

# The Position of Decriminalize Principle in Iran's Legitimate Criminal Politics

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## Abstract

Criminality, by its very nature, has limitations and prohibitions. The violation of this restriction imposes a penalty, which is another form of restriction. Undoubtedly, there must be a rational framework and a rationale for creating this ban, which implies freedom. In the meantime, one of the strategic principles in criminal law is the principle of decriminalize. This principle has a special status in the country's criminal policy. Because high rates of convicts, especially convicted prisoners, and lack of sufficient resources to maintain and cost them, as well as the very bad consequences and consequences that this kind of punishment creates for the individual and the community. The importance of implementing this principle doubles. Accordingly, the judiciary in the world is trying to resort to the application of this principle in its meaning, to moderate these great effects and costs. In this regard, the Iranian legislature, together with other judicial systems, has introduced some provisions in order to implement this principle. Because in Iran, some of the problems of the judiciary are due to criminal penalties. Iran's criminal policy, by applying this policy, has been accepted in various forms, according to the type of crime, of this principle. In this article, we tried to investigate the case law of Iran through the review of Iranian criminal law.

**Key words:** Principle of decriminalize - Legitimate criminal policy

## INTRODUCTION

In Iran, in view of the ultimate goal of a criminal policy based on secession, the prevention of crime, and the reform and treatment of delinquents, the main task of the realization of the objectives of a criminal policy is the judicial branch, because in Part Five of Article 156 The constitution, the proper action to prevent crime, and the reform of the perpetrators, are the primary duties of the judiciary. However, achievement of such a goal, contrary to the appearance of the matter, requires the cooperation and coordination of all the institutions of the entry, and among them, the inevitable role and mission of executive and legislative powers cannot be formulated in the formulation, formulation and implementation of a criminal policy, Ignoring, and this issue, the executive

branch's core duties, does not comply with the relevant provisions in the implementation of the constitutional principles, especially on the rights of the people and the legislature. For this reason, some believe that it might be possible to assign this heavy duty to the judiciary from the state of affairs, since, in principle, there is a reference to more offenders, prosecutions, trials and punishment of offenders, as well as Such a proposal can be submitted to the parliament in the form of statutory bills, a judicial branch. (Farajiha, Mohammad, 1991, 42), inflated inflation is not a new phenomenon, and some writers such as Bosa and Penetal have referred to it before World War II. (Bosa, Pinetl, 1990, para. 2), but the phenomenon is increasing nowadays. This inflation mainly includes what today is called technical penalty law, namely crimes pertaining to a specialized domain, such as public taxes, urban planning, the environment, and so on., Is. The development has been further developed.

The phenomenon of cumulative inflation is harmful at least for three reasons:

1. This phenomenon destroys the meaning and concept of fundamental values among citizens. And the importance of issues is at a level.

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2. Criminal inflation creates a constantly growing criminal law that, by hurting fundamental freedoms, creates false and humiliating fears among citizens.
3. Criminal inflation, on the other hand, causes citizens, casualties and victims of abuse. Because they are not aware of the growing laws, and therefore, they are dominated by the offices of the citizens, and sometimes excess and selfishness, and even extortion.

## CONCEPT OF DECRIMINALIZE

In addition to the criminalization and prosecution, another approach to reducing the criminal population is to decriminalize. Decriminalize, including all forms of *détente*, is a criminal offense. In this context, a change in the nature of crime from crime to injustice may be regarded as decriminalize, in decriminalize it is not meant that the current criminal character of the act of abandoning the act or behavior should be considered. But also the purpose of making crime and punishment. In the sense that in most cases the severity of the punishment would be reduced, or the punishment would be punished. (Kalantari, 2002, 312), defective decriminalize or decriminalization is more than criminalizing the perpetrators of criminal justice since, with the preservation of a criminal record, there are fewer cases of behavior that only the criminal response has become obsolete. (Rajjan Asli, 2002, 99). In addition to legal and judicial decriminalize, decriminalize can be divided into unconscious and voluntary forms. In an unconscious state, the tendency towards the elimination of punishment, which is relative to individuals or to certain behaviors, is reduced. Without legal authority, there is no evaluation power, about resorting to them. (Mohsenian, 2005, 26). In this case, this type of decriminalize can be attributed to decriminalize through repentance and denial, and Forgiveness in the law of punishment for adultery, sodomy, *mosahegheh*, drinking Vintage, and warrior. But in a deliberate or deliberate decriminalize, there is a process that tends to slow down the implementation of the punishment towards individuals or behaviors. And in that monitoring of the evaluation, and the equivalence of such a solution, is taken into account by some law enforcement agencies. (Mohsenian, 2005, 26).

## HISTORY OF DECRIMINALIZE

Today, the punishment process has faced numerous and serious challenges in all societies, and the phenomenon of "criminal crisis" or "crisis of prison" has been raised as a major concern for the policy of criminal law; on the other hand, the concern about respect for human rights And the human dignity of citizens, and economic, social and political considerations, in the form of criminal offenses such as decriminalize, decriminalization, prosecution, and

the application of restorative justice rather than criminal justice, and repression, at least extending it along with the criminal system, in the form of more use of restorative instruments, As a punishment, as a deterrent, and in opposition to criminal acts. Therefore, it is less a society that, with little or no qualitative (whether it be more violent and more dangerous and organized), or geographically (ie, transgression of crime) (Saffari, Dr. Ali, 2005, 12).

## DIFFERENCE OF DECRIMINALIZE WITH DECRIMINALIZATION

The Council of Europe, the European Organization for Cultural Diversity, Intergovernmental and Parliamentary Cooperation, was established in 1949. The council, in 1956, has given special attention to studies and criminological research, with the establishment of a European Special Committee on Criminal Matters. The committee, in 1972, commissioned a study on the notion of decriminalization, with respect to the criminal law of the member states. (Article of the report of the European Committee, special for criminal cases of Nasrin Mahra translation).

