

Religion like a moral basis for punishment

Abstract: Religion is based on traditions and customs, that is an experience of hundreds generations, gives its norms a sacral character and therefore transforms them into cruel standard of behaviour, in obligatory for everybody stereotype.

Idea of God’s punishment drastically affected on criminal legal imagination about punishment, though it created in the basis not only the centuries religious but national historical, psychological, social particularities of each people. Considering an issue on the ways of religion’s influence, religious sources, religious law, doctrines and ideas on institute of moral beginnings of punishment, one should note that this impact carried out as by direct so and indirect way.

Keywords: religion; punishment; customs and traditions; criminal law; society; state; morality.

Customs and traditions have always sanctified by religion, received mandatory force, legalized by all religions. Indisputability of the customs had also supported by heathenish religion of primitive man, on superstitious imagines of which “shade of killed cannot find a rest unless a killer will be killed” [1, p. 15]. Therefore, we might be agreed with assertion that religion is based on traditions and customs, i.e. an experience of hundreds of generations, gives them sacral nature and thereby, as rule, transmits them in cruel standard of behaviour, in mandatory for everybody stereotype. Consequently, religion taking itself a role of the pastor obliged to take care about its fold and to teach them to cruel normative

♦ **Rahimov Ilham Mammadhasan oglu** – Doctor of Juridical Sciences, Professor, Honoured Jurist of Azerbaijan Republic (Azerbaijan). E-mail: mopi_sid@yahoo.com

standard of daily behaviour, to a few but very important principles of life without constant observation of which a man might easily be transformed to animal [6, p. 4].

The texts of the Divine Messages testify that moral norms join to religion and receive Divine sanction in the period of collapse of a classless society and state's formation. These sanctions were extremely necessary to support of moral authority of tribal nobility.

Thus, being taken possession of the brains, religion is transformed in great power and has a tremendous influence on man and society, history and culture, life and morals and manners. Naturally, it impacts not only in nature of punishment and its execution, but also has right to apply it. V.G. Gafsky is completely right stating that "religion had had serious impact in the institution of criminal punishment as ever in primitive society the punishments were closely linked with religious permissions and prohibitions" [2, p. 41].

It was a time, when crime was personal insult, and response on that was wild and non-discreet revenge, which had corresponded and approved by the morals that time. When crime became to be considered as an insult of God then the punishment had become reconciliation to God, cleansing from sin, expiation of guilt. Since that time religion, but not customs and traditions, began to act as the moral basis on punishment. In compliance with scriptural vision of picture of origin and further development of criminal punishment the term "punishment" traces its roots to God's commandment "shall die", and the Book of Genesis is the most ancient of the Old Testament source of punishment's notion. Therefore, no doubt, doctrine on punishment goes in its roots to religion, and first attempts to determine the core and grounds of this phenomenon are just found in religious beliefs and sources. While studying the Bible, Koran – the greatest and unique in human history Scriptures, we discover the layers of ideas, which express a core of opinions of ancient man to life and death, murder and crime, punishment and death penalty.

The most ancient criminal laws (the law of Hammurabi, Manu and others) had fixed as punishment those deeds, which existed a long time in life and caused a reaction of society. Therefore, we may state that in actual these laws only established in written the punishments, which had long time applied for killing or theft as danger for society deeds.

H.J. Sumner Maine write: “There is no literally any system of written law from China to Peru, which in initial origin would not be included in itself the sums of religious and morals prescriptions and ritual rules. They thought about Rome law that secular and pontifical jurisprudence from ancient epoch were absolutely isolated. But those few that came to us from the Twelve Tables contains quite much that might just be related to religious ritual” [4, p. 4]. At this we talking not only recognized Divine Messages, but also about religious doctrines and ideas, without clarification and understanding of core and content of which it is impossible to understand deeply significance of punishment’s institution in life of each people and their moral beginnings. We may assert that idea of God’s punishment fundamentally impacted in criminal legal view about punishment though it had created in the basis not only of many centuries religious but also national, historical, psychological, social particularities of each people. Considering an issue about the ways of influence of religion, religious sources, religious law, doctrines and ideas into the institution of moral beginnings of punishment, we should emphasize that this influence had carried out as direct so and indirect ways.

