



Judicial Determination of Punishment in Light of the Changing Status of Legal Persons in the Legal Systems of Afghanistan and Iran

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Abstract

The judicial determination of punishment for legal persons in the legal systems of Afghanistan and Iran is a complex and multifaceted issue that, especially in the context of changes in the status of these entities, assumes new dimensions. Legal persons, as independent legal entities, bear responsibilities under the law and, in certain cases, may be subjected to punishments proportionate to their violations. This study analyzes the relationship between the changing status of legal persons and the imposition of punishments in the two legal systems of Afghanistan and Iran. Changes in the status of legal persons may include dissolution, bankruptcy, managerial restructuring, or transfer of ownership. Each of these changes can have significant implications for the legal responsibilities and punishments imposed on these entities. In the Iranian legal system, relevant laws and regulations provide specific frameworks for determining punishments; however, due to existing deficiencies, there is a need for review and reform. Similarly, the Afghan legal system faces comparable challenges, influenced by political developments and other contextual factors. This research adopts a comparative analytical method to examine the strengths and weaknesses of each system and offers recommendations for improving judicial and legislative practices in the area of sentencing legal persons. The findings of this study indicate that a lack of consistency and unified procedures in determining punishments can result in injustice and the infringement of stakeholders' rights. Ultimately, the author emphasizes the necessity of developing comprehensive and effective legal frameworks that can adequately address the impact of changes in the status of legal persons on judicial sentencing and safeguard the rights of both the public and individuals.

Keywords: *Legal Persons; Judicial Determination; Punishment; Afghan Legal System; Iranian Legal System*

Introduction

The values of concern to legal persons are not limited solely to financial interests; rather, they also encompass non-financial values. Naturally, for non-commercial legal entities, matters such as religious beliefs, political and cultural identity, and the attainment of social prestige hold paramount importance. These entities often invest in such areas to gain and maintain their public reputation. In contrast, the primary concern for commercial and for profit legal entities tends to be maximizing profit, reducing operational costs, and ensuring a positive financial balance sheet generally, the preservation of financial values. However, this does not imply that non-financial values are insignificant to such entities. On the contrary, while financial concerns remain central, commercial legal persons are also sensitive to their social standing, reputation, and credibility, and they make considerable efforts to protect them. Therefore, the design of criminal sanctions should be such that they are capable of simultaneously affecting both financial and non-financial values of legal persons. This dual impact is essential for achieving the intended objectives of criminal sanctions, particularly deterrence and the correction of criminogenic conditions. This goal can only be realized if the legislator provides a comprehensive set of both financial and non financial sanctions applicable to legal persons and makes them available to the judiciary.

The concept of judicial determination of punishment with respect to legal persons is primarily concerned with the output or effect of sanctions on such entities. In other words, it pertains to the types of punishments that are stipulated by law for legal persons and the extent to which a judge, when considering the specific conditions and status of a legal entity, can impose a suitable punishment that fulfills the objectives of both the judiciary and the justice system. Legislators in both Iran and Afghanistan have addressed this issue to varying degrees, and a separate examination of each legal system will follow. In the Iranian legal system, as the title suggests, certain punishments applicable to legal persons have been prescribed by law. These will be analyzed in detail below. The essence of judicial determination of punishment lies in assessing which of the legally available sanctions and to what extent are capable of achieving the judge's intended goals in light of the nature and circumstances of the legal entity in question. Legislators, considering the inherent characteristics of legal persons, have in many instances outlined various sanctions some explicitly, others implicitly while also providing space for judicial discretion to realize the corrective and deterrent objectives of punishment.

1.Monetary Penalty (Fine)

1.1. Definition of Monetary Penalty

Legal scholars have offered various definitions of monetary penalties. One legal expert defines a monetary penalty as “compelling the accused to pay a sum of money” (Akhundi, 2018: 124). Another definition states: “A monetary penalty is the conviction of an offender to pay a specified sum as punishment” (Sami'i, 1994: 149). Essentially, a monetary penalty is a form of punishment in which the convicted party is obligated, under a judicial ruling, to pay a sum of money to the state. This form of sanction referred to as a fine or pecuniary punishment is one of the primary enforceable sanctions applicable to legal persons (Ardebili, 2014: 167–168).

In the definition wherein the offender is compelled to pay the amount stipulated in the judgment to the state treasury, this obligation may create the false impression that the convicted party, like a debtor, must fulfill this obligation by any means, making the fine appear akin to a civil debt. Thus, from the perspective of the convicted person, the obligation to pay a fine may resemble the moral and legal burden felt toward a creditor. Given that the payment benefits the state and deducts from the convicted person's assets, the fine may be perceived as a debt owed to the government. However, despite the superficial resemblance to debt repayment, closer analysis reveals the inherently penal nature of monetary penalties. Though the payment results in the release of the offender from liability much like the discharge of a civil

debt the essence of a monetary penalty is criminal in nature and leaves no doubt about its punitive character (Sharifi & Habibzadeh, 2016: 182–184).

