



"Islamic Republic of Iran's Criminal Law Policy and Impact of the International Area"

Parviz Mohammadnejad^{1*}, Mohsen Rahami², Ali Najafi Tavana³

^{1*}Department of Criminal Law and Criminology, Faculty of Law, South Tehran Branch, Islamic Azad University, Tehran, Iran

^{2,3}Department of Criminal Law and Criminology, Faculty of Law, Central Tehran Branch, Islamic Azad University, Tehran, Iran

Received: 2 Sep 2021 ; Accepted: 25 Sep 2021

Abstract:

Globalization is a process that is presented in various aspects of human life. Given the growing and spreading of criminal acts on a global scale, the field of criminal and criminal law is important. In a way that has led to many criminal behaviors in the world. Criminal law with the globalization of the criminal phenomenon, which is a fundamental problem, has proposed many solutions in the domestic and foreign arena. In the field of crime to international rules or documents The domestic laws of the countries, the impact of international criminal law, and regional and international documents on national laws. In Islam, there is no doubt about the legitimacy of international treaties, since their conclusion is a way to achieve the ultimate goals of Islam Therefore, the ruler and the Imam of Muslims can agree with the non-Muslims if they agree on Religion, and nation or compel their hearts to Muslims. It should be noted that the main effect that the Islamic Republic of Iran can accept from globalization is related to the scope of sanctions, for the content and basis of this kind from the extensive crimes and powers of the legislature in their elaboration and implementation, it is possible to make such crimes compliant with the requirements of time and place and developments of the international community.

Keywords: Criminal Policy, Criminality, Commitment, International, Globalization

Introduction

Globalization, like a stream that has been presented in various aspects of human life, is also necessary for terms of the increasing and spreading of the criminal phenomenon on a global scale in the field of criminal law. The

breadth and growth of technology and information technology together with positive results and negative effects have led to many criminal behaviors in the world. Criminal law with the globalization of the criminal phe-

*Corresponding Author's Email: P_mohammadnejad@azad.ac.ir

nomenon, which is a major problem, many solutions in the domestic and foreign arena.

The emergence of international convergence, which is being raised as a matter of urgency, should be the creation of technology in an easy way for humans access to each other, and more importantly, it promotes the exchange of information on a global scale. Nowadays, the sharing of human beings in various aspects of social, cultural, and economic necessitates a great deal of attention to the issue of globalization.

Undoubtedly, economies around the world are now growing vastly. The land is shrinking because of the many problems, including the threat of nuclear and nuclear bombs, environmental pollution, the spread of various diseases, terrorism, and so on, to resolve them between the rules. We need. Therefore, the fate of nations and countries is very much related to one another, and it requires a solution and solutions to solve them. The problem of crime and its harmful effects on the world affects all countries and creates fears, especially from insecurity. But with such concerns, should not you have to find universal measures on the international level?

The concepts and principles of criminal law have become global in dealing with international documents and international criminal law, and the effects of this change are evident in various areas of criminal law. Within the scope of international criminal law, the principle of territorial jurisdiction of States regarding the crimes committed in the territory of their sovereignty has been dramatically changed in the interactions with international instruments, such as the Eleventh Counter Narcotics Convention and Psychotropic Drugs Act (1988 / M). (Babaei, 2011, p. 118)

In the field of criminalization concerning international rules or international instru-

ments and domestic laws, the impact of international criminal law and regional and international documents has been confronted with national bar laws.

Currently, with the development of technology, communications, transportation, and many other sectors we are faced with phenomena such as cybercrime, money laundering, drug smuggling, trafficking of children, women, and girls for sexual exploitation, terrorism, and worldwide. As a result, one of the most important developments in the present age of the international community is the crime issue. Adoption of a global order does not mean the full unification of human values, but it is necessary to take general measures only as a necessity and to learn the crime of crime in the world. However, today, the fight against crime as a global phenomenon requires international cooperation (Babaei, 2011, p. 122-124). Of course, it is clear that if the leader and the supreme leader advise the government of acceding to the treaties internationally, there is no doubt about the legitimacy of this adherence.