In the report presented by the committee, the definition of decriminalization is as follows. Decriminalization involves processes through which the jurisdiction of the criminal system is denied to act as a reaction to some kind of behavior, that is, for specific criminal behavior. This may be done by legislation or by way of which the courts interpret the law. In the first case, it is called formal decriminalization, and in the second case, actual or actual de-decriminalization. In the near future, with the explanation that practical de-commissioning is possible, it will provide a legal basis for criminalization. (Delmas Marty, 2008; 84), in other words, the practice of decriminalization is a gradual phenomenon of a decline in the functioning of the criminal justice system in relation to certain behaviors and circumstances that, formally and legally, have not changed in the jurisdiction of that system. This process, which is said to be appropriate in the pursuit stage, is more related to crime without sacrifice. Criminalization does not necessarily entail a change of opinion about them, the inappropriateness of certain behaviors, or the inappropriateness of the authority of state authorities. Sometimes, though, the criminal behavior that has been decriminalized is still considered undesirable, and the government is deemed to be righteous for dealing with it. However, the decision to remove the criminal description is taken from that vicious act. In such cases, sometimes non-responses and interventions are chosen, and the way to deal with this unfavorable situation is given to those who are directly concerned. (The European Council's December 2005 Decriminalization Report, 2005, p. 10),

despite today, one of the possible reasons for accelerating decriminalization, is to accept that some behaviors are not undesirable, and whether they are guilty or not, in the eyes of public opinion Not considered. Therefore, we must preserve the concepts of crime and delinquency for a variety of behaviors that violate the fundamental values of society. (Mahra, 1998: 131)

## DIFFERENCES OF DECRIMINALIZE, WITH DIVERSION

diversion, the removal of a suspect may be defined from the criminal justice process, which may be conducted at each stage of the proceedings. (Najafi Abdanabadi, 2011: 130), when this occurs within the framework of a criminal-law-based policy. With the withdrawal of the behavior, the judicial process of criminal enforcement is also lifted. Therefore, there is a close connection between these concepts. In other words, diversion, decriminalization and decriminalize are common goals for the Denial, which limits the scope of the criminal system's intervention. However, in a number of jurisdictional cases, it did not mean punishment, since despite the transfer of diversion to deal with many prohibited behaviors, from the criminal system to the administrative system, there is still safeguarding the special performance of the criminal system, such as imprisonment for certain behaviors. (Zeinali and Ahmadi, 2004, 227), thus, it seems that the reform of the rules and regulations concerning the jurisdiction and the process of proceedings, in order to eliminate the guarantee of especially penal offenses, such as the imprisonment of cases of jurisdiction, Administrative - Executive is given, it is necessary.

## CRIMINAL POLICY

The term criminal policy was first used by the German scientist Fouer Bach in his book Criminal Law, and the definition that he presented is "The set of oppressive and criminal methods that the government uses to counteract the crime of the reaction it shows. "And elsewhere, criminal law is defined as the" legitimate state of mind ". After Buck, the term criminal policy was used by Henke (and VoLizt) as well. The list in its definition has brought criminal policy:

Criminal policy is a discipline that, according to historical and philosophical sensitivities, strives to formulate criminal and criminal theories that are useful in practice, according to him, the crime was caused by individual and social factors, and Therefore, the social policy and criminal policy have been separated from each other and emphasized that the issue of social policy (social prevention), the elimination

of all or at least a limitation of the social conditions of crime is, while a criminal policy is in a position where they are prosecuted It is a screening of the struggle against crime, through individual influence against the perpetrator (Nurbaha, Reza, 1991, 71).

From the nature of nature, the scope of criminal policy is not limited to a set of rules of law, namely, criminal law and the law on the prevention of crime, but also the operation of various institutions that carry out the prescribed rules, such as law enforcement, prosecutors, authorities Judiciary, the Prisons Organization and other affiliated institutions, which are effective in shaping the nature of criminal policy (Gösen, Raymond, 1992, 278). In the meantime, the mark of that cell must undoubtedly be the originator of the view of diversity, and the multiplicity A tool to combat delinquency. According to this thinker, criminal policy is one of science, and all art, the subject of which is the formulation of the best positive rules, is in the criminological outburst, according to him, the criminal policy is the choice of society in determining the crimes that the law suppresses. In order to provide support for competent people. (Ansel, Mark, 1366, 16), Ansel's view was gradually becoming the basis for a new theory, according to which, according to the type of crime, the individual's situation of the offender and other circumstances, and the most appropriate reaction, is not necessarily criminal, but also non-punishment mechanisms Can be effective, while the government should not only be the exclusive custodian of criminal justice, and the use of non-governmental and popular institutions is also possible. In addition, the response is not limited to crime, and before that, it is also part of the prevention process. From this point of view, it is not solely a crime that must be considered, but must be taken into account in any abnormal and deviant behavior that violates the moral and social rules that could serve as the basis for future criminal norms. A criminal policy based on its new concept is the bridge between criminal law and criminology. (Nurbaha, Reza; 1999, 13)

## LEGISLATIVE CRIMINAL POLICY

It recognizes the legislative criminal policy, the tastes of different legislators, and their choices in various types of crimes and punishments, and in general how to deal with the criminal phenomenon, and the prosecution of crimes, which crystallizes in different laws of each society, including criminal law, (Christian, Lazarges, 1996, 17, 17), Iran's criminal tribunals, after the revolution, based their legislation on Islamic principles and the principles of sharia. In the meantime, the criminal law of Iran was conferred by the law and the system of classification of Islamic punishments replaced the customary criminal system.