In the case of monetary penalties, the judge compels the convicted person to pay a specified sum. This sum does not represent a debt in the conventional legal sense, as the judge's ruling is constitutive rather than declarative it does not merely discover a pre-existing debt. The primary intent behind imposing a monetary penalty is to achieve the goals of criminal punishment. It may only be enforced against a person who, under the applicable legal provisions, has been found guilty. At the time of issuing a sentence, the judge's focus is on the offender, considering their personal characteristics, the circumstances of the offense, the level of culpability, and other relevant factors (Nikou Manzari & Shamloo, 2021: 222–224).

Unlike imprisonment, a monetary penalty does not carry the stigma or shame of incarceration. It does not disgrace an offender who may have committed a crime unintentionally or through negligence in the context of non-deliberate or accidental offenses (Janati-Sadr, 2018: 57). For legal persons and individuals convicted of minor offenses, monetary penalties are considered effective and reformatory, and they do not result in lasting disgrace (Pradel, 2015: 133).

In other words, monetary fines represent one of the most significant sanctions that can be imposed on legal persons. While a fine entails the obligation of the convicted party to pay a sum of money to the state treasury, its penal essence and purpose distinguish it from compensatory payments such as restitution or civil damages (Farajollahi, 2009: 146). The Iranian Islamic Penal Code does not provide a specific legal definition for monetary penalties, nor is there a historical precedent for such a definition in earlier legislation. In Article 14 of the Islamic Penal Code, the legislator categorizes the principal types of punishments as follows: "The principal punishments under this law are of four types: a) Hudud, b) Qisas, c) Diyah, d) Ta'zir." This classification reflects the strong influence of Islamic jurisprudence (fiqh) on Iranian legislation. Subsequently, the law elaborates on each category, and Article 16 of the same code refers to Ta'zir punishments, stating: "Ta'zir punishments are divided into eight degrees: Degree 1 ... to Degree 8." Within this classification, monetary penalties appear in all eight degrees and maintain their legal force across the board.

Therefore, monetary fines may be imposed on legal persons if they are convicted of a criminal offense. According to Article 21¹ of the Islamic Penal Code (2013), the monetary penalty applicable to legal persons shall be no less than twice and no more than four times the amount prescribed for the same offense when committed by a natural person. In any case, the imposition of a fine on a legal person is permissible only if the law explicitly prescribes a fine for the corresponding offense when committed by a natural person. Thus, monetary penalties constitute one of the shared forms of punishment for both natural and legal persons.

2.1 Types of Monetary Penalties

Monetary penalties, as a form of criminal punishment, can be imposed on legal persons in four distinct forms, each of which has been specifically addressed in Iranian legislation.

In certain instances, the legislator treats a monetary penalty as an independent primary punishment, separate from other types of penalties. For example, according to Article 63 of the Islamic

¹ .According to Article 21 of the Islamic Penal Code (2013): "The amount of the monetary fine applicable to legal persons shall be no less than twice and no more than four times the amount prescribed by law for the commission of the same offense by a natural person."

Penal Code of Iran (2013), under the section on Ta'zir punishments: "Anyone who, without lawful permission, exhumes a grave shall be sentenced to imprisonment from three months and one day to one year. If any other crime is committed in conjunction with the exhumation, the offender shall also be sentenced for that crime."

Another form is the supplementary monetary penalty, which may be either mandatory or discretionary and is applied alongside other punishments. An example of this can be found in Article 664 of the Islamic Penal Code, where the legislator mandates a monetary fine in addition to corporal punishment (lashes), thereby obligating the adjudicating authority to impose both sanctions concurrently. In terms of discretionary supplementary fines—which are more frequent within the Ta'zir category Articles 672, 685, 686, and others of the Islamic Penal Code can be referenced as examples.

Another classification of monetary penalties concerns their quantitative structure, namely fixed and variable fines. A fixed monetary fine is one where the legislator determines a set range, such as the fine prescribed in Article 13 of the Law on Issuance of Checks (2004), which states that a fine ranging from one hundred thousand to ten million rials may be imposed for the issuance of a check as a guarantee, or one that is postdated, conditional, or signed in blank, provided the beneficiary files a complaint and the payment is not made (Goldouzian, 1999: 328). Another type is the proportional monetary fine, in which the amount is calculated based on a specific method. Article 702 of the Islamic Penal Code is an example of a proportional fine being imposed (Kuhestani, 2019: 106).

Given that legal persons particularly commercial and for-profit entities are inherently driven by profit motives, financial incentives often serve as the primary catalyst for unlawful behavior. Accordingly, monetary fines represent one of the most suitable deterrent mechanisms to prevent the commission of offenses by such entities. However, this form of punishment is not without limitations and ambiguities. One critique lies in its limited consequentialism; that is, the fines imposed on legal entities are often trivial when compared to their financial strength, revenues, and substantial profits, and thus fail to act as a meaningful deterrent. Conversely, excessively severe monetary penalties imposed on legal entities with limited financial capacity may lead to bankruptcy or dissolution, potentially resulting in job losses for natural persons employed by those entities. This highlights one of the inherent challenges in applying monetary penalties to legal persons.