In Islam, there is no doubt about the legitimacy of international treaties, because their co-creation is a way to achieve the ultimate goals of Islam and so the ruler and imam of Muslims can agree with non-Muslims if they are free from religion and compromise their cause. Make a Muslim side.

It should be noted that the main effects of the Islamic Republic of Iran's criminal law on globalization can be attributed to the scope of sanctions, since the content and basis for such crimes and the extensive powers of the legislature in their elaboration and implementation, the possibility of such The crimes are adapted to the needs of the time and place and the developments of the international community.

The present article is devoted to understanding the concept of legislative criminal law, about three major issues and in the following three articles:

1. Reviewing the Challenges of the Islamic Republic of Iran in Accession to International Conventions and International Commitments
2. Indication of examples of the impact of the legislative criminal policy in the light of the accession to, and review of, international conventions.
3. Review some of the strategies of the Islamic Republic of Iran to find a solution to eliminate the conflict between national regulations and international conventions

1. Legislative criminal policy

Legitimate criminal policy as the first layer of criminal policy in a legitimate government is the consideration and response of the legislator to the crime. (Najafi Ebrandabadi, 2012, pp. 7-8). Of course, the legislative criminal policy should not only be the first The criminal policy layer is considered to be the core of criminal policy and the type of response to the criminal phenomenon.

This criminal policy is the legislator's decision on the crime and the response to it, which takes into account the dependence of the criminal policy on the political system of each country and the tastes of different legislators, and their choices in various types of crimes and punishments in general How to deal with criminal phenomena and prosecution of crimes.

Therefore, the manifestation of crime, and the definition of the types of responses to behaviors that depart from the social norms that are considered criminal, should be sought at the level of the legislative criminal policy of a country. In the current era, crimi-

nal law is recognized as a crime in the context of law enforcement and should therefore be considered within the framework of criminal law.

2- Reviewing the Challenges of the Islamic Republic of Iran in Accession to Conventions and International Commitments

As with other governments in the world, the Government of the Islamic Republic of Iran faces many obligations as one of the players in the international arena. These commitments have a variety of legal implications and it is important to rely on the commitment of the government. Of course, these obligations do not always come from a clear consensus or agreement. The scope of obligations requires that the government take appropriate measures in the legislative, executive, and judicial areas. It is important that the Constitution in any country, including Iran, in some cases creates obstacles to the implementation of the abovementioned acts, and therefore we are faced with a lot of obligations in terms of obligations. The whole effort of governments and Iran is twenty so that if there is an obstacle and a conflict that is the basis of trouble, then somehow the Islamic Republic of Iran will face some really fundamental and sometimes The application of legal measures and, according to the jurisprudential case, should seek to escape these difficult situations.

But what does the international treaty mean? A kind of written agreement between international law matters is called an international treaty (Raiee, 2008, p. 195). There are, of course, many other words and synonyms, including the Treaty, the Covenant, the Declaration, The Agreement, the Charter, the Protocol, the Convention, the Agreement, and also, in this regard, the provisions of article 2 of the 1969 Vienna Convention; an

international agreement which has been concluded in writing between the States and which is subject to international law, apart from the title Specifically, it refers to an international treaty, whether it is reflected in a single document or two or more related documents. In the Constitution of the Islamic Republic of Iran, two principles 77 and 125 specifically relate to international obligations, but no definition of the terms and terms mentioned in these two principles and also Article 9 of the Civil Code.

2-1- The obligations of governments at the international level:

Are significant in two ways: contractual and non-contractual. The most important characteristics of the contractual obligations are with consent and are hereby declared and accepted, recognized in the framework of agreements, bilateral or multilateral, have a process both nationally and globally, and that any treaty for the enforcement of executive power in the country There should be a process such as the law in the legislature, in which Article 9 of the Civil Code and the Fourth Principle of the Constitution are binding in this regard.

