causes the destruction of a thousand people, he is an example of a corruptor on earth. To determine whether an action causes

the destruction of the generation or not, it is completely flawed to consider the numerical quorum, because whatever quorum is used as a criterion, this problem is still present and it is not logical that five grams of difference in the discovered drug determines the destruction of the generation and to be known as a corruptor on earth and to be executed. Therefore, it is necessary to pay attention to the quality of corrupting the society.

One of the consequences of the legislator's turning to a quantitative criterion in drug crimes is that many people who are considered corruptor on earth are not punished for their corruption. A person who distributes 1 kilo and 900 grams of drugs among the people of the society, if we take into account the qualitative criteria, the extent of the act committed by such a person is clear, because he causes contamination of several thousand people. But if we take into account the quantitative criterion, such a person is not considered an example of a corruptor on earth, and only imprisonment is imposed on him. And after a period of imprisonment, the punishments of conditional release or partial release are applied to him, and when he is out of prison, he may still commit drug sales, which will have his parole revoked if he is arrested. Despite the fact that such a person causes the pollution of thousands of people, but because the quorum mentioned in the anti-narcotics law has not been discovered from him, he is not considered corruptor on earth.

#### **5-1-4- Repeating the committed act and not giving up sedition**

In some verses of the Qur'an, the word "Sedition" is used. One of the verses that refer to "Sedition" is verse 193 of Surah Al-Baqarah, in which God says: "And fight them until persecution is no more, and religion is for

Allah. But if they desist, then let there be no hostility except against wrong-doers."

"Sedition" in the term is complex events that do not have a clear nature and have a deceptive and esoteric appearance full of corruption, which leads human societies to disorder, ruin and corruption in property and diseases (Makarem Shirazi, 2001: 238). The meaning of sedition in the verse is beyond war and armed battle, because firstly; the word "Sedition" in the verse is in the form of Nakarah, which means general in the context of negation. Secondly; in the verses of the Qur'an, sedition is more severe than murder. Therefore, it can be said that it includes both bloody battle and suspicion and conspiracy. In other words, sedition is sometimes formed through the deprivation of freedom, imposing pressure on Muslims and creating a suffocating atmosphere, and sometimes an atmosphere of illusion and widespread corruption is created. As a result, it can be said that because committing drug crimes create a polluted environment and spread corruption, is considered a form of sedition. Now, if the sedition of the sedition seekers leads to the deprivation of people's security and peace, God has ordered to deal decisively with them. Allameh Ja'fari writes in this regard: "Sometimes sedition reaches a stage of corruption that overshadows any degeneration and misfortunes. At this stage, not only human principles and laws are shaken and values are disintegrated and goals and means are destroyed, but human life is immersed in a danger that has no limit. This type of sedition must be resolved by any means, even if it was by killing" (Ja'fari, 1989, 3: 96).

According to this verse, if advice could not stop the seditious actions of the seditionists, he should stand against their seditious actions so that they do not harm public security and

comfort. Therefore, it can be said that in order to deal with drug offenders, who are in some way seditionists, the steps must be followed. In fact, it can be concluded that according to the mentioned verse, repeating and getting used to sedition causes the perpetrator to be executed. In other words, the perpetrator of sedition, which is one of the examples of drug offenders, is not executed in the first place, but in case of persistence and repetition of the committed act, the fire of sedition should be extinguished by imposing a heavy punishment such as death. If sedition reaches a level that affects normal life and human life, it is necessary to deal with it decisively. At this stage of sedition, the Holy Qur'an has issued an order to fight seditionists and says: "And slay them wherever ye find them, and drive them out of the places whence they drove you out, for persecution is worse than slaughter. And fight not with them at the Inviolable Place of Worship until they first attack you there, but if they attack you (there) then slay them. Such is the reward of disbelievers." (Baqarah: 191).

The mentioned verses regarding sedition, in order to kill the sedition seekers, pay attention to the quality of action, and in none of the mentioned verses, the quantity is mentioned, but they only emphasize the fact that if the sedition seekers' actions lead to the deprivation of security and comfort and to endanger human life, it is necessary to fight with sedition seekers. Therefore, we understand that in order to execute drug offenders, who are actually seditionists, the quality of their actions should be taken into consideration, not the quantity. Therefore, if the actions of the perpetrators of drug crimes cause destruction and chaos in human society, the society should be cleansed of such people, perhaps even one kilogram of drugs can cause the destruction of human

society. Limiting ourselves to the quantity and using it as a criterion make us distance ourselves from the philosophy of imposing the death penalty on corruptors on earth, which is to cleanse the society from the roots of corruption and corruptor.