According to the Afghan Penal Code, Article 138 explicitly recognizes monetary penalties as a principal form of punishment. The Code stipulates that primary punishments are those that: "are prescribed by this law (Penal Code) for the commission of a crime and are not intended to complement or follow other penalties." The phrase "prescribed for the commission of a crime" implies that this penalty stands independently and is directly applicable to offenses committed by either natural or legal persons. Furthermore, the latter part of the provision "and are not intended to complement or follow other penalties" emphasizes the independent nature of monetary penalties. Unlike supplementary punishments, which aim to complete or support other penalties imposed on the offender, primary penalties do not depend on any other sanction. Supplementary punishments are employed when it is deemed that a single primary punishment is insufficient for reform or justice.

When such punishments are imposed, they must be explicitly stated in the judge's ruling, otherwise, the principle of fair adjudication is compromised.

Additionally, the Afghan Penal Code provides for incidental (or consequential) penalties in Articles 178 to 183. The key distinction between incidental and supplementary punishments lies in the requirement of judicial declaration. Incidental penalties are automatically and inherently applied to the offender without the need for explicit mention in the judicial verdict.

Nevertheless, monetary fines are among the penalties enforceable under Afghan law against both natural and legal persons. Article 139 of the Afghan Penal Code defines a monetary fine as:

"A monetary penalty is the obligation imposed upon the convicted person to pay the adjudicated amount to the state treasury."

3.1 Characteristics of Monetary Penalties

Based on the aforementioned definition, several distinctive characteristics of monetary penalties can be identified, the most important of which are outlined below:

1. Non-custodial nature for legal persons: Since legal persons, unlike natural persons, cannot be imprisoned, monetary penalties represent one of the most appropriate forms of punishment applicable to legal entities. This is due to the fact that incarceration, a common form of punishment for individuals, is not applicable to legal entities due to their non-physical nature.
2. Proportionality and financial relevance: A second key characteristic of monetary penalties is their adaptability in aligning the punishment with the financial harm caused by the offense. Determining appropriate penalties in proportion to the damages incurred is more straightforward in the case of legal entities, especially considering that many crimes committed by such entities are economic in nature. Consequently, monetary fines are not only easier to impose compared to other punishments, but their scalability based on the severity and culpability of the offense makes them highly practical. For instance, the Afghan Penal Code, in paragraph 3 of Article 309, establishes a graduated monetary penalty for legal persons involved in narcotics-related crimes, as follows: "(3) If the crimes specified in paragraphs 1 and 2 of this Article are committed by a legal person, in addition to the punishment of the individual perpetrator, the legal entity shall, in the first instance, be sentenced depending on the circumstances to a fine ranging from two million to five million Afghanis. In the second instance, in addition to the five million Afghani fine, its license to operate shall be revoked."
3. Targeted deterrence: Since the majority of crimes committed by legal persons relate to property and financial interests, and given that one of the core objectives of such entities is profit generation, monetary fines serve as an effective deterrent. Entities seeking unlawful gain recognize the financial risk of such penalties and may refrain from illegal activity based on a cost-benefit analysis. Moreover, because the monetary fines stipulated in the Afghan Penal Code such as in Article 309 are relatively severe for legal entities, they often serve as an effective preventive measure.
4. Economic efficiency and revenue generation: One of the advantages of monetary penalties is that, unlike imprisonment, they do not impose additional costs on the state. In fact, they generate revenue for the government, making them economically advantageous. Therefore, from a cost-benefit perspective, fines are among the most efficient and cost-effective forms of punishment applicable to legal persons.

Given the points above, it becomes evident that monetary penalties are one of the main punishments prescribed for legal persons and, due to their nature and the types of offenses typically committed by such entities, they represent one of the most appropriate and proportionate forms of sanction (Collective Authors, 2019: 398).

A significant issue that arises in relation to monetary penalties concerns the currency in which the fine is to be determined. To address this question, paragraph 1 of Article 140 of the Afghan Penal Code stipulates:

“Monetary penalties shall be determined in Afghanis.” Accordingly, since the national currency of Afghanistan is the Afghani, all monetary penalties must be denominated in this currency. This is the case even though foreign currencies such as the Pakistani Rupee and the U.S. Dollar are commonly used in Afghanistan’s markets and many transactions are conducted in those currencies. Nonetheless, fines cannot be determined based on foreign currencies.

The next issue relates to the minimum threshold for monetary penalties. The question arises: What is the lowest possible monetary penalty that may be imposed? To answer this, paragraph 2 of Article 140 states:

“The monetary fine determined by court judgment shall not be less than five thousand (5,000) Afghanis.”