As to the legal consequences of such treaties (contractors), the most important of these is to commit to the implementation and observance of the content and texts of the treaty. Some other legal effects can be summarized as follows: if a government wants to accept a treaty internationally, it must first consider the status of its domestic law, it must take steps to amend the domestic regulations as appropriate, and take legal obstacles. And the regulatory authority provides the legal grounds necessary for the fulfillment of the obligation, and, in the light of the various provisions of the 1969 Vienna Convention, it can be said that no treaty can give

rise to an obligation to the State unless it expresses its consent expressly and in writing. (Raiee, 2008, pp. 198-199)

In the case of non-contractual obligations, or the obligations arising out of the right, Article 53 of the 1969 Vienna Convention stipulates that the rule of law of international law is a general rule that, as a rule of law, is violated only by a subsequent rule of general international law of the same nature, Adjustable - Accepted and recognized by the consensus of the international community of nations. International conventions are so important that their failure to comply means the most prudent international action of a state. (Raiee, 2008, p. 199)

The following can be explained by the nature of the underlying obligations: (1) human rights law; (2) the rules of international peace and security; (3) human rights law (Baldeser & et.al, 1996, p. 340)

Iran has accepted many of these treaties in the field of international obligations. The most important of these is the United Nations Charter, the Geneva Conventions on the Prohibition of the Slavery and the Slave Trade, the Convention for the Elimination of Discrimination, the Convention for the Suppression of Apartheid, the Covenant on Civil, Political and Economic, Social and Cultural Rights, and the Convention on the Rights of the Child, as well as many human rights instruments and the Geneva Conventions and its extension protocols.

What challenges does the Islamic Republic of Iran face in the field of international treaties? In the field of human rights documents, we can categorize them into three parts according to the Islamic Republic of Iran's principles and principles of law. First, documents that are consistent with the principles of jurisprudence and fundamental principles, for example, the Second Prohibition

of Racial Discrimination - Other documents, which are conditionally accepted, in whole or in part, such as the Convention on the Rights of the Child and third, those that are fundamentally challenging, most notably the Convention on the Elimination of All Forms of Discrimination Against Women

Regarding the third type, there are many important and fundamental challenges to be noted: 1- The acceptance of such documents by the jurisprudential principles conflicts with the fourth principle of the Constitution. 2. On the other hand, their disapproval of international pressures and the design of the abilities of these rules is, for example, the case with the Convention on the Elimination of Discrimination. 3- In cases where Sidi has been accepted in the Pahlavi regime in the past, and now the Government of the Islamic Republic of Iran has accepted it as conditional, the problem is more serious. 4. Some human rights instruments have issued human rights and freedoms that conflict with religious principles, such as the freedom to change religion, 5. and some documents relating to a particular class and group that are seriously contemplated in this regard. ; One of the Convention on the Rights of the Child, which in some cases conflicts with legal and legal standards, and the Convention on the Elimination of Discrimination against Women, which is in full or in principle contradictory to Islamic standards. (Raiee, 2008, 204-205)

2-2- criminal matters and challenges:

In the area of criminal law, in particular, criminal matters, we face some fundamental challenges, including some of them; some of the punishments in the areas covered by the religious law are considered compatible with some of the contents of human rights conventions. In some cases, the public prosecution

of sentences, especially the execution of prisoners, is in doubt, and they also regard some religious sanctions as contradictory to human dignity in human rights documents. And in the approach of the Committee on the Prohibition of Torture and the treaty related to it, there is a general conception of torture and includes the suffering and suffering of the legal punishment of the Islamic Republic of Iran.

Just as a state can act based on the principle of protecting national resources against foreign nationals who have acted outside the territory, such as counterfeiting national currency, it can also occur in the event of the emergence of common global values between all states and legal entities Non-governmental, defends these values, and we must bear in mind that some common global values may conflict with religious data and that a state faces problems in its religious teachings (Raiee, 2008, 206-207)

It is important to note that in some cases the non-conformity of the Islamic Republic of Iran's criminal law with the provisions of the international treaties is due to a different understanding and understanding in terms such as human dignity, freedom, justice, equality, etc. in the Republic Islamic Iran and international documents. For example, in the case of terrorism, Iran is largely concerned with the ambiguity of the definition of the term in international treaties and the incorrect perception of some insulting countries of the term to eliminate liberation movements under the protection of the Islamic Republic of Iran, Counteraction to this behavior has been attempted, therefore, in the Islamic Republic of Iran's criminal system, terrorism has not been independently criminally sanctioned.