Subsequently, the necessity of enacting the criminal law was made by the legislator, in a hasty way without strong culture, and a consequential analysis of the translation of the legal texts. (Milki, Ayub, 2004, p. 1383, p. 150), as well as the community of the community to refrain from carrying out degrading behaviors, and moral and social anti-values, with the aim of reverting the values and norms governing the community, it is well worth the society to respond Do not compensate for any deviation, by law and severe punishment. (Fletcher, 1998, p. 79)

## DECRIMINALIZE IN ISLAMIC TEACHING

The choice of punishment, because punishment is bad and harsh in its nature, always requires sufficient monotheism. (Duff, Antony & David Garland, A. 1994), Muslim scholars have long enjoyed the same sense of punishment in the analytical discussions of punishment. According to Shafiqi, rebellion and reprisals have been tantamount to expediency and deterrence of corruption, although they themselves are losing self-esteem and shedding blood, which in itself is a blast. (Al-Shatebi, 2003, 174), along with the principles of jurisprudence, the prediction of Enhancement for sins and offenses, also depends on the expediency. The sayings and votes of many jurists (religious scholars) testify to this; for example, Sheikh Tusi has said that Enhancement is due to Imam, and his execution is not obligatory to him. Therefore, if he considers the Enhancement to be expedient, he will refrain from Enhancement if he considers it desirable; whether the Imam believes that, besides Enhancement, another way for the perpetrator is not a deterrent, or he believes that the perpetrator has committed another way Except for Enhancement, it abandons the commission of action. However, some have said that if the perpetrator is abandoning the act of committing an act other than Enhancement, then the Imam will have the right to abandon it; however, if the perpetrator can only abandon the act by committing Enhancement, his Imam and this comment is more consistent with the precautionary principle. (Tusi, 1972, 69), Enhancement is the function of expediency rather than being directed to orphanage (Maki Ameli, No data, 144). Meanwhile, we consider two principles of the principles of Islamic law related to the principle of decriminalize:

### The Principle of Innocence

The reciprocity of the provisions of this principle in the realm of criminalization means that the imposition of any obligatory duty on a specific task where their violation results in a crime and, as a consequence, punishment, is contrary to the principle of exclusion, except that sufficient reasons and requirements, For such a task. In the votes of the jurists, the citation to the principle of innocence

is commonplace in order to deny Enhancement in doubt (Tusi, Mohammad ibn Hasan, 2001), the jurisprudential difference, about whether Enhancement is attributed to any sin, or especially the great sins, caused by the same Attitude to the problem. Some jurists, based on this minimalist approach, consider that the determination of punishment for minor sins is not permissible. (Khansari, 1985, 118)

### Principle of Dominance

The principle of the domination and liberty of human beings is one of the most important rules of Islamic jurisprudence on their lives and their personal belongings. This is because all human beings have been created free and independent (Montazeri, 27, 1999), the principle of non-authority and lack of domination of one another is based on the established principles and rules of jurisprudence (Naraghi, 1996, 178), In fact, the second principle is deduced from the original principle. (Al-Bahrololum 214, 1983) Provisions These two principles should never be restricted to the domain of property or personal affairs. They are observing the rules of the Islamic law, politics, public law and public affairs.

## THE STATUS OF THE PRINCIPLE OF DECRIMINALIZE IN IRAN'S CRIMINAL LAW

The Islamic Penal Code, as one of the most important laws of Iran, has undergone many changes over the past three decades. One of the most important innovations of this law is the new legislature's perspective. In Iran, decriminalize, in less than a decade, has been taken into account in judicial procedures, letterheads, macroeconomic policies, and in the fifth law of the law. This will reduce the cost to the government, due to the greater confrontation of people with the criminal justice system, the prevention of the restriction of the freedom of individuals, the prevention of misuse of the competent authority, their status and competence, the detection of crime, and the likes It becomes. These actions can be considered as decriminalize effects.

### Decriminalize at the Prosecutor's Office and Before the Issuance of Prosecution

In accordance with the lawfulness of pursuit, the prosecutor is obliged to prosecute offenders, but on the basis of adequate prosecution of the prosecution authority, it is permissible to prosecute the prosecutor if it is not appropriate to prosecute a defendant, to prosecute the offender permanently, or Temporarily ignore. Although the rule of law, or the necessity of prosecution, is in Iran's criminal policy, but the effects of the appropriate prosecution rule have emerged in Iran's constitutional laws as a result of developments in criminal law.

### **Archive the File**

In accordance with Article 80 of the Criminal Procedure Code, in grades 7 and 8, which are executed directly in court, in the absence of the plaintiff, or if they have passed, and the offender has no effective criminal record, the court may, with Consideration of the social status, and the accused's records, only refrain from prosecution for one time, and issue a file archives. The court can, if necessary, take the accused from writing in writing to comply with the law.

### **Suspension of Pursuit**

Suspension of pursuit is one of the obvious manifestations of the principle of the position or suitability of prosecution, the principle that is prosecuted against the principle of legality means that the prosecutor is authorized, in cases where the prosecution is prosecuted for the benefit of the prosecution Society, under the conditions of foreseeability, refrains from prosecution in the law, and refuses to file a case to court in court. This is also in the interests of the accused, that it is liberated from possible convictions and punishments, as well as for the benefit of the community, which saves the costs of the judiciary, and seeks to prosecute more serious crimes. (Khaleghi, Ali, 2009, p. 38)

In Iran's criminal law, the principle of the suitability of prosecution was first considered in the form of suspension prosecution, that is, until then, the system governing the criminal justice system of Iran, like some countries, was the legal system of prosecution, but with prediction Suspension of prosecution, in 1979, in Article 40 of the Criminal Procedure Code, the appropriate follow-up system was accepted in Iran.

Article 40 of the Code of Criminal Procedure was repeatedly stated: "In offenses, if the accused confesses to committing a crime, and this confession is reasonable in the contents of the case, if the prosecutor, considering the social status and background of life And the spirit of the accused and the circumstances that caused the offense to consider the suspension of prosecution appropriate, he can, suspend the prosecution of the following conditions, and file the case with the prosecutor: 1) the charge, from The offenses set forth in Section II of the Public Prosecution Law, 2. the defendant has no record of effective conviction, 3. a private victim has not been in between, or has passed. The Tribunal shall, if it approves, suspend the suspension, it shall be definitive, otherwise, it will proceed to the charge in accordance with the rules. Once the defendant has been served, after the suspension of the sentence, In 56, the legislator amended article 40, and in Article 22 of the law amending some of the laws of the court, he gave the prosecutor the right to suspend the prosecution, under certain conditions, And ordering that the case be sent to

the Tribunal for confirmation.