## 5-2- Traditions

According to a number of jurists, by examining the hadiths, the rules for ascertaining corruption on earth are obtained. In this article, after stating a sample of hadiths, an attempt will be made to present the rules for determining corruption on earth.

### 5-2-1- Punishment for arsonists

In an authentic narration from Sakūnī narrated from Imam Ṣādiq (AS): Imam Ali (AS) said about a man who set fire to someone's house and the house and things inside the house were burned as a result, he said that the arsonist should pay for the damage to the house and what was inside it and then be killed (Ṣadūq, 1404, 4: 162; Ṭūsī, 1986, 10: 231).

According to the opinion of some jurists, being a "Corruptor on earth" is the reason for the murder of an arsonist (Najafī, 1404, 43: 125). Since in the mentioned narration, humans were not burned, then carrying the narration about revenge is contrary to appearance. When a person sets other people's houses on fire, he must compensate for the damage. But in the narration, in addition to compensating for the damage, he was sentenced to be killed. From the phrase "In a people's house" in the narrative, it can be understood that the operations committed were extensive and beyond enmity and arson, which is a clear example of corruption on earth. In other words, the extent of the committed act makes the title of "Corruptor on earth" true for a person.

### 5-2-2- Levels of corruption

ʿUbaydullāh ibn Ishāq has narrated from Imam Reza (AS) that: I asked Imam about the obligatory nature of each of the punishments mentioned in the verse: "The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter." (Mā'idah: 33)

Imam replied: If someone fights with God and the Prophet and tries to spread corruption on earth and kills people, he will be killed, and if he kills someone and steals money, he will be killed and he will be crucified. And if he steals money but does not commit murder, his opponent's hands and feet will be cut off, and if he tries to spread corruption and prostitution but does not commit murder or theft, he will not be killed but exiled (Kulaynī, 1984, 7: 246-247).

According to the mentioned narrative, it can be seen that corruption has levels and according to the severity of the committed act and the amount of corruption that has been created, the perpetrator is punished. Therefore, according to this narrative, the prevalence and extent of corruption on earth is known as a material element and a condition for the realization of corruption.

### 5-2-3- Punishment for the murder of Ahl al-Dhimmah

According to some narrations, if a Muslim is used to killing Ahl al-Dhimmah i.e. people of covenant, he will be killed (Kulaynī, 1984, 7: 310; Ṭūsī, 1986, 10: 190). Famous jurists believe that if a Muslim repeatedly commits the murder of Ahl al-Dhimmah, he will be killed,

and the reason for killing such a person is that the perpetrator is corruptor on earth (Mar'ashī Najafī, 1415, 265).

Abu Salih Halabi says in this regard: If a Muslim kills a Dhimmī man or woman, he must pay his ransom. However, if he has acquired a habit of killing Dhimmī people, his neck will be hanged due to corruption on earth (Halabi, 1403, 384). According to the mentioned narration in the context of the murder of Ahl al-Dhimmah, it can be seen that habituation, continuation and attempt to corrupt the society makes the title of "Corruptor on earth" true for a person.

#### **6- How to meet the conditions of corruption on earth**

According to a sample of the verses and narrations that were stated, it can be seen that the criteria for the realization of corruption on earth are qualitative. The extent, continuity and occurrence of major damage to the physical integrity mentioned in the verses do not indicate the quantity, while the legislator has interpreted the mentioned limitations in the Anti-Narcotics Law with the quantity that such an interpretation is not compatible with the verses and narrations and maintaining the social system. In order to clarify the concept and apply the limitations of extent, continuity, major damage in drug crimes, it should be determined how and by whom the mentioned criteria should be determined? According to Imam Khomeini, there is nothing wrong with recognizing the subjects of rulings and applying titles to examples. The holy legislator is similar to others in inducing verdicts and does not have a special term or special language. Therefore, the verses and news that contain rulings, their understanding and the recognition of issues and examples are left to the public custom (Khomeini, 1999: 219-220). The authority in