Of the thirteen international conventions against terrorism, Iran has not yet joined the International Convention for the

Suppression of the Financing of Terrorism, despite the addition of six of them. (Shams Natteri, 1394, 281)

Of course, the bill on the financing of terrorism was approved by Parliament on February 13, 1394, and was approved by the Guardian Council on March 13, 1394. It should be noted that the legislature should make amendments to this law. It is not very useful to criminalize the financing of terrorism without committing terrorism itself independently. Therefore, it is appropriate to formulate and adopt a comprehensive anti-terrorism legislation that includes all criminal acts related to terrorism.

Also, the text of the Children and Adolescent Protection Act of December 2002 suggests that it is directly affected by international action for a targeted campaign against organized crime, specifically combating human trafficking. Some terms used in the text of this law are derived from the texts of international conventions on combating human trafficking (Shamloo, 67)

3 - Expressions of examples of the impact of the legislative criminal policy in the light of the accession to the international conventions and its review and review.

The crime of money laundering and illicit funds, which was part of Part B of Article 3 of the 1988 Convention on Drugs and Drug Addiction, led to the establishment of the Anti-Money Laundering Code of Law in 2007. The smuggling of women and children by the two articles 3 and 5 of the Protocol to Prevent, Suppress and Suppress Smuggling of Addictions to the Palermo Convention (2000) constitutes the fundamental legal and material legal status of the law against trafficking in human beings in 2004.

We can also refer to some of Iran's bilateral treaties with other countries; the agree-

ment on cooperation between Iran and Bosnia and Herzegovina, approved on 20/5/1387, on the issue of the prevention and fight against organized crime and some other major crimes. The Iran-Kuwait Security Cooperation Agreement of 9/2/1388, which continues to address the issue of preventing certain crimes, and the Iran-Afghanistan Cooperation Agreement Act of 8/10/1388 and Iran with Bahrain adopted 8/10 / 1388, which mainly refers to the prevention of certain crimes, including drugs, organized crime, and terrorism.

At present, the Islamic Republic of Iran has committed itself to the problem of globalization of crime and seeks to engage in international relations, especially in relations with neighboring and Islamic countries, in respect of their immunity to the global crime scourge (Babaei, 2011, p. 133)

3-1- Convention on Drug Trafficking and Drug Addiction (1988):

The United Nations Drugs Unit (1961) and the Convention on Drug Trafficking and Drug Addiction (1988), which Iran has joined, refer to issues such as the distribution and distribution of narcotics and their criminalization of them. It should be noted that the 1988 Convention is the most complete and recent approach to international anti-drug legislation, and the most important commitment by States parties to the treaty is the criminalization of the production, sale, and transportation of narcotics and psychotropic substances and the cleansing Revenues from such activities are based on the same principles and in line with the two treaties of the Supreme Leader of the Islamic Republic of Iran, the above-mentioned Acts on drugs and psychotropic substances under articles 4.5 and 8 of the Counter Narcotics Law and Article 40 An addendum has been censured by

the Exceptive Expediency Council Resolution of 1997 and 2010.

Massacre and genocide, which are of particular importance in various international instruments of the 1948 Convention on the Prevention and Punishment of the Crime of 1948, and its incorporation into the Statute of the International Criminal Court of 1998, require governments to take the necessary and proper legislative measures in the areas of crime and punishment.

