



Begging and Its Criminalization in Afghanistan Criminal Law Based on the Decree of His Highness the Amir al-Mu'minin (May Allah Preserve Him)

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Abstract :

One of the acts whose criminalization does not have a long historical background is begging. However, based on welfare of society, and upon the determination of the competent authority to classify begging as a criminal act, today in some countries of the world, including Afghanistan, the commission of this act has been prohibited and punishments have been prescribed for its perpetrators. The contemporaneity of the article's title reflects the relevance and significance of this research. The main objective of this study is to examine the criminalization of begging in Afghanistan criminal law based on the decree of His Highness the Amir al-Mu'minin (may Allah preserve him). The researcher has pursued this objective using books, legal texts, and scholarly articles (library-based method), adopting a descriptive-analytical approach. The findings indicate that the act of begging has been criminalized in Afghanistan criminal law and specific penalties have been prescribed for offenders. In cases where begging is organized or carried out professionally, the punishment is imprisonment; whereas if the individuals are indigent, they are initially provided with assistance according to their needs. However, if, after receiving such assistance, they engage in begging repeatedly, they may, depending on the circumstances, also be sentenced to imprisonment.

– **Keywords:** Afghanistan Criminal Law, Begging, Beggar, Criminalization.

1. INTRODUCTION

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From the distant past up to the present, some members of society have sought to generate income by appealing to the emotions, sentiments, and compassion of others and encouraging them to provide financial assistance. Such individuals present themselves as helpless or, by displaying their own physical disabilities or those of children and others, derive income from the labor of others. Such a person is referred to as a beggar, and this occupation is called begging. Resorting to this occupation takes different forms: at times, due to extreme compulsion and necessity, there are individuals who turn to it in order to earn their daily subsistence; while others adopt it as a profession and occupation, without any real necessity, and deliberately engage in it. However, due to the misuse of this act by certain individuals, in recent times, in some countries of the world, including Afghanistan, this practice has been criminalized. Accordingly, for perpetrators—if the activity is professional and organized (i.e., carried out through recruitment)—imprisonment is prescribed at the outset; and if the individuals are indigent, they are first provided with necessary assistance, but if they subsequently resort to begging repeatedly, imprisonment has likewise been stipulated in the law.

Conducting research on this topic is an urgent necessity and a clear demand, because the criminalization of begging in Afghanistan does not have a long history; rather, it is only in recent times that it has moved from the realm of permissibility and legitimacy into the category of criminal acts recognized by society. On this basis, examining this issue within Afghanistan criminal law, grounded in the decree of His Highness the Amir al-Mu'minin (may Allah preserve him), is of increasing importance. On the one hand, it contributes to the enrichment of academic resources and may serve as a useful reference for future researchers interested in this subject; on the other hand, the contemporaneity of the topic itself adds to its significance and value.

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It is worth noting that, in this study, the researcher—through examining begging and its criminalization in Afghanistan criminal law based on the aforementioned decree—seeks to answer the question of how begging has been criminalized within Afghanistan criminal law. It appears that begging has been classified as a crime and that imprisonment has been prescribed as a punishment for its perpetrators. The research method adopted in this study is library-based, whereby the researcher has utilized books, legal texts, and scholarly articles, and the type of research is descriptive-analytical.

It should also be noted that relatively limited research has been conducted on this topic. Among the existing works is “An Examination of the Factors Influencing the Tendency toward Begging in the City of Yasuj in 2017” by Mehdi Moeini and Sedigheh Jahanbazian, in which the authors analyze factors influencing individuals’ inclination toward begging; however, its scope is confined to the city of Yasuj and the year 2017 (Solar Hijri). Another study, “An Examination of the Phenomenon of Begging in the Naseri Period: A Case Study of the Province of Garus” by Shahram Yousefifar and Zahra Mousidand, adopts a historical perspective and is limited to the Naseri period and the region of Garus. Additionally, research has been conducted on the perspective of Islamic jurisprudence regarding begging, particularly in a comparative framework within mystical and juristic domains, such as “Begging in Mystical and Jurisprudential Teachings” by Seyed Mohammad Sadri, Heydar Amirpour, and Hassan Alipour. Furthermore, the work titled “Decriminalization of Vagrancy and Begging” by Esmail Haditabar and Adel Alipour advocates for the permissibility of begging and vagrancy and emphasizes that such acts should not be considered crimes.

However, what underscores the significance and distinctiveness of the present study is that the aforementioned research has generally been conducted within limited or specific contexts (such as Yasuj), or has taken a historical approach, and moreover, pertains to regions outside Afghanistan. In contrast, the present research is grounded in Afghanistan criminal law and based on applicable legal provisions.

In the continuation of this paper, the discussion will first address conceptual clarifications; subsequently, the types of begging will be examined, followed by

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an analysis of the three constitutive elements of the offense of begging and the punishments prescribed under the law.