In accordance with Article 81 of the new procedural law, the Iranian legislator has given the prosecutor, as a prosecutor, the prosecutor, as one of the prosecution alternatives, in pursuit of the principle of the position or suitability of the prosecution as one of the prosecution substitutes, so that if he has the consequences of criminal malpractice, It recognizes the conviction of the accused, such as the criminal offense, familiarity with the prison environment, and the ways of committing a crime, more than its benefits, for the community. For a period of six months, up to two years, the public prosecution suspended crimes from grades 6, 7, and 8, so that if the defendant did not commit a crime during this period, he would not pursue him for that crime.

### **Leave the Pursuit**

In accordance with Article 79 of Iran's Criminal Procedure Code, the Prosecutor will issue a prosecution if the plaintiff's request to leave the prosecution is issued. This does not preclude a reprimand scheme within one year from the date of issuance, "according to the issuance of the same article, the issuance of prosecution for permissible crimes, and pecuniary punishment. In public-law crimes, the passage will only be effective in terms of penalties. In the case of the conditions for the issuance of the prosecution, in the court, according to the above, the petitioner's request must be made before the issuance of the indictment. The point that, regarding the issuance of the sentence There, that is, the severe or mild type of punishment is ineffective in issuing this statement.

Also, Article 106 stipulates that: in cases where the offender has not complained about the crime within one year from the date on which the crime was reported, his right to sue shall be void unless he was dominated by the accused or for any reason outside the authority is not able to file a complaint, in which case the deadline will be calculated from the date of removal of the obstacle. Whenever a victim of a crime dies before the expiry of the term, and no reason to oppose the plan, each of his or her heirs, at the expiration of six months from the date of death, has a right to sue.

Note- Apart from cases where the plaintiff has been charged, his complaint, or his heirs, shall be considered if the subject matter of the complaint in accordance with article 105 of this law is not subject to time lapse.

### **Chase Time Tracking**

Article 105 of the Islamic Penal Code, adopted in 2013, refers to the review of time.

The article reads: "Time lapse, in the pursuit of crimes, terminates the punishment imposed on the offender, which has not been prosecuted from the date of the crime, until the expiry of the expiration date, or, from the date of the latest prosecution or investigation, until the expiration of these terms, not leading:

- (A) Grade 1 to 3 offenses, with the expiration of fifteen years
- (B) Fourth Grade Offenses, Ten Years Expiry
- (C) Penalties of the fifth grade, with the expiration of seven years
- (D) T. Sixth Grade Offenses, With Five Years Expiry
- (E) Seven-eight-year grave offenses, with the expiration of three years.

Note 1: Follow-up or investigation is an act that judicial authorities perform in a legal duty such as summoning, interrogating, listening to testimony and witnesses, investigations, or local investigation and prosecution.  
 Note 2- On the issue of the appointment, the timing of the prosecution begins from the date of the definite vote of the referendum, which is subject to criminal proceedings, subject to its issuance.

According to Article 109, the following offenses are not subject to prosecution, sentencing and execution:

- (A) Crimes against the internal and external security of the country
- (B) Economic offenses, including fraud and offenses referred to in article 36, this law, subject to the amount specified in that article
- (C) Crimes related to the law on counter narcotics

Article 113 states: "Suspicion of prosecution, sentencing, or execution of a sentence does not preclude the claimant's private claim, and the victim of the offense may file a private suit in the competent authority."

## **DECRIMINALIZE IN THE COURT, AND BEFORE THE ISSUANCE OF THE VERDICT**

### **Postponement of sentence and Suspension of Punishment**

In the course of the emergence of a realistic school, and as a result of a change in approach from an offense, to an offender, and following the importance of finding the case of the accused personality, two legal entities in the Iranian legal system entered. The Punishment Authority, which entered Iran's legal system in 1925. And another institution for postponing the issuance of a sentence, one of the innovations of the law of Islamic conduits approved by 2013.

The two institutions are preventing the perpetrator's misconduct from having long-term prisoners, helping the

offender to socialize, and returning to normal life in society, as well as saving prison fees, and using the community from criminals' work and activities. (Validi, 2000, 8), delay in the word, meaning suspending, hanging and hanging something, has come to something else. (Amidi, 1984, 404), and in the legal term, postponement means the rejection of the issuance of a sentence, which, in article 40 of the Islamic Penal Code of Iran, has given the court the right to be found in grades 6 to 8 after conviction in spite of the circumstances, postpone the issuance of the sentence for 6 months to 2 years. This delay can be both simple and careful. It seems that the basis of the philosophy of postponement of sentencing, a kind of warning to unprecedented criminals, and prisoners with criminal acts. It is also justifiable with tagging theory. So that it prevents traffickers from sticking to delinquency. (Ardebili, the Defense Newspaper, 2012, 19), the suspension of the enforcement of the sentence, referred to in Article 46 of the Islamic Penal Code, should be the same as the conditions for postponing the issuance of the sentence. With the difference that the suspension is suspended for all or part of the punishment. In addition to crimes in Articles 3 to 8, and also in accordance with Article 47, some offenses have been removed from the suspension of the execution of the sentence. The total amount of the postponement of the sentence, and the suspension of the execution of the penalty, is the arbitrary nature of the actions, by the court. It was desirable that the legislature, at least to postpone the issuance of a sentence, proceeded to court in order to enforce the law, in order to prevent it from appearing. Hence, it would be hoped that the perpetrators would not be imprisoned in micro-crimes, and in particular short-term imprisonment, and that the perpetrators of criminality should be regarded as a year of freedom.