One is completely clear: the ancient people had no doubts in usefulness and salutary action of punishment in moral improvement of a man. It reflected in various expressions in religious systems. So, Confucian treatise “Shu-Ching” (“Book of Histories”) says: “Sky in its desire to order the life of men allows us to apply punishments”.

Hinduism and punishment. According to ancient Indian religious tradition, man is purified by punishment, come back to righteous life after spiritual fall, sin. Purification and salvation are the two religious pillars on which are based the concept of punishment in the human world.

Consequently, to punish means to cleanse a man of wickedness, to save his soul from death. As we see, in this case punishment is most likely a means of education but not intimidation, i.e. it renders non-punitive impact in a man and has saving role, but not social one. It follows from this, that punishment notion to Indians imbued with religious and moral sense or beginning.

Main purpose is a power of creation and pure soul. This aim is achieved through punishment, with the way of suggestion of reverence to man-criminal before great creative energy that creates an order. But, as it known, punishment is impossible without intimidation, suffers, material losses, which feel a concrete people who committed those or that misdemeanor. On imaginations of ancient Indians, in comparison with spiritual aim all these are too insignificant as punishment is only a means to purification and salvation. It might just be concluded after familiarization to the ancient legal texts of “Narada”, the ancient Indian monument, and also to the books of Manu and Vishnu, origin of which undoubtedly connected to influence of religious beliefs.

The books Manu and Vishnu are named the books of laws because of they contain the rules of behaviour, determining with greatest accuracy. But, what is responsibility? What does punishment bear a man who does not obey to these rules? In other words, what are the sanctions in these laws? Are they based on moral beginnings?

Just in nature of the punishments one may see religious and moral content of these legal treatises. A core of punishment belongs to absolutely other sphere of being – to repentance, i.e. man has to punish himself here in order not to be subjected the worst in other life. For instance, he is obliged three times throw himself to a fire or to go into battle and to become a target for enemies. Everything

depends on what crime committed by him. For serious he had to burn himself, i.e. these laws gave an opportunity to criminals-sinners to execute in person the punishments that provided in the law, including death penalty.

But, we should note that a matter about repentance was always arguable. According to Siddhartha Gautama, “man in this world defiles himself with bad deeds, which are the next: making of sacrifice by men who are not worthy to make sacrifice, usage of forbidden food, speaking that what about it should not be spoken, disregard of prescribed, commission of forbidden deeds. They (i.e. brahmas authorities) are in doubts should he commit repentance for such actions or not. Ones declare that he should not as the deed is not destroyed. But the most outstanding opinion says that he has to be subjected to repentance”.

Religious character of nature (grounds) of punishment in the laws of Manu and Vishnu confirms the following text: “Gods are invisible deities, but Brahmins are visible deities.

Brahmins support a world. Only owing them deities are on the skies”. Thus, it turns out that despite punishment comes from God who cannot be visible, just Brahmins were possessed the keys of punishments.

What about the fact if crime has been committed by Brahmin? The texts of the laws confirm their special status, as “Brahmin cannot be subjected to bodily punishment; supreme punishment for him is an open announcement of his crime, exile or branding”. Brahmin is an object of encroachment of a special importance. For instance, if Brahmin is killed by somebody then how many specks of dust are painted by his blood in sultry soil of India, the same times of thousand periods a killer has to be in hell (Manu, XI. 20).

A role and significance of Brahmins are determined also by the fact that despite a king has Divine origin, he has right to assign a punishment with Brahmins’ advice only. Fair punishment cannot be imposed by ignorant and avid king who has no wise and virtuous assistants, as king’s mind is not educated and the heart is deluded by sensitivity. Only the king who has pure heart, true his word,

serious performance the Holy Scripture, possesses with common sense and supports with advices of kind assistants, may determine fair punishment (Manu, XVII, XXX.31). Imparting of special importance to the principle of justice says about moral basis of punishment's institution. It seems that union between Brahmins like visible deities in the world and the kings might be considered as beginning of establishment of secular criminal laws. Each of them had own interests. King was called to help to Brahmins who instead of that give sacred nature his power.

In this connection, H. Maine notes: "Something similar could be repeated in legal history of the West Europe if canonists could win the civilians.