2. Conceptual Clarification

Before entering into the main discussion, it is necessary and appropriate to clarify certain key concepts. Accordingly, this section explains and elaborates on concepts such as beggar (mendicant), begging, and criminalization.

2.1 Beggar (Mendicant)

A mendicant refers to one who begs, a beggar, a petitioner, or a supplicant (Dehkhoda, vol. 4: 6048; Farsi, vol. 1: 1125). In terminological usage, a mendicant is a person who, in public places, requests financial assistance from unknown individuals (Hajian Motlagh: 1381). In other words, an individual who is present in public spaces with the aim of attracting material assistance from passersby, and who at times, by displaying their own physical injuries or disabilities—or those of another person—seeks to evoke sympathy and encourage others to provide assistance, is referred to as a beggar or mendicant (Arefi, 1401: 244).

Elsewhere, it has been defined as follows: a mendicant is an individual who humbles and degrades himself before others in order to attract their compassion and kindness, thereby earning money through this means (Ash-shathry, 2010: 26).

2.2 Begging

Begging (takaddi) means to beg, to solicit alms, or to engage in mendicancy (Moen, 1383, vol. 1: 1125), and also denotes insistence in requesting and seeking assistance from others (Dehkhoda, 1377, vol. 5: 6904). It has also been defined as: “to beg, to withhold” (Azarnoush, 1384: 583).

In terminological usage, begging refers to a situation in which the mendicant benefits from the labor of others and sustains his livelihood through it (Moeini, 1398: 24). In Islamic jurisprudence, it is defined as: “requesting the property of others without the petitioner having a genuine need for it” (Al-Isfahani, 1408 AH: 2/45). In other words, standing in public places with the aim of encouraging passersby to provide gratuitous financial assistance constitutes

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begging (Arefi, 1401: 244). Therefore, any process through which others, out of compassion and kindness and without receiving anything in return, provide assistance to an individual is referred to as begging.

2.3.Criminalization

Criminalization refers to the process by which the legislator, in order to protect and safeguard the values and interests of society, and in accordance with the principles and rulings of Sharia, prohibits the commission or omission of certain acts and prescribes punishments for them (Tavana, 1392: 151). This concept is embodied in the principle of the legality of crimes and punishments. For distinguishing criminal acts from non-criminal ones, the element of Sharia-based legitimacy in hudud crimes and the element of legal codification in ta'zir crimes are recognized and accepted (Tavana, 1392: 151).

The existence of this process in classifying actions and statements as crimes is both necessary and just, because, in principle, all acts and behaviors are considered permissible unless a competent authority, based on the interests and welfare of society, designates some of them as crimes and declares them prohibited (Oudah, 1390: 125).

3,Types of Begging

Mendicants engage in begging through various means, such as extending their hands, displaying physical disabilities, placing a disabled child in public view, and similar practices. Accordingly, scholars and writers have examined this social phenomenon from different perspectives and, based on their respective fields of knowledge and understanding, have proposed various classifications of begging. In this section, the types and forms of begging will be explained.

3.1. Types of Begging from the Perspective of Normative (Taklifi) Rulings

In this part, the various normative rulings applicable to mendicants—taking into account their economic and living conditions—will be discussed and explained.

3.1.1. Permissible Begging

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This refers to a situation in which an individual is faced with severe economic hardship, overwhelmed by poverty and hunger. Furthermore, despite making efforts to secure a livelihood, meet basic needs, and obtain employment, the individual has not succeeded, and their life is endangered due to extreme destitution. In such circumstances, begging is considered permissible for that individual (Zaydan, 1430: 222).

3.1.2. Disliked (Makruh) Begging

In this type of begging, although the mendicant is unable to fully meet his own or others' financial needs, he is not in a state of severe economic hardship. Nevertheless, he resorts to begging in order to overcome his economic difficulties. In such a situation, begging is considered makruh (disliked). The difference between this type and permissible begging lies in the fact that, in the case of permissible begging, the individual's need is not apparent to others due to his restraint, whereas in disliked begging, the individual's condition is generally visible and known to the public (Sadri, 1397: 183).

3.1.3. Prohibited (Haram) Begging

If a person, without financial need or economic hardship, chooses begging solely for the purpose of acquiring wealth and increasing personal assets, and adopts it as a means of livelihood, then such begging is considered haram (prohibited) (Sadri, 1397: 184). The Noble Prophet of Islam (peace be upon him) said: "Whoever begs in order to accumulate wealth is as if he is asking for pieces of fire, whether he asks for little or much" (Muslim, 1419 AH: 40; Ibn Hanbal, 1414 AH: 3/11).