Iran unconditionally ratified the treaty in 1334 but has not yet implemented the necessary legal and judicial measures to implement it. It seems that the criminalization of genocide in Iranian law to address this crime is a step in the strengthening global determination to prevent the most heinous international crime and to prevent the perpetration of its crimes, it is also necessary to adhere to the Statute of the International Criminal Court (Ardebili, 2006, p. 1)

The crimes found in the Iranian Penal Code in this regard are merely considered ordinary or ordinary and do not constitute the stature of an international crime, which is predominantly arranged and organized. The computerized crime bill is structured according to the rules of the 2001 Cybercrime Convention, which was approved by the Council of Europe in Budapest, Hungary.

Considering that the Second Protocol to the Palermo Convention has been considered an international document on the trafficking of immigrants, unfortunately, despite the importance of this crime, there has not yet been a crime in the country (Salari, 2011, p. 16) Of course, determining the framework for the criminalization of smuggling of immigrants in the Islamic Republic of Iran's criminal system depends on the legal and legal foundations of it. It should be noted that the Islamic Republic of Iran joined the Merida Conven-

tion on 23/7/1387 with the ratification and approval of the Expediency Council, and the Anti-Smuggling Act has been approved by the Palermo Convention in the light of the Additional Protocols.

Money laundering is one of the crimes against economic security that the Iranian legislator, following the ratification of the Vienna International Conventions (1998), Palermo (2000) and Merida (2003), and the general public, adopted the Anti-Money Laundering Law in 2007 (Saroukhani, 2015, p. 237).

3-2-Iran and Important Conventions:

Some of the most important conventions that Iran attaches to them and has been enforced through the necessary procedures in the form of a law (under Article 9 of the Civil Code)

Convention on Economic, Social and Cultural Rights (1966), adopted in 1354 hj

International Covenant on Civil and Political Rights (1966), adopted in 1354 hj

International Convention on the Elimination of Racial Discrimination (1965), adopted in 1367 hj

International Convention on the Abolition and Punishment of Apartheid (1973), adopted in 1363hj

- Anti-Apartheid Convention (1977), adopted in 1366 hj

Convention on the Prohibition and Punishment of Mass Destruction (1946), adopted in 1344 hj

Convention on the Rights of the Child (1989), adopted in 1994

The Revocation of the Slavery Convention (1956), adopted in 1337 hj

Convention relating to the Status of Refugees (1951), adopted in 1354 hj

-The Protocol on the Status of Refugees (1967), adopted in 1354 hj

4. Examination of Some Strategies of the Islamic Republic of Iran to find a solution to eliminating conflict between national regulations and international treaties

Based on what is stated in paragraph one of this discussion about the major challenges facing the Islamic Republic of Iran, we need to look at some of the most important ways out of these problems to consider which legal approaches are more appropriate in this regard.

First, treaties that have not yet been accepted by the acquirer and placed under the obligations arising out of the right. In this regard, it is mostly possible to use a privilege or a clause and an interpretative declaration can be used. (Raiee, 2008, p. 208)

The 1969 treaty of Vienna expresses this clause in a poem: "The unilateral statement that a country issues, under one name or in any other phrase at the time of signature, ratification, acceptance, approval or accession, by a treaty. It expresses its intention to exclude or modify the legal effects of some of the provisions of the treaty. "

The application of this condition is subject to the proviso that the second chapter of the Vienna Convention has been consistent with Articles 19 to 23, which is stated in Article 19. Subject to this provision, the provision of the right is prohibited unless the treaty prohibits the provision of the treaty, the treaty being applied is conditional upon the acceptance of a clause solely in the case or special circumstances and the application of the condition for the treaty is inconsistent.

The second way is a commentary. If a treaty is essentially a blocked clause, then the government will be able to comment on it by issuing an interpretative declaration. It should be noted that this solution, in any case, makes the conversion of an ordinary commitment a commitment, as such a declaration could pre-

vent the adoption of a new international convention. (Raiee, 2008, p. 209)

In the case of treaties called so-called contractual obligations, the Government has the power to enter into the territory of two or more multilateral treaties, taking into account national and international interests and the social space of the country, or it is capable of accepting such treaties. To bet on.