The system, which would have been suggested by them, would give back its preference to repentance than criminal punishment" [4, p. 33].

The laws of Manu and Vishnu see a practical sense of punishment's institution in defence of honest and weak men from criminals and those who are stronger. In the basis of the provision concluded religious moral idea, which considers the punishment not only as the strongest means of restoration of the Divine harmony that violated due to crime, but also as implementation of basis of justice. "Punishment rules by all people, punishment guards; punishment is awake when everybody sleeps; wise men declared punishment embodiment of Dharma... If king did not punishment untiringly to those deserving it than more strongest would fry weak men like a fish on the skewer (laws of Manu).

As we see, punishment, especially deprivation of life, is understood like strong means that necessary to support of an order, justice and quite. But, why is punishment possessed with such power? Certainly, that having only the features of intimidation, punishment can performance these functions. Therefore, Hinduism was absolutely convinced in morality of punishment as intimidation. As for punishments in future afterlife of man Hindu beliefs provided that transmigration of a soul has the same important significance as direct awards and punishments, which are recognized non-eternal in all its forms, and temporal on its essence.

Whether a man is in his future life a plant, woman, Brahmin, wise man depends on his, how he arranges and lives in this life: if a man in this real life did not wash off his sins with proper repentance, then he would be one of the poor creatures; if he died pure then he would may reach the highest level of humanity. Therefore, only with intimidation is possible to direct people to commission of good deeds in this life though threat directed to future and will come in other life.

Law of Vishnu in particular says: “Criminals of the highest category transmigrate successively from one plant to other one, coming all kinds of plant kingdom. Culprits in dead sin transmigrate in the bodies of worms and insects. Criminals of the fourth category are transformed into aquatic animals. Those, who commit crime that led to banishment from the cast are transmigrated in the bodies of amphibious” (Vishnu, X-VI. 2).

So, Indian sacred laws influenced great to history of development of punishment’s doctrine, which was based on moral principles of the people.

Buddhism and punishment. In order to understand influence of buddhism into moral beginings of punishment’s institution. Buddhist ethics - a doctrine, which discovers a core of righteous life, is a pith of Buddhism. Its goal is to do human behavior more perfect, to achieve a harmony in relationship to himself and others. Buddha is a founder one of the world religions and cultural studying his figure has been continued for two and half thousand years.

The most important truth of Buddha: all life is a suffering, dukkha. There is nothing in it apart the torments; life is completely awful. Everything is born and dead in senselessness cycle of changes; there are no absolute values. Nevertheless, it is possible to get rid of dukkha (sufferings). For that one need to lead life filled with compassion and sensitivity, refrain of all that is poisoned and dizzied the mind.

Buddha did not believe that Gods can bring to humanity the tangible benefits, though He did not deny of Gods, considering that the Highest reality of nirvana

exceeds them. Nirvana (extinction) in Buddhism means the same that God means in other realities.

He called students to seek salvation by their forces, did not rely on Gods. Therefore, Buddhism is characterized with tendency to limitation of role and scope of punishments as this means does not conduce to improvement of the human nature. According to Buddhism, crime is a disease, Buddha is a doctor. Consequently, criminal manifestations should be combated not with punishment, but with Buddha's doctrine, which considers the most important aim of criminal policy not a punishment, but his correction and re-education, returning the criminal to a bosom of Buddhist spiritual and ethic values. "My law is the law of mercy for everybody" (Buddha).

Buddha said: "Everybody trembles before punishment, everybody is afraid of death - put yourself in the place of another. One can neither kill nor compel to murder... Who atones with good made evil he lights the world like moon, free of clouds... Non-doing the evil, achievement of good, purification of his mind – here is a doctrine of educative..." [3, p. 191]. As we see, in comparison with other world religions Buddhism is distinguished with higher humanism and morality. But, how is it reflected in punishment's institution? Buddhism's impact into criminal punishment in the countries confessing this religion due to particularities of historical and political development is differently. In early period of statehood and legal system in these countries prevailed religious norms, and sometimes they had replaced the norms of criminal law, i.e. man's attitude to punishment was based on developed by Buddha detailed eighty-level way, method of achievement of true and approaching nirvana.