### **Reduction of Penalties, and Exemption from Punishment**

In accordance with Article 37 of the Islamic Republic of Iran's Disciplinary Law, in the case of existential or multi-directional rebates, the court may reduce the sentence of punishment in a way that is more appropriate to the accused as follows:

- A. Decrease of imprisonment, up to three degrees
- B. To turn the property confiscated into a fine of one to four
- C. Permanent detachment, to the detachment for a period of five to fifteen years
- D. Reducing other punishments of one degree or two, of the same type or other type

Article 38- Discounts are as follows:

- A. Pass a shack, or a private claimant
- B. The effective cooperation of the accused in identifying partners or deputies, studying evidence, or discovering property and objects resulting from a crime, or used

- to commit it
- C. Certain situations affecting the commission of crime, such as behavioral, provocative speech of the victim, or the existence of a dignified motive for committing a crime
  - D. Notifying the accused before the prosecution, or his effective confession, during the investigation and investigation Repentance, good record or special status of the accused, such as old age or illness
  - E. An attempt by the accused in order to reduce the effects of the offense, or his action to compensate for the damage caused by it.
  - F. Mild damage to the victim, or the harmful consequences of the crime
  - G. poor partner intervention, or deputy in crime

This approach by the legislator and the judiciary, which imposes and punishes, is not the best way to fight and prevent crime, is greater in Article 39, so that the legislator handles the court's decision to issue a custodial exemption Specifically, the accused has been released. onditions such as lack of criminal record, prosecution, correction of the plaintiff without penalty, and.

Article 39. In the offenses of grade seven and eight, if there is a discount, if the court, upon conviction, determines that the offender is committed without any penalty, in the absence of an effective criminal record, and the passing of the sentence and Compensation for losses or the establishment of compensation arrangements may result in a fine for impunity.

Of course, in article 39, two points should be noted: one is that the correction of the perpetrator without punishment, how it is established for the court, and, second, that the article is subject, to grade seven and eight offenses.

### Repent

#### *Repentance in Excessive Crimes (the punishments that are punishable in Shari'a are fixed and fixed)*

The fifth chapter of the Eleventh Chapter of the Islamic Penal Code is dedicated to the issue of "repentance of the perpetrator." According to Article 114 of this law, in cases of crimes, except for Shoot and Warrior, when the accused becomes repentant before the crime, and his repentance and correction are established to the judge, the limit shall be set aside from him. Also, if the above crimes are confirmed by confession other than Shoot, if the offense is committed even after proof of the crime, the court can request the head of the judiciary to pardon the offender by the head of the judiciary.

Note 1- Repentance of the warrior, before arrest or domination, causes the fall of the limit.

Note 2: In adultery and sodomy, whenever a crime is carried out with reluctance or a victim of deceit, then the perpetrator of the repentance and the fall of the punishment, as set forth in this article, shall be sentenced to six months' imprisonment or flogging, or both Gets

The fact that, in the event of the repentance of the warrior, he was abandoned before his arrest, in verses 33 and 34 of Surah Ma'edeh, jurisprudence, the former Islamic Penal Code, and also in the wording of Article 114 of the Penal Code. Meanwhile, other prohibited crimes such as adultery, Vintage drinking and other things that are enshrined in the law, repent before the crime is proved, and in the court, in the sense that if the person is arrested and He will be tried and convicted, if he repents before he makes a statement in court, the limit will be set aside. About Shoot, there is also an exception, which is also mentioned in the law. Except for shoot and warrior, in the limited amount of crimes, if the defendant repents before the crime is proved, the limit will be abolished.

According to the Note to Article 114, in adultery and sodomy, if there is anguish and reluctance, the perpetrator in the event of repentance and the fall of punishment is punished, but in other cases, the defendant will not be punished. Major crimes include adultery, sodomy, trickery, Mosahegheh, Qawadi, Shoot, Insulting the Prophet, Vintage drinking, robbery, warrior, baghy and corruption on earth. In fact, 12 major offenses are mentioned in the law, which according to Article 114: In these crimes, except for the shoot and warrior, if the perpetrator repents before the crime is proved, the limit will be abolished from him. Also, about the warrior, if he repents before the arrest of a person, he will be cut off from him, while repentance does not have any effect after the arrest, and does not stop the execution.

#### *Repentance in enhancements degree 1 up to 5*

Repentance in class 1-5 enhancements reduces punishment, and in enhancements of grade 6 through 8, the punishment is dropped. Clause one of Article 115 of the Penal Code, states that the provisions relating to repent, to those who, regulations repetition of crimes according, in case they apply, now is not, if the crimes of imprisonment, from the repetition of the offense, the provisions of repentance about them Will not be applied. Therefore, it should be said that repentance in the punishment of punishment leads to a reduction or reduction of punishment, which is for the first time, and from the second to the top, the rules of repentance are no longer imposed on the perpetrator.

#### *The void of blood, Retaliation, and Shoot's punishment and warrior with repentance*

According to Article 116 of the new Penal Code, atonement, retaliation and Right people and war, to repent

is not set aside, as Diego and retaliation, as Right people, also in shoot repentance brought down the punishment, not as punishment for accusing, like Diego and retribution It is legal, not a right.

### *Confirming of repentance*

Article 117 of the Islamic Penal Code states that in cases where repentance is committed, it causes a fall, or a reduction in the punishment, repentance, reparation and repentance must be established, and the claimant does not commit. If, after applying the rules of repentance, it is proved that the perpetrator pretends to be repentant, the penalty is to be punished and the deductions are to be made, the annulment and punishment will be enforced. In this case, if the punishment is a type of Enhancement, he will be sentenced to the maximum punishment. The explanation is that the substance of the conditions prove repentance, and how to obtain it, according to which, in cases where the conversion is effective, and the collapse or commutation of the sentence, the court must repent or remorse the perpetrator to establish the, and only that the accused declares that he has repented is not enough. This method is different from the point of view of different crimes, for example, if you commit theft, it is necessary to limit the intention of repentance, you must return the property to the robbery, so that it turns out that he really has repented. However, if the court turned to repentance for actions, for example, it reduced or abolished the punishment, after which it became apparent to the court that repentance was not real, repentance would be ineffective., And the punishment returns instead.

