

Expediency-Oriented Criminalization and the Role of Expediency in the Islamic Penal Code

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Abstract

This study evaluates the role of expediency in criminalization with emphasis on the Islamic Penal Code of 2013. Expediency in criminal legislation is not limited to a secondary or the realm of government authority but also includes the basic Sharia rulings. All Shari'a rulings are subject to the expediciencies and on the essence of the absolute being of corruption. Therefore, expediency is the basis of the legislation of the Islamic Consultative Assembly and as a secondary and governmental authority is on the agenda of the Expediency Council. Criminalization has been associated with expediciencies to protect the national and international expediciencies of the Islamic Republic, preserve Islamic rituals and preserve human dignity and implement criminal justice. However, the most important challenge in implementing expediency in Iranian criminal law is that cannot be justified in terms of the principles of criminal law.

Keywords: Expediency, Criminalization, Criminal Justice, Secondary Expediciencies, Victim Rights

Introduction

The element of expediency as expediency-oriented justice has replaced by absolute or virtue ethics justice of "Kant". Although this theory has been modified by the neoclassical school of criminal law due to its negative consequences, it still enjoys a great prestige in criminal law; Many criminologists and philosophers of forensic science, including Feinberg use utility and expediency as the main criterion for criminalization and the purposes of punishment. In any case, expediency-based legislation makes someone to pretend that this is another face of benefit-orientation in customary law, and that the Expediency Council's prediction would, in fact, legitimize sharia criminal law and a broader interpretation leads to a secularist view of religion or to the floating of the criminal rules of Islam, the consequences of which are no less than in the previous cases.

The relationship between expediency -orientation in criminal law and benefit-orientation in customary law should be assessed. In addition, criminal law in any country indicates how justice is served in that country; expediency -orientation in criminal legislation and criminalization of permissible science, based on expediency or punishment manner of people may lead to abuse of those involved in criminal justice and punishment of innocent people and ultimately tarnish the image of justice and inalienable rights of citizens. According to Article 17 of this law, "a deterrent punishment is a discipline or punishment imposed by the government in order to maintain order and observe the expediciencies of society in the face of violations of government rules and regulations, such as imprisonment, fines, closure of business premises, and deprivation of social rights and residence in a certain place and prohibition of residence in a certain place and the like."

In any legal system, there is a set of value principles which legal regulations are set based on them and these value principles are referred to as principles. The principles of expediency in criminal law have both affirmative and causative consequences. Given the consequences of expediency and the fact that interest can be harmful like a double-edged sword, so there are substantive and procedural criteria that should be considered as reasoning through exigency. Criminalization can not be any behavior without grounds and expediencies, because otherwise we are faced with the phenomenon of unreasonable punishment of individuals by the ruler, and it is clear that the study of self-oriented behaviors of rulers is not legal in nature and Arabs does not have in local legal discussions. Therefore, it is assumed that the legislator always criminalizes a behavior with some expediencies in mind, but these expediencies are usually not specified by the legislator, and from the text of the laws, it is usually not possible to extract an explicit reference to the criminalization of various behaviors.

Valsalami (2017) examined the nature of expediency and its functions in theological issues: expediency in theology is a general concept relating to concepts such as grace and credibility and exchange and perfection of God such as wisdom, justice and knowledge and the purpose of divine actions. All three theological sects consider divine actions based on interest and agree on the rule of correctness and expediency in creation. And the dispute and disagreement of theological sects is about the grace to God and intellectual explorations and observance of righteousness. The Mu'tazila believed that because God is wise and does not do any action without wisdom, God knows the expediencies of his servant's best. In this way, they even considered the duty, reward and eagle for man as the same as divine wisdom and expediency, and emphasized that the issue of righteousness on the one hand with the wisdom and purposefulness of God's actions and on the other hand with man's wisdom and God's grace and perfect attributes.

Nejati Targhi (2014) examined position of expediency in representation at Ferdowsi University of Mashhad Thesis, Faculty of Economics: The principle of non-domination and sovereignty over the lives and property of individuals is a principle known in all human societies. However, under certain circumstances, the legislature or the original will inevitably grant authority to a person named the representative, and titles such as power of attorney, guardianship, administratorship and trusteeship will follow. In such circumstances, the representative concludes legal acts on the original account in such a way that the effects of those acts will require the original. According to this feature of the representation, in order to prevent the representative from abusing his position, a duty is set for the representative according to the extent of his authority. The commitment of representatives to expediency and envy is an obligation that will discipline the powers of representatives and prevent possible abuse of representatives. In fact, what is relevant in representation is the observance of envy and expediency, and the contract, law and custom express the manner of observing this obligation.