Thus, the minimum amount that a court may impose as a monetary penalty is five thousand Afghanis.

Given that the value of any national currency may fluctuate due to economic and political factors, paragraph 3 of Article 140 provides that:

“The value of monetary penalties prescribed in this law shall be revised every five years, taking into account changes in the value of the currency.”

Therefore, the standard for determining and adjusting monetary penalties may be revised every five years in accordance with shifts in the currency’s value.

In addition to the aforementioned points, certain conditions must be observed when determining monetary penalties for individuals—both natural and legal persons. The Afghan legislator has stipulated these conditions in Article 141 of the Afghan Penal Code, which provides: “In determining the monetary penalty prescribed in this law between the minimum and maximum amounts, the court shall consider the following circumstances and conditions:

1. Fulfillment of the objectives of punishment.
2. The personal, social, and economic circumstances of the offender.
3. The amount of benefit obtained or expected from the commission of the offense.
4. The type of right or interest that has been violated.”

This means that when determining a monetary penalty against natural or legal persons, the court must carefully consider the factors outlined in Article 141 of the Penal Code. This is further elaborated in Article 142, which addresses the important issue of “increasing monetary penalties” and states: “The court may, based on its own assessment or the request of the prosecutor, increase the maximum monetary penalty prescribed under this law up to double, provided that the increase is in accordance with the circumstances and conditions stated in Article 141 of this law, and on the condition that the increase does not result in the complete deprivation of the convicted party's assets.”

Accordingly, Article 142 explicitly recognizes the judicial discretion in setting monetary penalties for both natural and legal persons. In accordance with the criteria set forth in Article 141, the court is permitted to increase the monetary penalty up to twice the legal maximum, as long as this does not lead to the complete depletion of the legal person’s assets.

Thus, under Article 86 of the Afghan Penal Code, one of the most significant issues regarding the criminal liability of legal persons is the determination of appropriate penalties. This is particularly important because certain penalties prescribed for natural persons—such as execution or imprisonment—are inherently incompatible with the nature of legal persons, which are fictitious and legally constructed entities. For instance, comparing the dissolution of a legal entity to the death penalty, or the suspension of its operations to imprisonment, is merely metaphorical and not a true equivalence under the law. Therefore, penalties such as imprisonment or execution cannot be applied to legal persons. Conversely, measures like suspension of operations or dissolution are not applicable to natural persons.

Consequently, under Article 86 of the Penal Code, monetary fines are recognized as one of the primary punishments applicable to legal persons. According to paragraph 1 of this article, such penalties may be imposed when the legal representative of the legal person commits a crime in its name or on its behalf, thus establishing the criminal liability of the legal person. Considering that legal persons possess their own assets, distinct and separate from the assets of their founders or owners, monetary penalties are a practical and enforceable form of punishment.

According to Article 374 of the Afghan Penal Code, if the offense of bribery is committed by the president, representative, or legal agent of a legal person in the name, interest, or on behalf of that legal person, the legal entity shall be punished with a fine equal to ten times the amount of the bribe. This article establishes that a legal person may be held criminally liable and sentenced to a monetary penalty if its representative commits the offense of bribery.

In conclusion, monetary penalties as a form of punishment for legal persons are among the most appropriate and effective sanctions, playing a significant deterrent and preventive role in curbing criminal behavior by representatives of legal entities.

2. Confiscation of Property

2.1. Definition of Confiscation

Confiscation, or seizure of property, refers to the state's appropriation of all or part of the assets belonging to the convicted person based on a court ruling (see: Farajollahi, 2009: 157). The legislator of the Islamic Republic of Iran addresses this type of punishment applicable to legal persons in Article 20 of the Islamic Penal Code (2013), classifying it as one of the enforceable sanctions against legal entities. According to Article 19 of the same law, Ta'zir (discretionary) punishments are categorized into eight degrees, and confiscation of the entirety of one's assets is considered a first-degree punishment, indicating its severity and gravity (Mousavi Mojab & Rafizadeh, 2013: 188).

2-2. Objectives of Confiscation

As noted, confiscation of property generally serves three purposes:

1. In some cases, it functions as a punitive and repressive measure, which can clearly be inferred from Article 19 of the Islamic Penal Code, where the legislator categorizes total asset confiscation as a first-degree Ta'zir punishment a classification that underscores its high importance.
2. In other cases, it serves as a preventive security measure, particularly to keep dangerous objects or means of crime out of circulation.
3. Sometimes, confiscation aims at compensating for the damage caused by the offense.

In the first scenario, confiscation is enforced as punishment against the offender. In the second, it aims to prevent dangerous tools or items from being passed on or accessed by others. In the third, it is

applied to remedy or offset the harm caused by the offense. However, distinguishing these three objectives and clearly identifying which one applies can often be challenging.

Confiscation is generally classified into two types: General Confiscation, where all of the convicted person's assets including cash and noncash, movable and immovable property are seized. Specific Confiscation, where the state takes possession of certain assets, such as those that were the subject of the crime, products of the crime, or instruments used in committing the crime.