Second, the treaties that the government has accepted to them do not affect the right of the contract, at any rate, two legal remedies, the nature of the justifying factors, and the fundamental changes in the situation can be made significant in the Vienna Convention of 1969.

It seems that, as the elimination of the subject of a treaty eliminates the obligation, the creation of new conditions derived from the fundamental beliefs and values of a nation may also convey conflicting obligations to those values with a serious question, especially since a school revolution and value has occurred in a country like Iran. (Raiee, 2008, p. 210)

Concerning the fundamental changes in the circumstances of Article 62 of the Vienna Treaty, it refers to points. One is that the existence of such a situation is the main basis of consent to be bound by the treaty and the effect of this change is a fundamental change in the scope of the obligations that still have to be fulfilled under the treaty. Such conditions can be the basis for suspension, just as the basis for the termination of a treaty (Raiee, 2008, p. 211)

A very important issue regarding international treaties is that the Government of the Islamic Republic of Iran, under the fourth principle of the constitution, which is the supreme and supra-legal superior, is faced with the fact that its content is a fundamental principle, and even the law of the constituency is

dominant. And therefore, this government accepts any accountability contrary to the principle of exclusion and prohibition. When confronted with a treaty and international document, such as the Iranian legal system, priority is given to domestic and national rights, and the government is also obligated to follow this rule, therefore, priority will be given to national law and the most important provisions of Islamic law.

Trying to explain religious views and repeatedly protesting the provisions of documents that contradict religious teachings is another way that can prevent the formation of customs in the international community and reduce the burden of obligations. (Raiee, 2008, p. 214)

5. Review and Conclusion:

There is a major interaction between criminal policy and the world of politics since the people of politics are mainly criminalizing the application of the rules of community responses, whereas, if the policy is legal, the rights and fundamental freedoms of citizens are adequately secured and guaranteed. Gets, On the other hand, the criminal policy is related to the study of a specific issue in the community, the criminal phenomenon, and on the other hand, implementing a strategy (strategy) to respond to criminal situations or deviations (deviations).

It is very important today that crime prevention, along with repression and intimidation, is one of the most effective means and methods of criminal policy for responding to crime. (Najafi Ebrandabadi, 2010, p. 746)

It should be noted that common sense politics is practiced against a rational or rational criminal policy. In popular politics, the orientation is a most rigorous, security-oriented, and vicious circle, and factional, political, and ideological considerations are predomi-

nantly objective and scientific. The pragmatic criminal policy was more emotional and politicized, and its purpose was to relieve expectations and demands The immediate and cross-sectional nature of the people, and the position of potential victims. (Najafi Ebrandabadi, 2010, p. 742)

Criminal policy in all countries is a result of political, economic, cultural, and ethnic factors. (Delmas Marty, & Najafi Ebrandabadi, 2014, p. 13). There are two important issues in the difference between criminal policy and criminal law: one is that the policy approach Criminal is multidisciplinary and the other is asynchronous and asymmetrical criminal policy, ie movements such as punishment and decriminalization, or vice versa, of crime that are in a state of evolution. (Delmas Marty & Najafi Ebrandabadi, 2014, p. 49) The main structure of criminal policy in two important pillars: criminal phenomenon (crime and deviation) and the response of the board and the structure of society (two and civil society) can be understood (Pak Nahad, 1388, 38)

Therefore, gradually, criminal law under the influence of human rights considerations set the social concept of deviation alongside the single legal concept of crime. (Qiyasi, 2006, p. 15), and in preventive and responsive responses to the rule of law, the intervention of various social authorities along with government authorities and the official became important and expanded. Of course, criminal law is usually referred to as the central core and the main means of criminal policy. (Najafi Ebrandabadi, 2010, p. 1740)

Mrs. Delmas Marty has also presented a great deal of great work to Marc Ansella's famous disciples in developing the term criminal policy (Gholami, 2012, p. 53). He described the criminal policy as a form of society using its answers It arranges this dis-

traction from formal norms (crime) and social norms (deviations). The criminal policy involves theoretical and practical aspects of all forms of crime control, not just the theoretical aspects of the criminal system, the criminal policy of movements and movements, such as the crime or detente movement. In the case of criminal law, the two grounds are criminal and criminal (Ebrahimi, 2012, p. 111)