According to the background of the research, we will find that all these researches are mostly related to the position of expediency from the perspective of Imami and Sunni jurisprudence, examining the reason for expediency in deriving rulings from the perspective of Imami and Sunni jurisprudence, the nature of expediency and its functions in theological issues and position. Expediency refers to representation, while the present study tries to point out the role of expediency in criminalization by emphasizing the Islamic Penal Code of 2013, while none of the previous researches have mentioned the topic of expediency in criminalization and this is distinguished from other previous studies.

Criminalization and Criminal Regulations of Iran

Iran's criminal regulations face several basic problems in terms of criminalization: in some cases, there is no necessary condition for criminalization, in some cases it does not have sufficient conditions for criminalization; for example, it is neither fair nor necessary to do so. In the case of some acts that have been criminalized, it can be prevented by using administrative, cultural and educational methods. Here are some substances:

The Principle of Justice in Determining the Performance Guarantee

Principle of justice: it is the basis of criminalization, it is also the line of reaction against crime and the determination of punishment or other corrective measures. Obviously, the guarantee of execution can be useful only if it is fair, and at the same time, the offender has paid the penalty for his actions (Fallahi, 2014, p. 258).

Crime is a form of unfair achievement; an imbalance caused by the offender's disregard for the rights of others. What must be corrected with punishment, and thus punishment, is to re-establish the equality distribution of privileged distribution of privileges between the offender and those who follow the law (Qazi, 2006, p. 112).

Although the concept of "right to fair" is by no means new, it is only in the last decade that this phenomenon has gained a very important place in the way of thinking about criminal law, until then the belief in the possibility of reducing crime and the desire for corrective theory. It maintained its influence for most of this century (twentieth century). "The right to fair movement began in the United States in the 1970s." This new approach refers to two factors, first: the death of the "corrective theory", whose ineffectiveness has been proven in practice by increasing recidivism, and second: growing concern about the level of inequality of punishment in similar crimes, Individuals were punished by judges (Shami, 2015, p. 195).

Utility and Criminal Law

According to the utility theory, no action in essence can be described as good or bad, regardless of its consequences. The criminal legislator must also pay attention to the fact that criminalization and sentencing are painful and evil, so their moral legitimacy is based on their results; the consequences of punishment must be greater than the suffering inflicted on the individual, and these consequences cannot be studied in any other way. In fact, the government should enter the field only when necessary. On the other hand, in committing a crime, the offender calculates the cost and benefit, so the punishment must be greater than the pleasure of the crime, in order to prevent him from committing the crime.

Accordingly, theories of right of fair and retribution that have prevailed over the past can not be allowed to be punished, because then, even if there is no utility to the punishment, the offender must be punished, so the theory of "benefit" must be sought. "Punishment", whether specific and general deterrence, or correction and training of the offender, which in any case, will be useful to society. This theory contradicts the view of correction and rehabilitation of the offender in the shadow of punishment, because on the one hand, we punish the offender in order to train and correct him, on the other hand, we leave him under the domination of the principle of pleasure.

In addition, according to the principle of pleasure, everyone seeks to provide maximum pleasure and utility for the maximum number of people, but the group that has the power to do so is harmed by that action, so they determine the punishment for it. What right does a group have to criminalize some acts and punish its perpetrators, which if the second group had power, would have turned that act into law? Because it is assumed that the action provides the maximum benefits for the maximum number of people.

The Utility of Punishment

Utility-orientation is strongly opposed to the theory of right of fair to punishment; According to the theory of right of fair of the offender, there is law violation or morally deserving of punishment. At the same time, the victim's retaliatory actions are prevented. Benefit-orientation: If we punish people with these justifications, it is necessary that if the punishment is of no use, it should be carried out. Right of fair, on the other hand, looks to the past and is retrograde. In addition, the inclusion

of a sense of retribution in the criminal process stimulates the citizens' sense of revenge and its recognition. In any case, it will be useful for the society.