### *Providing evidence of repentance*

According to article 118 of the Islamic Penal Code, the accused can, before the verdict is given, submit his repentance evidence, as the case may be, to prosecute or prosecute. In fact, Article 118 has generalized Article 114, since Article 114 refers to repentance before the proof of the crime, and Article 118 provides evidence of repentance before the crime is certain. In other words, it should be said that, in the opinion of the legislator, until the certainty of the sentence, the crime has not yet been proved.

### **Mediation**

According to Article 1 of the Mediation Ordinance, mediation is defined as follows:

(Mediation is a process in which the victim and the accused with mediator management, in the appropriate space about the causes, effects and consequences of the attributable crime, as well as ways to compensate for the damage caused to the victim and the accused and if the agreement is made, the obligations and rights of the parties will be determined.)

According to Article 82 of the Code of Criminal Procedure of Iran, crimes sentenced the six to eight, that their sentences suspended, the judicial authorities may, at the request of the accused and consent of the victim or private litigant, and the obtaining of security appropriate, A maximum of two months is due to the defendant the applicant the right to pursue his education, or to compensate for the crime, and, for the purpose of obtaining a compromise, may, with the consent of the parties, refer the matter to a person or institution for mediation.

In the second paragraph of Article 82, the judicial authority can also refer the matter to the Dispute Resolution Council, or an institution, by agreement of the parties, the initiative here with the judicial authority (the court and the court). But in fact, the second stage is resolved by the community, but mediation is allowed by a judicial authority. After the order is issued, the first mediator should be treated separately with the victim, and talk with the offender, in order to understand their wishes, then make a joint meeting. If mediation is successful, according to the article, if the issue is overdue, the prosecution will be suspended, and the prosecution will be issued. The plaintiff will be registered at the meeting of the Dispute Resolution Council, and no further prosecution will be required by the Prosecutor.

The task assigned to the Court under Article 195 Law of Civil Procedure, which provides that "where possible, with the peace of the parties, the case ends. Court of effort and struggle enough in reforming the interpersonal, the act will, and if you managed to establish peace would be dealt with and voted appropriate, will issue. it can be the best examples mediation judicial considered, as well as of peace and reconciliation, based on some Justice K, the duty, to Referring to the court, invite the parties to the dispute, and in this regard, help them, as well as "advisers and helpers who are based in some militia, before The process of filing a complaint is essentially trying to bring peace and reconciliation between the perpetrators and the perpetrators of time-consuming crimes, to some extent possible, in judicial mediation and "police criminal mediation", which anyway Within the organization. (Habibi, 2007, p. 5)

But has it passed through a mediator that causes a public prosecution to crash, either private, or both? In perpetrators of crime, since the private aspect of crime is overwhelmingly overwhelming, this overcoming the general aspect Spreading both public and private pleas, but in the case of unforeseen crimes Article 82, eliminates most of the private aspect, but the public prosecutor's ruling is determined by the issuance of a suspension sentence. In this case, in unforeseen offenses, the judicial authority may,

with the aggregate of the conditions referred to in Article 82, suspend the prosecution from six months to two years.

According to Note 82, the interrogator cannot mediate, but, according to the note, he may request the prosecutor, in the wording of Article 82, the prosecutor may request a judicial mediation, that is, the prosecutor himself cannot, Mediation, in the case of the prosecutor, who is not going to have any problems in the old days, but how can the court apply to this court, while the court has the authority to issue a ruling, and the prosecutor in the court, the matter is in this case, and opposes the principle of separation of office Chasing and investigating, and issuing votes.

### **Exemption from Punishment**

By establishing this establishment, the Iranian legislator opened the hands of the judge to return the offender to the community, and reduced his punishment, albeit only in low-profile crimes, ie in grades 7 and 8, and has determined that, if the conditions are met by the judge, such as the fact that a person is eligible for reform, and the reimbursement of his interests, as well as compensation for the loss suffered by the plaintiff, he may exempt the perpetrator from punishment. In this new establishment, despite the conviction of the offender, his trial from the penalty, provided that he does not commit a new offense within a specified period. In the Islamic Penal Code, the legislator has spoken in two cases of exemption from punishment, one of which is in Article 39 and the other in Article 45 of this law. Article 39, in chapter four of the Islamic Penal Code, under the title of reduction of punishment, and exemption from it, and Article 45 in Chapter 5, is entitled postponement of the issuing of a sentence. In fact, one of the differences between the two articles is that, in article 39, the Enhancement offenses of Grade 7 and Grade 8, and Article 45, are subject to Enhancement offenses of grade 6 to 8. According to Article 39 of this law, the condition for the exemption from punishment is that the court acquires the qualifications of the offender, that is, first, the person's offense, and then the qualifications of the offender, and recognizes that if the penalty is not implemented, the offender is corrected. Or not, because one of the goals of punishment is to reform the perpetrator.

The issue that, in article 39 of the Islamic Penal Code, as an exemption from punishment, is explained, and some lawyers or jurists, regard it as contrary to the constitution and contrary to religious law, is based on the fact that the legislator has said that, In grades 7 and 8 of the Enhancement offenses, in the event of creating conditions such as rebates, such as the recognition that the punishment is not executed, the lack of effective criminal record, the prosecution and compensation, the court after conviction, The sentence exempts from

punishment. That is, the court, at that time, has been sentenced to pardon, while under articles 96 to 98 of this law, as well as article 110, paragraph 110 of the constitution of Forgiveness, or the reduction of the punishment of convicted persons, in the Islamic norms, after the president's suggestion The judiciary is a leader. But what is expressly stated in article 39 is that the individual is definitely not guilty of any penalty, in order to interfere with Article 110 of the Constitution, or Articles 96, 97 and 98 of the Islamic Penal Code, but only to the court He did not deprive him of any reduction in the conviction of the accused, and the verdict he issued expelled him from punishment.

## **DECriminalize IN THE COURT, AND AFTER THE ISSUANCE OF THE VERDICT**

### **Conditional Release**

#### *Linguistic concept*

Conditional release is a kind of care and monitoring of criminals who are returned to the community under certain conditions.