the field of concepts is with custom. After accepting this matter that custom is the authority for verifying the subject in the world outside of the mind, it should be clarified in the next order: Who has the authority for such verification? In customary matters, it is accepted to refer to an expert (Haji Dehabadi, 2014: 107). In the context of the subject under discussion, verification of corruption, which is an external matter, is done by referring the matter to an expert. However, if the judge has doubts, he must continue his investigation to ensure certainty, and if the expert's opinion is not informative, it is not mandatory for the judge to follow it. In the aforementioned restrictions, there is a concept of ambiguity in order to verify the corruption, and the clarification of the meaning of such restrictions requires the review and opinion of experts and knowledgeable people in that field. As it was stated, in the field of concepts, authority is with custom, and the expert clarifies the issues by referring to custom and his knowledge in the specialized field. In the Anti-Narcotics Law, clearing the ambiguity of the concept of restrictions necessary for the realization of corruption on earth is left to custom and expert opinion. The opinion of the expert must be in harmony with custom, reason and Shar'. Experts believe that two kilograms of industrial drugs infects five to six thousand people, and based on these statistics, they believe that if someone has more than two kilograms of drugs, he is considered corruptor.

In fact, in this way, they solve the ambiguity of wide restrictions and the introduction of major damage. Which custom, common sense and law says that one kilo and nine hundred grams of narcotics does not cause corruption, but if the quantity reaches two kilos and one gram of drugs, the extent and major damage

and as a result corruption on earth has been realized. Eliminating the ambiguity of the *Hudūd* of corruption on earth by setting an amount for narcotics is not compatible with customs, neither with reason, nor with *Sharʿ*. In none of the verses and narrations, the quantity is mentioned to determine the corruption, because if any quantity is used as a criterion, it becomes a problem that a difference of five grams cannot determine whether a person is corruptor. As a result, in order to clear the ambiguity of the concepts, the expert should distance himself from the quantity and pay attention to the quality of the committed act, its continuity and the damage that act causes in the society. A person may be a major drug trafficker for years and not take part in enforcement operations, and the transportation and distribution of drugs is carried out by his people. Such a person is a clear example of a corruptor on earth, because both the extent of corruption in the society, the continuity of the act and the major damage to the physical integrity of people are evident while it may never be possible to discover more than two kilograms of drugs from him, to execute him for the crime of corruption on earth. On the other hand, a person who bought two kilos and five grams of drugs and hid them at home for daily use was arrested by the officers and sentenced to death due to reaching the quorum.

#### **7- Contradiction of Quantitativeism with the philosophy of independent criminalization of corruption on earth (maintaining the social system)**

One of the controversial issues that exist is the debate on the criminalization of "Corruption on earth" independently. The jurists have not dedicated a special chapter to "Corruption on earth" in legal texts. In any case, despite the existence of differences of opinion about the

independence of "Corruption on earth", the document of those who consider "Corruption on earth" as an independent crime is 2 verses from the Qur'an:

1. Verse 32 of Surah Al-Mā'idah: "On that account: We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people: and if any one saved a life, it would be as if he saved the life of the whole people. Then although there came to them Our messengers with clear signs, yet, even after that, many of them continued to commit excesses in the land."

Their way of reasoning is that God considers killing a human being the same as killing all of humanity, but He has excluded two cases of killing due to revenge and corruption on earth. Therefore, anyone who kills a willful murderer and a corruptor on earth will not be retaliated (Ardabili, nd: 666; Fazel Lankarani, 1422: 639; Mu'min, 1415: 400).

2. Verse 33 of Surah Al-Mā'idah: "The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the Hereafter."

The addition of the word "Punishment" to the sentence indicates that the punishment is the reason for such a punishment. Spreading drugs in society and infecting people even if it is not accompanied by weapons is an attempt to corrupting the earth. Therefore, converting "Attempting corruption on earth" as "Moharebeh" indicates that if the attempted corruption is realized and there is no Moharebeh and war, the mentioned

punishments will be applied (Mu'min, 2012: 55-56).

On the other hand, those who do not consider "Corruption on earth" as an independent crime have caused many problems to the arguments of those who consider it as an independent crime. Many articles have been written in this field and there is no room to express it here, despite all the differences of opinion, the legislator considered the crime of "Corruption on earth" as an independent crime in the penal law approved in 2012. In this section, despite many objections to the independent criminalization of "Corruption on earth", we ignore all objections and agree with the legislator and accept the criminalization of corruption on earth independently.