The Position of Expediency in the Legislative Stage

It should be noted that the meaning of expediency used in these cases is expediency in its own sense. This example of expediency has three parts:

Case 1: Sometimes the administration of justice is problematic and to prevent this problem, we stop the administration of justice.

Case 2: Sometimes the administration of justice is not problematic, but the benefits of not administering or stopping justice are much greater and more important than the administration of justice. In this case, we stop doing justice.

Case 3: Political, economic, etc., and especially industrial changes create needs that must be met. Some examples of expediency are not compatible with just one concept of expediency and are in fact examples of two or more concepts of expediency. Some jurists consider these cases as real examples of justice and justice-seeking and do not consider justice to be effective in establishing and accepting them. On the other hand, some jurists consider it as a real example of the concepts presented for expediency and in fact they consider them as a real example of expediency in criminal law.

Criminal Cases Based on Expediency

It is necessary to reconsider the Islamic Penal Code approved by the Islamic Consultative Assembly in 1392 and Note 3 of Article 88 regarding the decision to apply security measures for children or adolescents according to expediency; This form of legislative strategy in the note to the article, which explicitly refers to one or more revisions in the decision, was in fact taken according to the personal and personality requirements of individuals (children and adolescents), because full implementation of laws without flexibility in decision, is considered against expediency.

Also, according to Note 2 of Article 278 of the Islamic Penal Code adopted in 2013, regarding the imprisonments provided in the Hudud, which are not considered ta'zir, the legislator delegates the amnesty to the Supreme Leader and this respected official also decides on the basis of expediency. Article 428 of the law also refers to the financial assistance of those seeking retribution through the treasury, if it is expediency to apply retribution.

The interaction and implementation of justice and criminal law is not problematic, but the benefits of the pursuit of expediency are less, in this case more seen in the philosophy of punishment, explaining that criminal enforcement guarantees sometimes have the characteristics of repression, Some heavy and severe punishments of the physical type in man-made laws, there may be no expediency in that well-known concept, and punishment is determined by the concept of deterrence in the specific sense of the word and without corrective and educational mechanisms. The conclusion is that the criminalization of some immoral behaviors, regardless of necessity, leads to an increase and inflation of the criminal population and the density of criminal laws, for example, the criminalization of punishment and punishment subject to Article 17 of of law to overcome addicted do not seem to be compatible with the concepts of expediency.

Relationship and Interaction of Expediency and Criminality in Laws

In the one hundred and twelfth principle of the Constitution of the Islamic Republic of Iran, the legislator, while accepting the principle of Velayat-e-Faqih, has also given a significant share to the principle of expediency. The interaction of expediency with criminality in this and future discourses is about determining the criteria of criminality based on the principle of expediency and expressing the examples of criminality crimes on this basis, as well as explaining the effects of expediency criminology in the Islamic Penal Code.

Expediency in the system of the Islamic Republic of Iran with the formation of the Expediency Discernment Council found a legal aspect and distanced itself from its purely theological and philosophical field. What the Constitution of the Islamic Republic of Iran and other laws and regulations state of expediency never includes the expediences of a particular person or group, in other words, in the system of the Islamic Republic of Iran, neither in principle nor in theory is it permissible

to commit crimes based on the expediencies of a particular person or group. Has not been issued and criminality has always been denied on the basis of personal or partisan criteria.

But what creates this ambiguity is the phrase "expediency of the system" and the word "system" itself, from which a precise legal definition has not been provided, and this issue has led to abuses in this regard. The word system is used at various levels and concepts, and the acceptance of any of its interpretations and interpretations will have special effects and requirements. Some experts believe that the system in the current legal and political literature is synonymous with "maintaining the system" in jurisprudential sources (Malek Afzali Ardakani, 2009, p. 151). Whereas in traditional jurisprudence, the maintenance of the system as an obligation does not mean the maintenance of the government, but means the maintenance of the whole social unit.

However, it cannot be denied that in order to preserve the social whole, the maintenance of a just and righteous government is also a prerequisite for the survival of society; But what we call in the constitution of our country in principle one hundred and twelfth is "the expediency of the Islamic system" and the result is the expediency of Islam, the system, individual and public expediencies and is different from the traditional jurisprudence's view of the expediency of the system in the general expediency or public expediency. It seems that Shiite jurists have avoided using the single word expediency in the meaning we are discussing and have used the term "general expediency" (Rahmatollahi, 2009, p. 138). However, in the Constitution of the Islamic Republic of Iran as the supreme law and in other laws, especially the Islamic Penal Code, the legislator considers the public expediency to be the expediency of the system (government) of the Islamic Republic. The expediency of the system in criminalizing these crimes, which is explicitly emphasized in the Islamic Penal Code.