Therefore, man's behaviour had not been regulated with existence of punishment, and had concluded in observance by Buddhists of the eight rules (stages, states), which did not determined in written source. They are perceived by Buddhists like "some customs" transmitted from one generation to other one. Following indicated rules, a man achieves the highest form of life including non-

infliction of a pain to others, abstaining from bad actions, crimes. Consequently, an existence of the punishment has no sense for such people as they follow these rules not due to fear before punishment, and in result of comprehension of the truth about necessity of right action in way of life.

Unlike the West, people of the Far East are not inclined to believe in punishment as means of providing an order and justice, but opposite, the strict observance of the traditions may call to life fair order of things and relationships. Therefore, despite existence of punishment, it plays non-significant role in the rules of human behaviour. On opinion of the Chinese, honest man should not think and fear of punishment. His lifestyle has to exclude any behaviour punished. Since ancient time the Japanese guided by famous Confucian principle: “People must not know the laws, but only obey them”. Other words, uncertainty and inevitability of future punishment deter stronger from commission of crime than punishment itself.

If in the West and other countries are related to punishment like a basement of social system, significant instrument of society’s protection from encroachments in its values, while the people of the Far East proceed from the fact that an order should be protected not with coercion through punishment but predominantly with methods of conviction, self-critical evaluation of behavior, with spirit of moderation and harmony. But, why does punishment, including death penalty, exist in these countries? As this contradicts Buddhism, distinguishing higher level of morality.

Buddha says: “Non-infliction of harm to all living creatures”. Whole Far East traditionally follows the formula: “Law is good for barbarians”. Other words, “criminal punishment is necessary only for non-honest men”. Proceeding that, in particular, traditional Chinese concept of criminal policy does not deny a punishment, but considers that it for “barbarian”, for those who do not think about morality and morals, for incorrigible, hardened criminals, for foreigners, who are far from doctrine of Buddha or do not recognize it. Chieh-Fu Wang believes that a core of the Chinese traditional legislative concept is Sin (punishment), which had

developed in Ancient China in frame of Confucianism, Maoism and Legalism. China might be named Confucian with same right and ground with what Europe is named Christian and Arabian world – Muslim. Confucius had a strong impact on spiritual life of the Chinese. For the two and half thousand years he is a spiritual advisor, teacher not only the Chinese nation but also other Far Eastern people, embodiment of their cultural identity. Today each educated Chinese knows his doctrine and perceives his like a vital adjustment.

According to Confucius, in interrelation of morality and criminal policy priority belongs to morality, though certainly he denied neither the role of legality nor the role of punishment in vital functions of society and state. However, the great philosopher was convinced that criminal policy in sphere of punishment, particularly of death penalty, should be based on strong foundation of morality. Such conclusion is based on following statement of Confucius: “If to edify people through the ruling that based on the law and to support an order with threat of punishment then the people begin to avoid punishments and lose sense of shame. If to edify people through ruling that based on virtue and to support an order through using of the Rules then there appear to people the sense of shame and they are corrected”.

Unlike India and Ancient Egypt, where punishment had considered as fair retribution for commission of crime, in China it acts as the means of supporting of an order in state for keeping of public power on the principle: “Better to punish few innocent then to miss one villain.” Therefore, it is no wonder that the current Criminal Code of the People’s Republic of China contains 69 of corpus delicti, which punished with death penalty. So, only 0.78 per cent of population act for abolishment of this punishment and 99 per cent say no.

M.A. Pavlov notes that “in frame of Buddhism in Ancient East lifetime punishment is not separated from the post-mortem punishment; they were one whole and mutual supplemented each other. In Ancient China emphasis had been

made in other side of punishment, and namely like in an instrument of public power that is necessary for ensuring law and order” [5, p. 3].

We should note that the code on the Mongolian laws of 1640 (Code of Oyrat) had also religious beginning as from the text of Introductory part of the Great law seen that gathered representatives of nobles of the Mongolian people are worshiped to Ochir Dara Lama, and the text of the laws’ code based on Sha-kyamuni and Dzonkhavy – “hermit from tribe of shakyev” – a founder of the Buddhism.

Judaism and doctrine about punishment. There are no so much people who like Jews, who thorough kept, keep and creatively multiply their traditions.