Specific confiscation can itself be divided into: Object-based confiscation, when the item or property involved in the crime is discovered and the court orders its seizure. Value-based confiscation, when the item is not found, and instead the monetary equivalent of its value is collected from the convict.

In the Islamic Penal Code, the legislator's intent in the context of legal persons appears to focus on general confiscation, i.e., seizure of all the assets of the legal entity. Nevertheless, in some cases, legal entities may be deemed as instruments of crime, and thus part of the entity or its assets that directly contributed to the offense may be subject to confiscation based on a court ruling. For example, a commercial or service unit used for storing, producing, or distributing narcotics may be subject to such action.²

While the legislator considers the confiscation of all assets of legal persons, due to the significant impacts and consequences, this is only applied in limited cases, such as when dissolution is prescribed as a legal sanction. Otherwise, if such punishment were indiscriminately applicable to all legal persons, it could result in harm to stakeholders, including employees or others connected with the company or institution.

Thus, under Article 22 of the Islamic Penal Code, confiscation of a legal person's assets may only be carried out if the legal entity was established specifically for the purpose of committing a crime³ (Sharifi & Habibzadeh, 2014: 107-108). Additionally, the classification of confiscation as a first-degree punishment under Article 19 further highlights its severity and importance in the context of legal persons.

In light of the Afghan criminal justice system's objective to combat crime, as stated in clause 3 of Article 3 of the Afghan Penal Code, it can be inferred that when monetary fines are insufficient in achieving the goals of crime prevention or correction, the Afghan legislator has provided for confiscation of property. According to Article 86 of the Afghan Penal Code, confiscation of property constitutes the second punitive response to crimes committed by legal entities.

This form of punishment is specified in paragraph 2 of clause 1 of Article 86. For instance, to expand upon this topic, Article 508 of the Penal Code states: "If an organized criminal group or a legal person under the control or authority of an organized criminal group commits the crime of money laundering, the following penalties shall apply: The natural person shall be sentenced to long-term imprisonment and a monetary fine between 500,000 to 2,000,000 Afghanis. The legal person shall be dissolved and its assets confiscated.

Therefore, as indicated in Article 508, the penalty for a legal entity committing money laundering under the authority of a criminal organization is dissolution and asset confiscation—making the latter one of the two legally prescribed punishments for legal persons. As with monetary fines, confiscation of

². Pursuant to Article 13 and Note to Article 14 of the Anti-Narcotics Law, as well as Subsection 2 of Paragraph (g) of Article 18 of the Law on the Regulation of Medical, Pharmaceutical, Edible, and Potable Substances, enacted in 1955 (1334 AH).

³. Pursuant to Article 22 of the Islamic Penal Code, enacted in 2013 (1392 AH): 'Confiscation of the legal entity's property shall be applied only if the entity was established for the purpose of committing a crime, or if it has deviated from its original lawful purpose and has exclusively directed its activities toward the commission of a crime.

assets is a proportionate punishment that can serve a crucial deterrent function and help prevent future offenses by such entities.

However, it is important to distinguish between confiscation of general assets and confiscation of proceeds and gains derived from the crime. As the legislator explains in Article 182 of the Afghan Penal Code: The court shall order the confiscation of money and objects acquired through the commission of the crime, used in committing the crime, intended to be used for committing the crime, or those that constitute the crime in and of themselves.

This provision implies that in all crimes, the proceeds and gains derived from criminal activity are subject to confiscation, and the state is obligated to enforce such confiscation. However, this type of confiscation differs from the confiscation of a legal person's assets.

The assets mentioned in Article 508 are legitimate properties owned by the legal entity and not necessarily related to the specific offense. These are confiscated as punishment, removed from the legal entity's ownership, and transferred to the state. In contrast, the confiscation of proceeds and gains under Article 182 refers to illegally obtained property, held unlawfully by the offender (in this case, a legal person), and is always enforceable, alongside other punishments.

3) Suspension of Activities of Legal Persons

Suspension of activities is a legal mechanism that can either temporarily or permanently prevent legal persons from engaging in specific operations. The Iranian legislator, in paragraph (p) of Article 20 of the Islamic Penal Code, addresses this issue, stating: "Prohibition from one or more professional or social activities permanently or for a maximum period of five years."

This sanction is particularly significant in the context of legal persons, as it can be tailored to the nature and status of such entities.

Given the phrasing used by the legislator "prohibition from one or more activities" it can be inferred that the judge has the discretion, based on the evidence presented in the case file and the nature of the offense, to impose a ban on a single or multiple activities carried out by the legal person. If the judge determines that the legal person is likely to be reformed within a short or long period, then a temporary ban lasting up to a maximum of five years may be imposed. However, if no potential for reform is perceived, then permanent prohibition from one or more activities will be enforced.