In the case law, the legislator has based the mentioned principle on his criminal policy and in order to utility the people, he has determined and intensified the punishment by enacting regulations such as the addiction Law as well as the Law on Embezzlement, Bribery and Fraud.

In deterrent punishments, the position of expediency is considered. Deterrent punishment is a discipline or punishment that is determined by the government in order to maintain order and observe the expediencies of the community in case of violation of government regulations and systems. Such as imprisonment, fines, closure of the place of business, revocation of license and deprivation of social rights and residence in a certain place or places and prohibition of residence in a certain place or places and the like (Article 17 of Islamic penal code, 1991). In this case, the regulations are the result of the government and the executive branch, which in practice are implemented in cooperation with the two branches of the judiciary and the executive branch.

The provision of imprisonment is a violation of human rights due to the quality and organization of state penitentiary courts and the need to protect and respect the freedom of persons who require the right to defense and the possibility of appeal for the accused and should be arranged to issue a limited sentence. Judges of justice should play an effective role in deciding on imprisonment (Goldozian, 2016, p. 530).

Effects of Criminalization Based on the Principle of Expediency

Criminalization based on the principle of expediency has harmful effects and consequences in the Iranian legal system that need to be considered. In this section, we will examine the mentioned works:

Multiplicity of Regulatory Authorities in the Field of Criminology

The general legislative power has been delegated to the Islamic Consultative Assembly in accordance with the Constitution. Therefore, in the field of criminal law and especially criminalization, it is the duty and special task of the Islamic Consultative Assembly. However, by accepting the principle of expediency, it is concluded that other superiors and subordinate institutions of the legislature in the country, under certain conditions, find the permission to regulate in the field of figurative crime (Shams Natri and Jahed, 2008, 95).

The existence of multiple authorities in the field of criminology will only have the effect of creating an undesirable and inefficient criminal policy. When an institution or institutions, in addition to the Islamic Consultative Assembly, enact laws or approvals in the rule of law, a number of legislative

authorities are realized. Therefore, the existence of multiple legislative bodies that do not have a specific jurisdiction, and some of which enact conflicting or inconsistent laws on single or related issues, can seriously damage the stability and legal order of the country.

This problem exists within the jurisdiction of legislatures in or near parliament, such as the Assembly of Leadership Experts, the Expediency Council, the Supreme National Security Council, and the Supreme Council of the Cultural Revolution, the Supreme Council of Cyberspace, the Economic Council, the Supreme Administrative Council, and the Supreme Administrative Council. Therefore, despite the fact that a number of legislative institutions have not been formed in a uniform manner and have not had the same function and some of them have contradictory approvals, this category poses good and significant challenges to the legislative status of the Islamic Republic of Iran. Has encountered.

Expediency Criminalization and Criminal Inflation

Criminal inflation and the existence of scattered and incoherent laws, which sometimes conflict with each other, are the result of resorting to maximum criminalization and expediency in criminalization by different institutions with different goals. In other words, expediency -orientation criminalization in the field of criminal inflation has the role of a double-edged sword that can be used to help and minimize criminalization, as well as to cause maximum criminal inflation and criminalization, which has the opposite effect and is against expediency.

The multiplicity of legislative institutions and the existence of numerous and scattered laws in the field of criminal criminality as a phenomenon that prevents citizens and law enforcement from accessing the law, greatly reduces the rate of compliance with criminal law. It is obvious that non-observance of such a principle will cause the law enforcers and the citizens to never have confidence in achieving and being fully aware of the legal requirements of an issue. In fact, due to numerous legislations, citizens as rulers of laws will not be able to access and be aware of them.

Laws are binding on the general public as long as they are promulgated in an appropriate legal form and communicated to the citizens. Citizens should not be deprived of the law if they refrain from passing laws to their target audience, or if their performance, especially in legislation, is such that it impedes such access to serious barriers. Also, the enactment of multiple laws by multiple legislatures under issues that revolve around a single axis or have a thematic overlap calls into question the inherent and transversal features of law, such as openness, clarity, and effectiveness.