3.1.4. Obligatory (Wajib) Begging

If a person falls into such extreme economic and financial distress that there is a fear of losing his life, then in such a situation, if he resorts to begging, its normative ruling—according to the Hanafi and Maliki schools of Islamic jurisprudence—is wajib (obligatory). This is because the act of begging in such a circumstance is undertaken solely for the preservation of life, not for the

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accumulation of wealth or the pursuit of comfort (Amirpour, Sadri, and Alipour, 1397: 185).

3.2. Types of Begging Based on Motivation

According to Article Three of the Law on the Collection of Beggars and the Prevention of Begging, issued under the decree of His Highness the Amir al-Mu'minin (may Allah preserve him), beggars are classified into three categories, as outlined below:

3.2.1. Indigent Beggar

An indigent beggar refers to a person who resorts to begging in order to meet his daily needs or those of his family. Such an individual adopts begging as a means of securing basic necessities and earning income. As noted, in this situation, the beggar turns to this act out of necessity, helplessness, and the compulsion of circumstances, often due to the absence of other employment or skills, and perceives it as the only available option.

3.2.2. Professional Beggar

This refers to a person who, despite not being in economic hardship or genuine need, has adopted begging as a profession. From the context, it is evident that such individuals are primarily motivated by the desire to increase their wealth and accumulate more assets, viewing begging as a suitable means to achieve their intended goals.

3.2.3. Organized Beggar

This category refers to a person who has been organized or directed into begging by others. In reality, such individuals are employed by others and may receive a certain payment in return for engaging in this activity. For this reason, they are referred to as organized or recruited beggars.

4. Elements of the Crime of Begging in Afghan Criminal Law

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In this section, the three constituent elements of the crime of begging—namely the material element, the mental (psychological) element, and the legal element—will be explained in order.

4.1. Material Element

The material element refers to an act or omission that has been prohibited by the competent authority, whether the sacred Sharia of Islam or the legislator. When such an act is carried out in reality, moving from the individual's mental intention to tangible execution, or when a legally mandated duty is materially neglected, it constitutes the material element. This element is essential for holding a person accountable and accusing them of committing a criminal act; no individual can be held responsible or punished in the absence of the material element (Tabibzadeh, 1403: 51).

Similarly, Article (33) of the former Afghanistan Penal Code defines the material element as: "The material element of a crime consists of committing an act contrary to the law or refraining from an act mandated by law, in such a manner that the act or omission results in a criminal consequence and there exists a causal relationship between the act and the result." By examining this provision, it can be stated that in the case of begging, neither the intention of the individual alone nor the legal classification of the act as a crime is sufficient to hold the person liable. It is necessary that the prohibited act be executed in a tangible and observable manner by the mendicant.

4.2. Mental (Psychological) Element

The mental or psychological element of a crime refers to the intention or purpose behind committing an act that the competent authority has criminalized or mandated (Zeraat, 1385: 180). The former Afghanistan Penal Code (1396 Solar Hijri) similarly defines it as: "The mental element consists of criminal intent, knowledge and awareness of the crime and its consequences, or criminal negligence."

From the content of this article, it is possible that a criminal act may be committed either intentionally or by mistake. However, it is evident that the

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crime of begging requires intent and awareness, as it cannot occur accidentally or through negligence. Therefore, begging is considered an intentional (willful) crime.

4.3. Legal Element

Article (32) of the former Afghanistan Penal Code defines the legal element as follows: "The legal element of a crime consists of the explicit specification of the criminal act and its prescribed punishment in this law." This provision illustrates that, for an act to be considered a ta'zir crime, it must be explicitly stated in the law. In other words, when an act is criminalized by the legislator based on the necessity and interests of society, the corresponding component is referred to as the legal element of the crime (Tabibzadeh, 1403: 51).

Based on the foregoing, it can be asserted with certainty that begging in Afghanistan contains the legal element, as it is explicitly criminalized under the Law on the Collection of Beggars and the Prevention of Begging, issued by His Highness the Amir al-Mu'minin (may Allah preserve him), and its performance is prohibited.

5. Criminalization of Begging in Afghan Criminal Law

This section explains how begging is criminalized and the penalties prescribed for mendicants under Afghanistan criminal law.

5.1. Prohibition of Begging

Article 4 of the Law on the Collection of Beggars and the Prevention of Begging under the decree of His Highness the Amir al-Mu'minin (may Allah preserve him) states:

- 1. A healthy person who has a source of livelihood and possesses enough food for one day cannot engage in begging or exploit children, the disabled, or other persons with impairments for this purpose.*
- 2. A healthy person without a livelihood, or one who has a livelihood but is not healthy, and who does not possess enough food for one day, also*

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cannot engage in begging or use children, the disabled, or other impaired individuals for this purpose.

From the clear and unambiguous wording of this article, it is evident that a healthy and employed individual who has at least a day's food is prohibited from resorting to begging or compelling others to beg. Even the presence of one of these factors—health or employment—is sufficient to prohibit the act of begging.