In the legal system of Afghanistan, suspension of activities is another form of punishment that the legislator has explicitly prescribed for legal persons. In other words, the temporary suspension of a legal entity's operations is recognized as one of the main criminal sanctions that can be imposed upon such entities. This is codified in paragraph 3, clause 1, Article 86 of the Afghan Penal Code, where temporary cessation of activities is listed as a specific punitive measure.

The Afghan Penal Code includes multiple provisions for temporarily suspending the activities of legal entities. This sanction can serve as a critical and effective tool for both punishing the entity and preventing future offenses, while also offering an opportunity for institutional reform. For instance, Article 507 of the Afghan Penal Code provides: "If a natural or legal person commits the crimes enumerated in this chapter more than once, in addition to the prescribed punishments, they shall be sentenced to suspension of their activity license for a period of one to five years."

In this provision, the Afghan legislator refers specifically to natural and legal persons who repeatedly commit money laundering offenses. This means that if a legal person is found guilty of money

laundering more than once, its operating license shall be revoked for a period ranging from one to five years.

This article is particularly applicable to companies or institutions that engage in repeated violations, such as serial money laundering. In such cases, suspending their license for a specified period is intended to disrupt their criminal operations, reinforce legal accountability, and encourage institutional correction.

4) Diyya (Blood Money) in Relation to Legal Persons

According to the Afghan Penal Code, only ta'zir punishments (discretionary punishments determined by the state) are applicable to legal persons within the criminal justice system of Afghanistan. As stated by the legislator in Article 2 of the Penal Code: "(1) This law regulates ta'zir crimes and punishments. (2) The perpetrators of hudud, qisas, and diyya crimes shall be punished according to the provisions of the Hanafi jurisprudence of Islamic Sharia."

From this provision, it can be inferred that the Penal Code only encompasses ta'zir crimes and punishments, and offenders of hudud (fixed punishments), qisas (retaliation), and diyya (blood money) are referred to Hanafi jurisprudence. Consequently, within the Afghan legal system, legal persons are only criminally liable in the context of ta'zir crimes, and they can be sanctioned accordingly.

In contrast, under the legal system of Iran, regardless of whether diyya is categorized as a criminal punishment, a form of civil liability, or a sui generis institution, the legislator in Note to Article 14 of the 2013 Islamic Penal Code has recognized diyya as a sanction that can be applied to legal persons. According to Article 17 of the same code: "Diyya—whether quantifiable or unquantifiable—is a form of property (compensation) prescribed by Islamic law for causing non-intentional harm to life, body parts, or faculties, and also in cases of intentional crimes where qisas is not applicable, as determined by law."

Before the enforcement of the 2013 Penal Code in Iran, courts used to hold the highest-ranking individual within a legal entity personally liable for the payment of diyya. In such cases, if the convicted person failed to pay⁴, enforcement would proceed under Article 3 of the Law on the Enforcement of Financial Sentences. This often resulted in situations where a person remained financially liable for diyya even after their term of office or during retirement.

However, note to Article 14 provides: "If a causal link between the conduct of the legal person and the inflicted damage is established, diyya and damages shall be recoverable. The application of ta'zir punishments to legal persons shall be in accordance with Article 20."

This note clearly provides for the enforceability of diyya and compensation against legal persons, with diyya covering physical harm and damages covering financial loss. Accordingly, to hold a legal person liable for diyya or damages, the existence of a causal relationship—whether direct or through indirect causation (tassabub) is necessary.

For example, in ground freight transport companies, vehicle owners are obligated to regularly inspect their vehicles and obtain technical clearance certificates from authorized centers to ensure the

⁴According to Verdict No. 890997131180059 dated September 22, 2010 (31/6/1389), issued by Branch 111 of the General Criminal Court of Rasht, a fatal accident occurred due to negligence and recklessness during the execution of road separation operations at the Astara terminal connection to the main road, resulting in the death of a motorcyclist. The court found the expert opinion regarding the shared liability of both the motorcyclist and the Astara Road and Transportation Department to be consistent with the facts. However, it was not the legal entity of the said department that was held liable, but rather its director, who was sentenced to pay blood money (diyah) to the heirs of the deceased and a monetary fine in lieu of imprisonment.

absence of defects or malfunctions. Failing to possess such certification constitutes a violation of regulatory standards and entails legal liability. If, for instance, a bus overturns due to lack of technical inspection, the legal entity may be held liable for causing the harm through indirect causation (tassabub). The underlying obligation—vehicle maintenance and defect correction—is thus attributed to the legal person.

In addition to physical harm, legal persons are also liable for financial damage and the commission of criminal acts. For instance, Article 505 of the Iranian Islamic Penal Code states: “If, during driving, passengers are injured or killed due to incidents such as vehicle overturning or collision with obstacles, and the cause is not a force majeure (such as earthquake or flood) but attributable to the driver, then the driver is liable for diyya. If the cause is attributable to another legal or natural person, that person shall be held liable.”

According to this provision, when the incident is causally linked to the conduct of a legal person, that entity becomes liable for diyya.