The law must be known and transparent to all in order to be subject to the citizens of natural and legal persons in the field of practice. Therefore, the numerous rules that are imposed on a subject in a contradictoryambiguous or suspended manner, and which are also scattered, confuse or mislead the subjects and executives in recognizing their rights and duties. At the same time, this causes the law as a purposeful identity to fail to achieve its main goal and function, which is - at least success in regulating and controlling the relations of its subject - and becomes an inefficient law (Malmiri Center & Mehdizadeh, 2015, p. 164).

The Relationship Between Criminalization and Social Considerations Caused by Expediency

The principle of legal regulation is based on the regulation of life in society, law and society are inextricably linked. "According to Oiken Earl, the center of the evolution of law is the text of society as in all other eras". Society should be given the right to create new rules, institutions and legal organizations during its life. A fundamental issue in law and any legal system will be that in order to implement historical and old rules and institutions, their implementation must be justified and, in addition, they must be adapted to the developments of the time. Therefore, the legitimacy of criminal law is based on the normative acceptance that has been implemented and depends on the level of public acceptance that the criminal law is passed and its implementation.

Criminal law must be rooted in society and for that society. Before the existence of criminal law, the authority to judge any right or wrong behavior of an individual in the field of social life is based on judgments that society treats based on its values (Fallahi, 2014, p. 383).

Therefore, the criminal law must be in line with the public expediency, and in fact the public is what makes sense in the form of the indivisibility and coherence of a thing; i.e. one of the citizens prevent the use of another, and be available for all individuals and public.

Although criminalization is based on some principles, but the general expediency, considering the power of the ruler, has paved way to this field and its effect can not be attributed, of course, can not be denied. That the public expediency acts like a double-edged sword that, although under certain conditions for the utility of the members of the community some of the individual rights are temporarily suspended, the government can take the initiative, but on the other hand it can be avoided (Pourbaferani, 2011, p. 41).

The principle of public expediency is another principle of criminalization in criminal law. In other words, some behaviors are against the expediencies of society as an entity independent of its constituents, and these behaviors can be punished according to this principle. Examining the content of this principle carefully, it is clear that if the principle of harm does not apply to individuals, it can also include the public expediency, because behaviors contrary to the public expediency actually involve harm to society as a whole. "According to Mill, man is able to find common expediencies between themselves and the human community of which he is a part. So that any behavior that threatens the overall security of society is also threatening for that person.

The Relationship Between Criminality and Expediency Political Considerations

In addition to social considerations, political considerations also play a significant role. Regarding this view and interaction, we can pay attention to the intellectual and historical backgrounds of the emergence and enactment of codified laws in the Iranian legal system, these considerations which historically coincide with the Constitutional Revolution in Iran are, with three main goals, encouraging the participation of people and society in political life, creating economic and social changes to compensate for the backwardness in Iran and creating a strong and coherent central political system of Iran's first criminal law, which is the beginning of criminal change in Iranian law. The General Penal Code was introduced and approved only by the Parliamentary Law Commission using the permission of the parliament (Bashirieh, 2008, p. 69).

Choosing between social goals and conflicting value ideas is sometimes easy and sometimes difficult. In cases where it is not possible to satisfy the desires and expediencies of the individual and everyone equally, it is necessary to make a choice. It seems that the theory of public expediency should provide such conditions that open the way for the flourishing of the talents of individuals and strengthen and guarantee human dignity. It is obvious that in this theory, which contains the general characteristics of the public expediency, does not Ability to provide a list of solutions. Rather, in all Hudud - according to this general criterion and the characteristics of the theory of public expediency, which pays attention to both freedoms and individual rights and the public good, and considering the conditions governing that situation and the degree of development of that society, ethics and habit People's decisions are made.

In states where public order always takes precedence over liberties and individual rights, the provisions of criminal law, especially in crimes against security, are defined and regulated in such a way that they can provoke violent and disturbing protest behaviors in the fragility of the political climate. And do not place them in the open circle of crimes against public order and security. Therefore, the lack of rational and fair decision-making methods and institutions leads to the gradual weakening of individual rights and freedoms in favor of public authority. It is in such circumstances that limiting the authority of the government and political power in this area is necessary and appropriate (Rasekh, 2016, p. 251).