#### *Conceptual term*

Conditional release is a reward. In this regard, for prisoners of conscience and conscientious conduct, in this context, the conditional release of the imprisoned person is encouraged to demonstrate moral self-esteem during the condemnation, and prison regulations in due course, conditional release is a means, in order to provide peace of mind and order, inside the prison, so that in its shelter, the educational and rehabilitation programs can be properly implemented in the prison environment.

#### *The view of the law*

According to Article 58 of the Islamic Penal Code, adopted in the year 92, in respect of sentencing to imprisonment, the issuing court may, in the case of convicts, be sentenced to more than 10 years' imprisonment, after being held in half, and in other cases, after bearing a third of the period of the sentence, On the recommendation of the prosecutor or the judge to execute the ordinance, subject to the conditions laid down in this article, order a conditional release.

Legislator of Iran has adopted this institution from France. (Mohammad Nejad Ghadekliaee, Parviz, No. 30, 1997). The idea of granting this legal entity to convicts in Iran was also carried out by the Minister of Justice of the Republic of Iran, Hedayati, an effective corrective step, and a point of evolution of the criminal policy in order to protect Society is against the criminals. (Vaziri, Abolfath, No. 62, December and January 1958)

### Before the Revolution

In 1925, when the Penal Code was ratified, conditional release as a criminal policy, and with the aim of preventing crime, was not included in Iran's law. In Iran's law, the release of the sentenced to probation was initially intended to work at the felony or industrial establishments, which was approved by the law on the promulgation of non-political offenders, adopted in 1935. (Agriculture, Abbas, 2006) until in 1958, the government had made a decision to release a number of prisoners due to the lack of a prison, thus, by adopting a single article of the parliament, with three remarks as the law of suspending the punishment of prisoners, caused this to happen. According to this article, all persons who were imprisoned for crimes and crimes (with the exception of the convicted offenders, the bandits and the armed robbers), if they spent half the time of conviction, in the guilty party and two-thirds in the crime, of The rest of the sentence is exempted.

Therefore, by ratifying the article of the law on the conditional release of prisoners, in March 1958, which included Article 9 and the note, they made amendments that provided the terms and conditions for the grant of conditional liberty, and the manner in which it was applied, by The court determined that the offense was punishable by half, and in the case of a crime, two-thirds of the punishment, provided that the person was sentenced to imprisonment for the first time, was subject to release. Article 40 of the former law, regarding the Islamic punishment, with the acceptance of the general provisions of the single article, conditional release, limited to the sentence of imprisonment. (Nurbaha, Reza, 2010)

### After the Islamic Revolution

In 1981, this single article was changed, and became Article 39 of the Islamic Penal Code, adopted in 1361, and eventually this article was amended by Articles 38, 39 and 40 in the law of 1991, and eventually the provisions on conditional release, In the year 2013, it changed.

The Islamic Penal Code, adopted in 2013, while accepting the establishment of conditional freedom, and considering its necessity and practical benefits, not only changed some of the provisions of the prisoners' conditional release, or they have been amended in some way, but the new institution, entitled " The semi-liberal system has entered into this law. (Shambiati, Hooshang, 2013)

According to Article 58 of this law, convicts sentenced to more than 10 years' imprisonment, after half a sentence, and convicts under ten years of age, can withstand conditional release by serving a third of their term of imprisonment under certain conditions. Among these conditions is the compensation of the losses of the private

claimant, and the non-use of conditional release, before that. The probation period is less than one year and will not be more than five years. During the probation period, the court may require the convicted person to execute orders that, in the event of a violation of the order, one or two years, shall be added to the conditional release, and in the event of repeated offenses, or intentional offenses, conditional release Canceled

### Imprisonment Alternative Penalties

In the criminal policy of Iran, the legislator in Chapter 11 of the Fourth Development Plan, under Article 125, obliged the judiciary to prepare a bill of alternatives for imprisonment in order to take advantage of the new methods of reforming and treating criminals. The bill was drafted in 2004, finally approved under Articles 64 to 87 below under Chapter 9 of the Islamic Penal Code, titled "Alternative Penalties for Imprisonment."

But, is this alternative punishment reduces the prison population as expected and expected? The answer is no, because prisoners in prisons are divided into 5 classes. First: Second defendants: real prisoners. Third: financial convicts. Fourth: the prisoners are awaiting execution, and the fifth: a convicted prisoner is a criminal offense. And in the meantime, alternative punishments include only one hand, which is the second group, the actual ones, and the others do not include. (Najafi, 2007, p. 118), so as far as possible, it should be avoided resorting, executed, and punished with ineffectual punishment, and he committed to a genuine and continuous detention, that this is a utilitarian punishment. (Gudarzi Borujerdi and Meghdadi, 2005, 35), alternate sentences for imprisonment include care periods, free public services, cash penalties, and deprivation of social rights.

### The Semi-Liberal System

This newly established institution is also considered by the Iranian legislature in Article 56 of the Islamic Penal Code. The historical record of the semi-liberation system goes back to the regulations of the prison organization before the revolution. This kind of system can be found close to a system whereby convicted prisoners are kept out of the prison environment during the day, and spend their nights and days off in jail. (Ancel, 2012, 99), in accordance with Article 56 of the aforementioned law, in grade 5, 6, and 7 prisons, the court may, subject to the passing of the plaintiff, and the deposit of the appropriate bail, place the convicted person under his or her consent under a semi-liberal system, which, during Convicted outside the prison, committed to doing a career, vocational training and more. It will be effective in the process of reforming or compensating for the crime.