Jewish doctrine about notion and education of punishment that associated with religion go to the roots in deep antiquity and presented to be a complex system developing during considerable period. Traditionally, it seems to be that the Ten Commandments or Decalogue, - the ancient from Jewish laws where it might be met a punishment, - were received by Moses from God in Mount Zion approximately in XV B.C., 480 years before Solomon’s temple construction.

Initially, just these laws called “Torah” that means “Law”. Therefore, they should be considered the main sources of data about religious punishments as for Jew any punishment assigned by court will be only one of the variants of Divine impact.

Moses laid not only religious but also moral foundations of legislation. If proclaimed by him religiosity rests on monotheism then morality – on love to his people. Undoubtedly, we may assert that moral beginnings of the punishment’s institution by principle “an eye for an eye a tooth for a tooth” stipulated in Moses’ legislation are the first by time. Moses understood that main is state structure, creation of political space for people’s establishment and development. For that it should be staked not in spirit of freedom and conscience of man, and coercive power, tough and severe punishment, a principle of equal vengeance.

In the basis of the Ten Commandments – Moses’ Law and its central part, Decalogue – are the behaviour’s rules (the rules of belief and the rules of life) only

the forbidden nature. These common religious moral and legal principles are the philosophy of Moses' legislation, which identify justice with equal vengeance. Therefore, justice presupposes assessment of man on his actions, reward on merits, for those are required minimum two things: criteria (rule, template) for measurement of the actions and a person who is authorized to measure.

At the same time there are no punishments in the Decalogue. It turns that observation of the norms in Decalogue have voluntary, conscious nature. Why is no there any punishments? Most likely, it might be explained with that Decalogue acts in role of constitution, which declares the more important social values and stipulates common provisions and consequently there are no sanctions in it. They are stipulated and listed in the rest part of Moses' legislation i.e. in the books: Exodus, Leviticus, Numbers, and Deuteronomy. We should note that Moses' legislation regulates in details the punishments for violations of sexual relations. In Jewish religion a punishment is considered, first of all, to be as God's punishment for transgressions and violations of the commandments. Therefore, Moses' Laws like a basis of punishment are, in most part, the laws of preventive and intimidated nature. Consequently, punishment should consider like initially established by God an instrument of impact on created by him human, which may have dismal effect with its cruelty. However, one should take into account that social conscience of Jewish people of that time was quite adapted to establishing of the strict measures.

Life condition and desire for survival and preservation of peoples required just such punishment, which established by God and approved by Jewish people. According to Moses' Laws, punishment reflected Jews' needs and ideas about morality and justice. Motive of law-abiding behaviour is a fear of punishment. "Fear of punishment is stronger than thirst of award" (Sefer Ha Sidil). "God does not punish without notification" (Iose b. Galafta – Tolmud Sanhedrin, 566).

According to Moses' laws, at the same time punishment is a correction that bears the kindness, compassion, and healing, creates conditions preventing commission of new crime. A core of punishment in Judaism is retribution.

Thus, one may assert that Moses' Code and punishments of man stipulated in it are based on moral beginnings.

Christianity and punishment. In doctrine of Jesus Christ was put a point in a matter about human revenge and punishment like retribution: Christianity more definitively and successively than Judaism refuses people to administer revenge and retribution (punishment), fixes this right for God only on principle "punishment with love", which means that God punishes us because loves people. Jesus does not deny that God is a punishing. He says that if God is a punishing only just because he is a loving. God is God just for his love and graciousness. "So, be graciousness like your Father is graciousness" (Luke 6:36).

Each Christian for God is his, He – our Father, and we all are brothers and sisters, members of one family that connected with spiritual ties. "My son, do not make your heart hard against the Lord's teaching; do not be made angry by his training. For to those who are dear to him the Lord says sharp words, and makes the son in whom he has delight undergo pain" (Proverbs of Solomon, 23, 13-14).