The Place of Expediency in Hudud Crimes

In the discussion of extreme crimes, all these crimes are considered as major sins and are considered as a major sin before they are considered as a crime. This relationship has led to the discussion of Hadd in terms of procedure, proof process, etc., rules that if considered without considering the long-term goals of the Islamic legal system, it will seem inefficient and inconsistent. In Islamic jurisprudence, expediency is the basis for forging and legislating the Shari'a rules, and in

addition, it is the source of inferring the Shari'a rules and also, the basis of management and administration of society and the issuance of government decrees is used and can be considered in the implementation stage of decrees, especially boundaries.

Imami jurists agree on the expediencies and corruptions based on the rules of Islamic law; That is, what is considered obligatory has an expediency and what is considered forbidden has corruption and harm. There are also reasons for this in the Quranic verses and narrations received from the Prophet and the Imams (AS) (Hor Ameli, 1403 AH, p. 45).

Undoubtedly, in the expediency, special attention should be paid to the two elements of time and place. The requirements of time and place, effective and have a role in the Shari'a rulings, are those changes and transformations that occur in human life and are in accordance with the expediencies, goals and objectives of Islamic Sharia. The evolution of custom and habit, which changes the titles and subjects of the rulings in the course of time, is an undeniable rule.

Undoubtedly, the legal system of Islam and especially its criminal law is based on the observance of expediencies and corruptions. In the book "Islamic criminal legislation" it is stated:

Acts that are considered a crime in the Islamic penal system and are commanded and forbidden are due to the fact that committing or leaving them causes harm to the social system or their beliefs or the life of members of society or their property or reputation or feelings. Or other matters that are necessary for the community, maintaining them and not deviating from them. Islamic Sharia, in order to protect social expediencies and military protection, which is the basis of society, and to guarantee the survival of strong, committed, and morally virtuous societies, criminalizes and punishes some acts (Odeh, 2000, p. 77).

By following the rules and laws of Islam, we will come to the fact that all Islamic rules, with the exception of them, contain valid expediencies that have been legislated because of their existence. In Islam, no ruling can be found in which there is no expediency; although in some cases, the expediency of legislation is hidden from many people, different types of aggression and violation of these expediencies create different types of crime (Feyz, 2006, pp. 77-76). Therefore, it can be concluded that crimes are based on expediencies and fall into five general categories:

1. Crimes which essence is violated.
2. Crimes in which religion and belief are violated.
3. Crimes in which reason is violated
4. Crimes in which generation is violated.
5. Crimes in which property is violated.
6. Crimes in which society and public security is violated.
7. Crimes in which the dignity of individuals is violated.

There is no doubt that in each of the five categories, there are many small and large crimes. If we put each group in a pyramid, a crime will be placed at the top, the punishment of which is a Hadd or retribution of the soul. At the base of the pyramid are very small masses, and the higher the rule is assumed, the larger the masses become, except for the masses at the top of the pyramid and the greater punishment; That is, the hadd or qisas of the soul, the rest of the crimes from the bottom to the top all have ta'zir punishments.

For example, at the top of the pyramid of crimes against the spiritual integrity of individuals is Qazf, and insults less than Qazf are considered as ta'zir crimes under its category and are lighter than that. Paying attention to the observance of excellent materials by the Shari'ah in the Hadd, leads us to the answer to the question why there is no closure and intercession in the Hadd and they are also specified in terms of quantity and type? In punishments, expediency is the responsibility of the ruler, in other words, "by the way of the ruler"; That is, whatever the ruler deems fit, he rules.

The Role of Expediency Oriented Criminalization in the Islamic Penal Code

A brief look at the Iranian criminal law reveals that in many cases the issue of expediency in criminalization has been considered. This topic examines the issue of expropriation in two laws; 1) "Islamic Penal Code approved in 2013" and 2) "The fifth book of the Islamic Penal Code ("punishments and deterrent punishments)" has been prepared.

The Rold of Expediency Oriented Criminalization in the Islamic Penal Code Adopted in 2013

The issue of expediency in criminalizing the Islamic Penal Code has been considered in various dimensions. It seems that the legislator has determined the punishment for criminal acts, taking into account various individual and social aspects and the criminal consequences of the issue.

The Crime of Adultery

According to Note 2 of Article 224 of the Islamic Penal Code adopted in 1392, "Whenever a person commits adultery with a woman who is not satisfied with adultery with him while he is anesthetized, asleep or drunk, his behavior is considered as rape." "In adultery by deceiving and deceiving a minor girl or by kidnapping, threatening or intimidating a woman even if it causes her to surrender, the above sentence is also valid."