### orgiveness

Forgiveness is one of the causes of the fall, or the reduction of punishment, as well as the expression of kindness and affection, towards the sentenced person, who is bestowed on the highest authority of the country, or the legislative authority. Forgiveness, which is bestowed on the highest authority in the country, is a private Forgiveness, and another public Forgiveness. Under Article 11 of the 110<sup>th</sup> Constitution, and Article 24 of the Islamic Penal Code, Forgiveness must be proposed by the head of the judiciary, and approved by the Supreme Leader, and the nature of the constraint "within the limits of the Islamic principles", in the original and the aforementioned article, in the codified laws It has not been explained, and inevitably, it should be referred to the authoritative sources of jurisprudence, and the famous fatwa of the jurists. The use of Forgiveness, which is a criminal policy measure, seems to be desirable in the short term. Because all the unfortunate offenders benefit from this national reconciliation effort. Their criminal testimony is erased from the background. And are exempted from all care or corrective measures. But in the long run, the general Forgiveness laws may be catastrophic. Because it causes the reformist programs that are in the process to be released, and the perpetrators will be redundant again. On the one hand, in the future, we face accused people who lack sentences. While, in fact, the crime is considered to be unprecedented. In addition, repeated use of Forgiveness has a significant effect on the punishment of intimidation, and a deadly blow to the aspect of punishment. Which has a detrimental effect on the purpose of general crime prevention.

The former law, in relation to Forgiveness, stipulated that the offender's pardon would not result in the death of the punishment unless it is specified. Also, in cases where the Forgiveness is punishable by penal offenses, the effects of the conviction after the expiration of the period will be lifted from the time of the release of the convicted offender. In any case, it would have been better if the former legislator paid more attention to this, and regularly stated the conditions and effects of various amnesties, public and private amnesties.

### New Law Approach to Forgiveness

The new Islamic Penal Code, in its eleventh chapter, entitled "the fall of punishment," and in the first part of its article, outlines the rules for the Forgiveness of the perpetrators and the accused. First of all, it should be noted that the procedure for the execution of a private pardon is exactly the same as the former law, and consequently with the proposal of the head of the Supreme Council, and the order of the Supreme Leader.

Fortunately, the new law has paid attention to Forgiveness, along with the Forgiveness of the first type, and states in

Article 96: "Public Forgiveness, which, according to the law, gives rise to Enhancement, condemns prosecution and prosecution. If the sentencing is issued, the execution of the sentence will cease, and the effects of the conviction will be resolved. "

Contrary to the previous law, the current Penal Code has stated that Forgiveness does not eliminate all the effects of sentencing, but it has no effect on the payment of death and loss compensation.

### CONCLUSION

Crime prevention policies for crime prevention should, instead of terrible, terrible classic punishments, on the one hand, seek medical treatment to prevent recurrence of crime, in the context of the reconciliation of the offender's social offense, and, on the other hand, prevention programs Collective delinquency, in order to prevent the commission of the first offense. Undoubtedly, one cannot exclude classical punishment, in general, from the rules. But it can gradually restrict its realm, and it should always be remembered that "prevention is better than cure and better treatment than punishment," criminal policy, the only factor controlling crime, is not in a society, and Beyond that there are various meta-criminal control systems that play a variable and different, but certain, role in crime prevention, and repeat offending. Such as the family, religious places, school, work environment, and various other social institutions, which, naturally, work differently depending on the type of social organization. So, it's a mistake to think that if there is no criminal policy, nothing can be done. However, everything is possible. With regard to criminal policy, only hypotheses can be made about the degree of effectiveness, and the impact of criminal policy on crime control, which also depends on two variables:

1. The characteristics of the social system, and the system of current values, in the target society
2. The quality of the institutions that determine the criminal policy of this society.

Legislative criminal policy of Iran, due to problems such as the plurality of legislatures, the weakness of the investigation and specialization, the adherence to individual policies and personalities, the traditional and retrospective attitude to the process of criminal law, and extreme offenses, and with the avoidance of The realities of the Iranian society are shaped solely on the basis of abstract conceptions of the concept of crime and punishment, but with the violation of individual rights and freedoms, and criminal tagging, the grounds for the discontent and distrust of society, the poor performance of politics Legislative criminality, and as a result of the failure of legislative measures.

The intent, repression, intimidation and deterrence attributable to the punishment, which is deduced from the context of Iran's legislative criminal policy, is at the stage of implementation with austerity, tolerance, tolerance, obstruction and serious interruption. The existence of problems such as a great deal of time, the severity of criminal sentences, and their implementation, the development of public and private Forgiveness measures, the development of probation measures, and the suspension of punishment, the leniency and leniency in some criminal enforcement laws, such as the Executive Order of the Prisons Organization, Lack of adequate supervision and control, implementation of some penalties such as whipping, drafting parallel drafts and drafts, at the level of the judiciary, and other relevant institutions; weak physical facilities; multiple penalties for administering sentences; lack of post-departure care; Prisoners, the dishonesty and impossibility of performing some ritual and customary punishments, the lack of corrective measures, and much Ray Other problems, Policy criminal penalty, with a severe recession, and the effectiveness is dramatically reducing criminal.

### Offers

1. With the formation of a special committee, with the presence of thinkers, professors and experts in the field of criminal law, the pathology of crime, and criminal behavior in the country, the findings should be made, with the required definition of the policy of crime, the offer and presentation to make
2. The pathology of the law, and the investigation of the causes and factors of the ineffectiveness of the penal provisions, and the removal and modification of unnecessary decrees, can be useful and practical for the purpose of discovering and presenting the principled and targeted strategies to improve the quality of legislation in society, And reduce the crisis of inflation by criminal laws.
3. Encouraging the participation of civil society, and the private sector transformation, in the rehabilitation, reform and education of reformed offenders (especially children and adolescents), can be useful and effective in restoring public confidence and returning lost opportunities.
4. To plan and expand the individual legislative, judicial and executive policy in the use of punishment, and equip the judges and law enforcement agencies and penalties, to provide the facilities and facilities necessary for the filing of the personality, for the convicts and to adapt as much as possible, with the psychological, physiological characteristics And their social and, if applicable, the use of a policy of escalation, or reduction of punitive measures, decriminalization, deprivation of liberty or crime, will help resolve the

crisis and resolve the existing problems of the criminal justice system.

5. The formulation of penal codes is vital for the legislative authorities, based on scholarly and realistic studies, and cultural, ethnic, social, religious studies aimed at measuring needs, and the outcome of the approved laws, and avoiding the occurrence of discrimination and disagreement. It is essential.

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