To implement this provision, a Commission for the Prevention of Begging has been established. Article 6 of the same law specifies its members, including: the Deputy Minister for Counter-Narcotics of the Ministry of Interior (as Chair); the Deputy Ministers of Labor and Social Affairs, Justice, Economy, Finance, Public Health, Information and Culture, Promotion of Virtue and Prevention of Vice and Complaints, Guidance, Hajj and Endowments, and Martyrs and Disabled Affairs; the President of the Afghan Red Crescent Society; the Mayor of Kabul; the Director General of Prison Administration; the Executive Director of the Chamber of Commerce and Investment of Afghanistan; and the Director General of Coordination of Municipal Affairs under the General Directorate of Administration.

This commission, along with its members, is tasked with achieving the intended goals of the law, namely providing assistance to indigent and distressed beggars, and legally addressing professional and organized beggars. Since a detailed discussion of these duties falls outside the scope of this paper and would require separate research, this explanation suffices for the present study.

5.2. Punishments

The punishments for the crime of begging are prescribed in Article 22 of the aforementioned law, which can be summarized and analyzed as follows:

- If a professional beggar exploits a child, a mentally ill person, or a disabled individual to elicit the sympathy of others, the competent court may sentence the offender to imprisonment for up to one month.*
- Additionally, individuals who act as organizers or coordinators of such beggars are subject to imprisonment for up to six months.*

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- *In the case of an indigent person who has previously received assistance and resorts to begging again, the competent court may impose a sentence of ten to thirty days of imprisonment, depending on the circumstances.*

5.3. Detention, Burial, and Funeral Procedures

The Deputy Minister for Counter-Narcotics is responsible for presenting the beggars mentioned in Article 22 of the law to the relevant court within ten days following their apprehension and after gathering the necessary information. If the case file is not completed within the stipulated period, the Deputy Minister may request an extension from the competent court.

Moreover, Article 23 of the law provides that if a beggar dies while in the custody of any of the authorities listed in the law and has no relatives, or if the relatives refuse to take responsibility, the burial, preparation, and interment of the deceased shall be carried out by the responsible municipal officials.

6. CONCLUSION

Begging, or mendicancy, represents one of the emerging challenges of human society. Sometimes, due to the compulsion of circumstances, individuals resort to this occupation to meet essential needs and sustain themselves.

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However, in other cases, persons may engage in begging without genuine necessity, either voluntarily or at the instigation of others, to increase their wealth or resources.

Based on the foregoing, in some countries—including Afghanistan—begging has been criminalized in light of public interest and social welfare, and legal measures are taken against offenders. Specifically, a professional beggar who exploits a child, a mentally ill person, or a disabled individual to elicit the sympathy of others may be sentenced by the competent court to up to one month of imprisonment. Organizers of such activities face imprisonment of up to six months.

In contrast, indigent beggars receive financial and non-financial assistance to fulfill their basic needs and eliminate the necessity of resorting to begging. Nevertheless, if such individuals repeatedly engage in begging despite receiving support, they may be sentenced by the competent court to ten to thirty days of imprisonment.

To enforce the prohibition of begging in Afghanistan, the Law on the Collection of Beggars and the Prevention of Begging under the decree of His Highness the Amir al-Mu'minin (may Allah preserve him) established a commission. This commission is chaired by the Deputy Minister for Counter-Narcotics of the Ministry of Interior and includes the Deputy Ministers of Labor and Social Affairs, Justice, Economy, Finance, Public Health, Information and Culture, Promotion of Virtue and Prevention of Vice, among others. Each member is entrusted with responsibilities to provide assistance to the needy and enforce penalties against violators. The goodwill and services of these authorities extend both during the lifetime and after the death of beggars. If a beggar dies without relatives or if relatives refuse to assume responsibility, municipal officials are tasked with the preparation, burial, and interment of the deceased.

7. Recommendations

- 1. Conduct Comparative Research:** *Future studies should focus on the criminalization of begging in Afghan criminal law in comparison with other countries. It is expected that other researchers will take the*

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initiative in this regard so that stakeholders can benefit from their findings.

- 2. **Examine Begging from the Hanafi Fiqh Perspective:** In the field of criminal law and criminology, it is necessary to analyze the phenomenon of begging from the perspective of Hanafi jurisprudence in Islamic law. The insights gained from such research can provide valuable guidance and information to relevant stakeholders.*
- 3. **Organize Seminars and Awareness Programs:** It is essential to conduct awareness campaigns and programs to inform beggars and mendicants about the prohibition of begging and its criminalization under the law.*
- 4. **Examine the Factors Influencing Begging:** It would be beneficial if future researchers study the factors that contribute to begging or mendicancy and share their findings with policymakers. Such research can help authorities implement appropriate and precise measures aimed at addressing and eliminating the root causes of begging.*

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