In this article, the legislator seems to have addressed the issue of protecting children and adolescents and people with disabilities and protecting the vulnerability of minors. In this paragraph, the legislature, in conjunction with domestic and international principles and international conventions such as the Child and Adolescent Protection Act of 2002 and the UN Universal Declaration of the Rights of the Child of 1959, specifically protects minors and uses all forms of violence. To confront these people.

According to Article 225 of the Islamic Penal Code adopted in 1392, "The hadd punishment for adultery is stoning for adultery and adultery for stoning." "If it is not possible to carry out the stoning, upon the proposal of the court issuing the final sentence and with the consent of the head of the judiciary, if the crime is proven, it will result in the execution of the adulterer and the adulterer, otherwise it will result in 100 lashes for each."

In this article, the legislator has opposed the death penalty and has considered the protection of human dignity. Restricting stoning and converting the punishment in the expediency of the community and international authorities has also been an expediency-orientation approach in criminalizing this issue.

The Crime of Sodomy

According to Article 234 of the Islamic Penal Code adopted in 2013, "the hadd punishment for sodomy for the perpetrator, in case of violence, reluctance or having the conditions of Ehsan, is execution, and otherwise one hundred lashes." "The Hadd of sodomy for the object in any case (presence or absence) is execution."

In this article of the law, the legislator also wants to prevent the use of the death penalty as much as possible by changing the sentence, and has considered the expediciencies of the community and international authorities. In 1992, in order to reduce imprisonment and those who go to prison, the legislature envisaged a new institution in the Islamic Penal Code called Alternative Punishment of Imprisonment, which stipulates that if there are special conditions, imprisonment can or should be changed to other punishments.

Crimes Against the Internal or External Security of the Country

Article 286 of the Islamic Penal Code adopted in 2013 states: "Everyone, widely, commits crimes against the physical integrity of individuals, crimes against internal or external security, spreading lies, disrupting the country's economic system, arson and destruction, spreading toxic and microbial substances." And endanger or establish centers of corruption and prostitution or vice versa in such a way as to cause severe disturbance of public order, insecurity or major damage to the physical integrity of individuals or public and private property, or cause widespread corruption or prostitution "He is considered a corruptor of the earth and will be sentenced to death."

In this legal article, the legislator has separated moharebeh as corruption on earth. According to the Islamic Penal Code adopted in 2013, both the crime of moharebeh and corruption on earth are considered as partial crimes, he said: Before the law of 2013, there was an overlap regarding

these two crimes; In other words, the legislator sometimes used the title of corruption on earth and punished it in cases where the crime was not Hirabah.

Among these cases, we can mention the Law on Punishment of Disruptors of the Economic System, which in this case, cases called corruption on earth and the death penalty was set for it, but sometimes it was interpreted that another crime may have occurred or in other words, a crime not committed in law.

In the Islamic Penal Code of 2013, the legislator separated the two titles of moharebeh and corruption on earth, stating: In Article 279 of this law, the legislator has defined moharebeh and stated that moharebeh is the drawing of a weapon for the purpose of life, property or honor It is the people or their intimidation, in a way that causes insecurity in the environment. A person who takes a weapon with a personal motive towards one or more specific persons and his action is not public and also a person who takes a weapon against the people but does not deprive him of security due to his disability is not considered an enemy.

Another expediency-orientation approach in criminalizing the Islamic Penal Code is to protect society from the dangerous actions of some individuals and white-collar workers and to prevent disruption in the country's economy.

Basically, what happens in the process of corruption on earth is something beyond a mere crime that affects one or a group of people. These kinds of crimes, which were mentioned in this memo, have a direct effect on the Islamic system or at least a certain class of society.

Armed Uprising Against the Regime

Article 287 of the Islamic Penal Code states: "A group that launches an armed uprising against the basis of the Islamic Republic of Iran is considered a rebel, and its members will be sentenced to death if they use weapons."

The crime of armed insurrection was also emphasized in Article 186 of the 1991 Islamic Penal Code. What follows from the provisions of this article seems to be the expediency of criminalization in this legal article, the protection of the whole system and the basis of the system of the Islamic Republic of Iran, because the armed uprising is the subject of the crime, ie what the crime is on the Islamic Government (Pourbafarani, 2011, p. 45). In the spiritual element of this crime, malicious behavior, which includes the overthrow of the system, is included.