One word, Christian ethic requirement was other one than Jewish, - "answer to evil by good", "do not try to win by evil of the evil", "do not resist to evil". Respectively, a core of punishment should be other one. Just in the matter on the core of punishment, first of all death penalty, is seen contradiction between Jewish and Christianity. In various situations and many times Jesus says about his attitude to Moses' Law. The most comprehensively and specifically he formulates it in Sermon on the Mount, in particular in fifth chapter (proverb 21-48). "You have knowledge that it was said, An eye for an eye, and a tooth for a tooth: But I say to you, Do not make use of force against an evil man; but to him who gives you a blow on the right side of your face let the left be turned" (Proverbs of Mathew, 5:38-39).

In principle, even a punishment in kind of death penalty is not rejected by Gospel. Certainly, its conducting in state life is distinguished from the gospel attitude to guilty as much as different the objectives and terms of activity of state

and church. Moses' Law was established by severe life, and accordingly it had to adapt to it. And Christian moral draws only ideals, to which everybody has to seek, but which nobody achieves. Call of Christ: "Judge not lest ye be judged" was applied that time not to population, but to some men. Therefore, Jesus kept in mind not court in meaning of justice, and typical for people home, common and human gossips.

Islam and punishment. The value of Qur'an is concluded in that Allah included in the Divine Message the religious, moral and legislative foundations of historical development of the Muslim world. Declared by Him religiosity is based on monotheism, morality – on love to people independently on national and religious affiliation, legislation – on the principle of fair retribution. Allah, humanity, justice – so briefly might be determined the essence of the Qur'an.

While a certain foundation of the Islam and Muslim law, Qur'an is in considerable extent the legislation of protective kind, establishing the prohibitions and punishments for their violation. In this sense it is similar to criminal law, and consequently, is worthy to be researched in modern criminal legal aspect. The rules of Sharia are the base for establishing appropriate criminal punishments. Qur'an, Sunnah, Ijma are the sources of the Muslim institution of punishment.

If there are no appropriate instructions in these sources concerning punishment for those or that deeds then "Qiyas" is applied, i.e. judgements in area of law on analogy. Morality in Qur'an has not systematized in form of certain code, not brought together to visible combination of the common principles. But, there are the notions that generalize concrete moral relationships and virtues: justice, graciousness, conscience, wisdom etc. Moral beginnings of the punishment in Qur'an come from these principles. Like the Decalogue and Sermon on the Mount, Qur'an recognizes the justice of punishment, i.e. equal retribution, citing directly in Moses' Law.

Qur'an expresses the true that good includes itself an award, and the evil – punishment. Hence, being stayed in frame of the ethics and logics, it is impossible

to think that for evil rendered not the evil, but good. Talion, which existed earlier, according to Qur'an, is as if the means of fight against violence – it constricts the violence. Therefore, talion justified as restriction of violence between people, i.e. this is not end in itself. Just for retreat from requirement “do not kill” provided punishment of death penalty on the principle “to answer by murder for murder”. Thus, Qur'an not so much prescribes a retribution for murder but as much as accepts it as legal reality, aiming to limit violence between men: “whoever kills a soul, without [its being guilty of] manslaughter or corruption on the earth, is as though he had killed all mankind, and whoever saves a life is as though he had saved all mankind” (5:35).

One cannot forget that Qur'an determined by time and traditions of the people, among of which He had created, that reflected in concrete material and formulations of moral norms. On content of Qur'an one may judge about moral level of Arabs that time, about past of the people, their customs and traditions. The same time it was directed to combating to the obsolete customs and traditions. Therefore, there were necessary punishments, which based on new moral beginnings.

Qur'an provides not only application of concrete punishments to specific criminal, but also moral and psychological intimidation that is concluded in formation of atmosphere of fear, pangs of conscience, inevitability of punishment, which is differentiated in dependence on seriousness of committed, intentional or imprudent commission of crime.

Qur'an draws quite big attention to repentance like a predecessor of punishment. In many ayahs of Qur'an Allah willed to repent, complimented of repentant persons and told about their awards. “Yet [to] those who commit misdeeds but repent after that, and believe, - indeed, after that, your Lord shall surely be all-forgiving, all-merciful” (Qur'an. Sura 7 “The Elevations”, ayah 153). Repentance (that is awareness of his sins, adoption of sincere decision no longer to commit them and asking Allah to forgive) is the main manifestation of the belief,

though it nobody makes free from responsibility for crime committed. On Qur'an the right to pardon belongs only to Allah, who welcomed those who applied to him with repentance: "I visit My punishment on whomever I wish, but My mercy embraces all things" (Qur'an. Sura 7 "The Elevations", ayah 156).