Therefore, legal persons can be held liable for diyya not only through ta’zir punishments, but also in cases of bodily harm or death, provided they possess the legal capacity for commission of offenses, including quasi-intentional acts or pure accidents. Since the Iranian legislator has emphasized the necessity of a causal relationship in Article 14, and given that homicide is a result-based crime, the establishment of both the act or omission and the causal link between such conduct and the death or injury of the victim is a prerequisite for legal liability.

Moreover, if a legal person is determined to be the direct or indirect cause of death or bodily injury, it can be ordered to pay diyya. Conversely, if the legal person proves that it had enforced policies prohibiting violations and had taken appropriate preventive measures, it shall be exonerated from liability. Nonetheless, in such cases, the individual (natural person) perpetrator may still bear individual criminal liability, which will be adjudicated separately.

Furthermore, if the cause of the incident is not attributable to the named individuals or legal entities, and is instead due to force majeure (e.g., earthquake, flood), then none of the parties shall be held liable.

5. Dissolution of Legal Persons

One of the most severe punishments that may be imposed on legal persons is their dissolution. This form of sanction results in the permanent termination of the legal entity’s existence, effectively erasing any further operation or legal identity it might possess. It is important to note that dissolution is distinct from permanent suspension. In cases of permanent suspension, only the legal entity’s economic activities are invalidated, while the entity itself may still legally exist. In contrast, dissolution is comparable to capital punishment in the case of a natural person, whereas permanent suspension resembles life imprisonment, and temporary suspension is akin to temporary imprisonment or disqualification from public service (Salehi, 2016: 48).

When a legal entity is dissolved as a punishment, its shareholders and employees are also affected, since the cessation of its operations means that no profits or wages will be paid to them. The direct and indirect consequences of such a punishment reflect its gravity, rendering it equivalent, in effect, to the death penalty for a natural person. Therefore, dissolution is rightly considered one of the most severe forms of punishment applicable to legal persons (Pourbafrani & Seifi, 2015: 118).

According to Article 22 of the 2013 Islamic Penal Code of Iran, if a legal person is established with the primary purpose of committing a crime—for example, if a company is created specifically for

money laundering—or if it deviates from its initially lawful purpose and pursues criminal objectives exclusively, it shall be deemed criminal and subject to dissolution.

Regarding the second condition, "exclusivity" implies that although a company may have originally been established for legitimate production, it later shifts to solely pursuing criminal goals, such as money laundering. If a company commits a crime during the course of its legitimate operations, it may still be found criminally liable; however, it will not necessarily be subject to dissolution. What matters in assessing the criminal liability of legal persons is that their primary and essential purpose is criminal. This criterion of exclusive criminal purpose does not exist in the context of capital punishment for natural persons, and proving that a legal person exists solely to commit crimes can be inherently difficult.

Nonetheless, a legal person could potentially be sentenced to dissolution by examining the consequences and manifestations of its criminal behavior. Clearly, when a legal person provides substantial benefits to society, it may be inappropriate or counterproductive to dissolve it, as the damage may extend to employees and shareholders, particularly if the criminal conduct is limited to the actions of certain individuals within the organization. In such cases, a change in management could rectify the legal person's trajectory (Pourbafrani & Seifi, 2015: 116–120).

Therefore, based on the foregoing, dissolution constitutes one of the most important and severe punishments that may be enforced against legal persons. The Iranian legislator has recognized its gravity by classifying dissolution as a first-degree punishment under Article 19 of the 2013 Islamic Penal Code, thereby affirming its position as the most severe sanction for legal persons.

Similarly, Afghan criminal law recognizes dissolution as one of the most serious punitive responses toward legal persons. As such, it is comparable to capital punishment for natural persons. This equivalency highlights the severity of dissolution as a criminal sanction.

The Afghan Penal Code explicitly provides for dissolution in Clause 4, Paragraph 1 of Article 86, and the legislator has referred to it in multiple subsequent articles. For instance, in Article 515 of the Afghan Penal Code, it is stated: "(1) If the crime of human trafficking is committed by a legal person, in addition to the punishment of the perpetrator, the legal person shall be fined between three and five million Afghanis. (2) The monetary fine specified in Paragraph 1 of this Article may be adjusted due to currency fluctuations based on the recommendation of the High Commission on Combating Human Trafficking and Migrant Smuggling and approval by the government. (3) In case of a repeat offense as described in Paragraph 1, the legal person shall also be subject to revocation of its license."

The phrase "revocation of license" in Paragraph 3 is expressed absolutely and without qualification, which implies that if a legal person's license is revoked permanently, it effectively leads to its dissolution, preventing it from any further activity.

Additionally, Article 282 of the Afghan Penal Code addresses the dissolution of legal persons involved in terrorism financing. It states: "If the crime of financing terrorism is committed by a terrorist organization or a legal person under the ownership or control of such an organization, the following punishments shall be imposed: Members of the terrorist organization: life imprisonment (Grade 2). Confiscation of the organization's assets and its dissolution."