Article 489 of the Penal Code speaks of the formation of an office or a population group or a population branch of more than two people inside or outside the country to disrupt the security of the country.

Article 19 of the Criminal Code of the Armed Forces, passed in 1992, also condemns the punishment of soldiers who form a population of more than two people to disrupt the security of the country.

Article 288 of the Islamic Penal Code adopted in 2013, "If members of a rebel group are arrested before a conflict and the use of weapons, if the organization and its headquarters exist, to third-degree imprisonment, and if the organization and its headquarters are destroyed "They will be sentenced to fifth-degree imprisonment."

In this article of the law, it has been in the expediency of the legislature to criminalize, Islam and encourage insurgent groups to cooperate with related bodies. The Islamic approach to Islamic punishment indicates that punishment in Islam is for the purpose of correcting and disciplining individuals, and if remorse and remorse for individual action and behavior are identified, the Islamic ruler can reduce his punishment.

A person who commits a crime, while having to endure a just punishment, must always have a way back so that he can return to the arms of his family and society in the hope of the forgiveness of the Islamic ruler. But pardoning criminals can have a huge impact on reducing the suffering of families whose heads are in prison, because in fact the families of criminals are also punished by their imprisonment, which pardons those criminals who actually regret themselves. It has educational effects for prisoners and many blessings for their families.

Conclusion

The purpose of this study was to identify the challenges of expediency-orientation criminalization in the penal system and the Islamic Penal Code.

The results are as follows:

In the Constitution of the Islamic Republic of Iran, in Article 112, the principle of expediency is interpreted as the expediency of the system, and there is no phrase called public expediency, which creates several challenges in the criminalization process in countries.

The subject of expropriation has been used in cases of the Islamic Penal Code of 2013, such as Articles 88 and 278, in crimes such as ta'zir crimes, especially against children and adolescents, defense of victims' rights or people's rights, which Be. In the Islamic Penal Code, the ruler does not consider himself obliged to follow the victim's desire to apply punishment or approach non-criminal measures, but his decision is the result of considering several expediencies, one of which is the victim's conditions and rights.

In the Islamic Penal Code adopted in 1392, the expediency -orientation approach to criminalization has been considered. Articles 224, 225, 234, 287 and 288 criminalize various issues, taking into account individual, social, national and international expediencies. The legislator, in the Islamic Penal Code adopted in 1996 (penalties and deterrent punishments), the issue of expediency, has played an effective role in criminalization, which includes related legal articles to articles; 516, 561, 564, 701, 710, 712 and 718 of this law.

Some principles and necessities of criminology justify the effective intervention of expediency, so that the concepts of public order and its aspect in the structure of criminology show its relationship with expediency and lack of connection with various and practical concepts of expediency in this regard.

In order to have a criminal policy with a justified and purposeful strategy in justifying the intervention of criminal law, the legislator is in dire need of expediency in the public opinion of society and maintaining this legislative strategy will guide the penal system of any society to the symbols of justice and its high meanings.

The social context and structure of societies show the effective role of the extent and effect of expediency in criminology. The quality and quantity of this role can be examined in the form of various reasons in the legal basis and criminal policy of a penal system and finally the need Existence of the involvement of practical concepts of expediency in criminalization.

Important tools for exercising social control follow certain principles in decision-making and criminalization. In this regard, several issues are significant. The first is to examine challenging situations, because criminalizing a behavior means placing that action in the sphere of influence. The government, as well as recognizing that the government has legislative authority, is another issue we must assess the social benefits and costs of criminal action on a particular type of behavior, and finally the overall capacity of the penal system given its resources at a given time. Relevant, when the burden of the system is excessive, the quality of its efficiency decreases, so in order to avoid overburdening the burden of the penal system and determine a certain range, it is necessary to specify this range in criminal decisions.

In all dimensions, forms and concepts of criminal policy, including legislative, judicial, preventive, executive and even international treaties, there are significant and effective signs of all words of individual and social expediency, the behavior of the legislator in criminal law is certainly the most important basis. Criminal policy is for new criminalizations and decriminalizations and increase and decrease of punishments, including deeper and more serious attention to comparative criminal law, legal system and legislation of other countries and human rights teachings in formulating a useful and desirable criminal policy.

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