Repentance of sincere believers in Allah is typically not fear of criminal punishment, but fear of God and regret about committed crime. By the way, there are a lot places in Gospel, where correctly and nice said about repentance like the basis of graciousness. "For if you let men have forgiveness for their sins, you will have forgiveness from your Father in heaven. But if you do not let men have forgiveness for their sins, you will not have forgiveness from your Father for your sins" (Mathew 6:14-15). Jesus Christ told: "Let him among you who is without sin be the first to send a stone at her" (John 8:3-7).

Representatives other religions, especially in the West, are often asked a question: why does Islam provide severe punishments, often applying of death penalty? The first, punishment in Qur'an is the same like in Moses' legislation and Bible: retribution. It is sufficiently to indicate an application of punishment in medieval Europe. The second, as it known, moral norm might easy be transformed into legal one, which more expressed in Muslim law that based on Qur'an. Such dynamic is a particularity of the Islamic justice.

But it should be noted that despite seemed difference of Christianity and Islam, the both religions severely condemn any manifestations of injustice. The both religions teach people to be fair and in every way to resist any injustice including court judgement. "O, you, who have faith! Be maintainers of justice and witnesses for the sake of Allah, even if it should be against yourselves or [your] parents and near relatives" (Qur'an. Sura 4 "Women", ayah 135).

It is necessary to emphasize that Qur'an calls to be impartial, showing that just this quality of man as the basis of justice. "Be fair; that is nearer to Godwariness, and be wary of Allah" (Qur'an. Sura "The Table", ayah 42). "O David! Indeed We have made you a vicegerent on the earth. So judge between

people with justice, and do not follow desire, or it will lead you astray from the way of Allah” (Qur’an. Sura 4 “Sad”, ayah 26).

Awarding and praising of men for fair matters, Qur’an hardly notifies those who commits unfair in this life on the earth. “We shall set up the scales of justice on the Day of Resurrection, and no soul will be wronged in the least. Even if it be the weight of a mustard seed We shall produce it and We suffice as reckoners” (Qur’an. Sura 4 “The Prophets”, ayah 47). And further: “Today every soul shall be required for what it has earned. There will be no injustice today. Indeed Allah is swift at reckoning” (Qur’an. Sura 4 “The Forgiver”, ayah 17).

Punishment had understood by ancient people like beginning of triumph of justice. As for religion as normative ethic system, certainly, it forms the base and inexhaustible reserve in development of criminal law and institution of punishment. Naturally, moral level of people had impact on nature of applied punishment in each stage its historical development. And it means that moral beginnings of punishment to people with various level of development and different morals were differed as apart from customs, traditions and religion they had various culture, psychology, characters and they had developed by different paces and ways.

References

1. Vasil’ev L.S. Istoriya religii Vostoka [History of religion of the East]. Moscow, 2006, 368 p.
2. Grafsky V.G. Vseobshchaya istoriya ptava i gosudarstva [General history of law and state]. Moscow, 2007, 752 p.
3. Lafitskiy V.I. Sravnitel’noe pravovedenie v obrazakh prava [Comparative jurisprudence in images of law], v 2 t. [in 2 vol.], Moscow, 2011, v. 2, 415 p.
4. Maine G. Drevniyi zakon i oby chay [Ancient law and custom]. Per. s angl. M.M. Kovalevskogo [Russ. ed. by M.M. Kovalevskiy]. Moscow, 2012, 312 p.

5. Pavlova M.A. Voznkinovenie idei o nakazanii v dogosudarstvennom obschestve i na Drevnem Vostoke [Appearance of an idea about punishment in pre-state society and in Ancient East]. Uголовно-исполнительная система: право, экономика, управление (научно-практическое и информационное издание) [Criminal penitentiary system: law, economy, management (scientific-practical and informational edition)]. Ufa, no. 3, 2007. Pp. 26-34.

6. Суд над смертной казнью [The Trial of the death penalty]. Pod red. M.Y. Kantona [Ed. by M.Y. Kanton]. Moscow, 1912.