In general, criminalization is a process in which the lawmaker, according to the basic norms and values of the society, has declared the current act prohibited and has established a guarantee of criminal execution for them (Najafi Abrandabadi, 1993: 156). Jurisprudential teachings have had special functions in order to ensure the social and psychological security of the Islamic society, and punishments have been established in order to protect religion, reason, generation, life and property (Ghazali, 1417, 1: 174). The obligation to maintain the system is one of the independent jurisprudential rules and it is documented by many evidences that the purpose of maintaining the system in jurisprudence is to preserve the society as a whole. Rule of *Tasbīb* is one of the most important rules in order to maintain the social system. So if there is a cause that disrupts the system, in order to maintain the system, the cause of the loss must be eliminated. A person, who commits corruption in the society in various ways, including widespread drug

crimes, infects thousands of people and has negative effects on the foundations of the family and finally on the social system, the title of corruptor on earth applies to him. Therefore, in order to maintain the system and prevent disruptions in the social system, the punishment of corruptor on earth, which is execution, is applied to them. Corruption on earth is one of the most prominent crimes against citizens and the government. In order to protect the health and safety of the individual and the society, the legislator has made corruption on earth an independent crime. Since the commission of drug crimes threatens the health of the people of the society and is a serious obstacle to the development of the country and the maintenance of the system, if it is confirmed that there are serious damages to the people of the society and the government, they are classified as corruption on earth. The criterion of quantityism in the anti-narcotics law is not compatible with the philosophy of independent criminalization of corruption on earth. With the explanation that: if a person distributes one kilogram of drugs among the members of the society and after serving a prison term, distributes one kilogram of drugs again and infects thousands of other people, the legislator doesn't consider him as corruptor on earth doesn't prescribe the punishment of the corruptor on earth for him. Simply because in every time he was arrested, he did not meet the quorum set in the Anti-Narcotics Law for the sentence of death penalty. This is despite the fact that such a person is, in fact, corruptor on earth, and the committed actions have the conditions of expansion and continuity, and they endanger the health of the people of the society and are a serious threat against the government and the system. Therefore, what should be taken into consideration is identifying

the necessary criteria to determine a person as corruptor on earth, according to the verses and traditions related to corruption.

### Conclusion

The majority of jurists do not believe in the criminalization of "Corruption on earth" independently. However, in Article 286 of the Islamic Penal Code approved in 2012, the legislator has considered "Corruption on earth" as an independent crime and has determined conditions for the crime of corruption on earth, which include: Committing crimes against the physical integrity of people on a large scale, major damage to the physical integrity of people, the spread of corruption in the society to a large extent. In the anti-narcotics law, the legislator considers the criteria of "Corruption on earth" and "Quantityism" to determine the death penalty for drug offenders. As mentioned, one of the criteria stated in Article 286 of the Islamic Penal Code is "The extent, major damage and spread of corruption". In the Anti-Narcotics Law, the legislator interprets the conditions mentioned in Article 286 of the Penal Code in terms of the quantity of drugs discovered. This is despite the fact that the extent of the action, the major damage and the spread of corruption are qualitative criteria and cannot be measured, so it is not possible to interpret qualitative criteria with quantitative criteria and thus remove their ambiguity. By examining the verses and traditions related to corruption on earth, we also find out that the criteria for establishing the crime of corruption on earth are the wideness and extensiveness of the committed act and the continuity and habit of doing it, and in fact, paying attention to the effect of the committed act on the society. In other words, according to the verses and traditions, qualitative criteria and the amount of influence that corruption has on individuals and

society are important, not numerical criteria. What is important is that the root of corruption in the society is destroyed by applying punishments such as death penalty for corruptors on earth, while by putting quantity criteria in drug crimes, many corruptors are not only not eliminated, but they act more and more organized day by day. Because by setting the quantity criteria, a person who has ten grams less than the prescribed amount of drugs will not be sentenced to death, maybe after enduring a period of imprisonment, alternative punishments will be applied to him and again it causes contamination of people and society. In fact, such a person has committed a crime against the physical integrity of people on a large scale and spread corruption on earth, but simply because the prescribed quorum has not been discovered from him, he is not considered corruptor on earth. Therefore, quantityism in the anti-narcotics law is not compatible with the preservation of the social system, because the preservation of the social system requires the legislator to pay attention to the impact of the committed act on individuals and society.

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