This provision indicates that when a legal person engages in financing terrorism, its assets are confiscated, and the entity itself is dissolved.

Furthermore, Article 500 of the Afghan Penal Code provides: "(1) If the crime of money laundering is committed by the president, representative, or legal agent of a legal person in the name or for the benefit of the legal person, the legal person shall be fined an amount equivalent to the laundered

funds or assets. (2) In addition to the fine mentioned in Paragraph 1, the legal person shall be subject to one of the following penalties: 1. ... 2. Dissolution of the legal person, if it was created for the purpose of committing money laundering or allowed the use of its facilities and assets for the commission of such a crime. 3. ...”

Accordingly, dissolution is one of the key penalties applicable to legal persons under Afghan law, especially when the legal person is founded for or used in the commission of serious crimes. The legislator has emphasized its use in significant cases and explicitly permitted its implementation.

Conclusion

With the expanding role and influence of legal persons in the social and economic life of contemporary societies, the legal systems of Iran and Afghanistan have sought to ensure the accountability of these entities by designing and implementing punishments that are appropriate to their nature and conduct. Given that legal persons possess distinct characteristics that differentiate them from natural persons, the imposition of penalties on such entities requires careful consideration and a specific legal approach. Among the most important legal instruments employed in this context are monetary fines, asset confiscation, suspension of operations, payment of blood money (diyah), and dissolution.

Monetary fines are one of the most common and effective sanctions applied in response to offenses committed by legal persons. Due to their direct impact on financial resources, such fines can serve as a significant deterrent and incentive for behavioral reform. In both Iran and Afghanistan, the amount of the fine must correspond to the nature and scope of the offense as well as the financial capacity of the legal entity. Failure to observe proportionality in the imposition of fines can reduce their effectiveness, particularly in the case of large corporations or institutions with considerable financial resources. Therefore, lawmakers in both countries must establish clear and enforceable mechanisms that simultaneously ensure justice and prevent recidivism.

Asset confiscation is another important and preventive measure, especially in cases where the committed offense has led to illegitimate financial gains. The purpose of this sanction is to recover unlawfully acquired assets and prevent the strengthening of a legal person's position through illegal activities. While Iran's criminal laws explicitly outline the conditions and limits for asset confiscation, Afghanistan's legal framework—though increasingly attentive to this issue still requires further development and clarification. For instance, it is necessary to determine to what extent this punishment may affect stakeholders such as shareholders or employees, and what safeguards should be in place to protect their rights.

Temporary or permanent suspension of a legal person's operations is another judicial measure used to address legal violations. This sanction is typically applied when a legal person's activities pose a direct threat to public order, societal security, or the rights of others. In both Iran and Afghanistan, suspension is regarded as one of the most severe sanctions, to be applied under specific circumstances and in accordance with legal procedures. Nonetheless, this measure should be structured in such a way that it not only neutralizes existing threats, but also allows for the resumption of operations should the legal person rectify its behavior and fulfill its legal obligations. In this way, the legal system can strike a balance between deterrence and the preservation of economic activity.

The payment of diyah (blood money) by legal persons represents a modern and complex issue in the legal systems of Iran and Afghanistan. While diyah has traditionally been applied to compensate for harms caused by natural persons, the increasing role of legal persons in social and economic spheres has led to its extension to such entities. In cases where damages result from the illegal activities of legal persons, these entities may be held responsible for compensation through the payment of diyah. This issue

has particular jurisprudential implications in Iran, given its Islamic criminal law foundations. Afghanistan has also made efforts in recent years to align its legislation with contemporary needs, but further development of legal provisions and enforcement mechanisms remains necessary.

Dissolution, as the ultimate and most severe punishment for legal persons, is imposed in situations where the committed offenses are so serious and widespread that reform and continued operation are deemed impossible. Beyond its punitive function, this measure also has a preventive dimension, serving as a firm warning to other legal entities. In the legal systems of both Iran and Afghanistan, dissolution is typically applied in cases involving serious crimes, repeated violations of law, or the loss of eligibility to legally operate. However, the implementation of such a measure must be conducted with great care, considering its potential impact on various stakeholders. Otherwise, it may result in significant social and economic repercussions.

In general, the judicial imposition of sanctions on legal persons in Iran and Afghanistan requires a delicate balance between the principles of justice, deterrence, and effectiveness. Both legal systems, by employing a combination of tools—such as monetary fines, asset confiscation, suspension of operations, *diyah*, and dissolution—have attempted not only to address violations but also to prevent future offenses. Nevertheless, in order to better achieve the goals of criminal justice, there is a pressing need for clearer legislation, more precise implementation, and greater alignment with international standards. Improved coordination between judicial and executive bodies, as well as drawing on the experiences of other countries, can contribute significantly to enhancing the efficiency and effectiveness of the criminal justice system in addressing legal persons.

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