It should be noted that each country's criminal policy is influenced by the human, social, political, economic, and international factors influenced by the specific criminal statistics of each society at various times. (Unnamed, 2013, p. 133)

Based on this, depending on the type of government and the specific situation of each society, there are different classifications of criminal policy inspired by scientific approaches or ideological teachings. The criminal policy of each country reflects the accepted values of the community and how it is supported, and the criminal law is a clear and practical example.

Of course, populism is an approach based on which criminal policy managers focus on public opinion, policies, and programs that lack the basis of science and bachelor (Lazerz & Najafi Ebrandabadi, 2003, p. 39). If Criminal policy using criminal data and sociology examines the criminal phenomenon and prescribes appropriate responses (Lazerz & Najafi Ebrandabadi, 2003, p. 67).

The features of a combined criminal policy, which, in addition to religious values and orders, are based on scientific data and research and statistical studies and can also serve the purpose of Islam, is, first, the timing of a dynamic criminal policy and efficient, always observing today's society. Second, new criminal offenses are contrary to the principle of the territoriality of criminal

laws, and the elimination of these conflicts should be in the interest of international law and human rights standards, and international criminal law must adhere to scientific rules. And the third, new developments and the emergence of new crimes that Islam's religion does not reject the facts, and even confirms them in various formats and narratives.

Crime is a pervasive and infrastructure-based science, such as philosophy of law, political philosophy, and social sciences. Crime is a kind of highlighting the values, social, political, economic, and other interests that the legislator wants to support. (Janipour, 2013, p. 128). The criminalization of certain behaviors concerning the field is Various and influenced by the custom of the community, international treaties, jurisprudential texts, and other components. (Pourbaferani, No 75, pp. 30-31)

Dr. Najafi Ebrahbandadi, in the case of crime, referred to two types of primary and secondary criminalization: the primary criminalization of how and why to punish a social deviation in its various forms, and in the secondary criminalization of the application of the law by the institution's Criminal justice that does not consistently coincide with the initial criminal offense (Markaz Malmiri, 2015, p. 158)

In the Islamic system, the role of the jurists in the formulation of Islamic legal laws is only the discovery of the law, not its codification, and the role of the legislative bodies of the Islamic state in the implementation of those general principles is based on the examples and the existing issues and needs. (Convent and University Research Institute, 2002, p. 119) For example, one of the cases after the Islamic Revolution was based on the impact of jurisprudential views, the definition of transgressive crime is an unforeseen crime that manifests itself in two concepts of right and right (Nobahar, 2016, p. 228)

The constitution of the Islamic Republic of Iran allocated the law to the Almighty God (paragraph 1 of the second principle), then divine revelation as a factor for the expression of the law (Section II of the third principle), and in the third stage, the divine rule, accepted human sovereignty He has considered the triple powers arising from the sovereignty of man on his social status (Article 56). The administration of the country has been based on public opinion. (Sixth principle) (Malek Afzali, 2007, p. 69)

Concerning the fourth principle of the constitution, it should be acknowledged that the superstitious principle which forms the basis of the formation of the system of the Islamic Republic of Iran is supramative as a superior principle over other principles of the constitution. (Ismaili, 2015, p. 156) Criminalization in the Islamic Republic of Iran has a mixed context of values and realities and requirements. Another important point about the issue of the order in the system of the Islamic Republic of Iran, according to the constitution, is the issues referred to in the second principle; the second part of this principle refers to the fundamental role of divine revelation in the explanation of the law, and the sixth principle refers to dignity and value. It is also worth mentioning that human beings should pay attention to continuous *ijtihad*, utilizing the science and experiences of the day, and neglecting oppression and oppression and domination and domination.

The fourth principle of the constitution referred to above is based on the absolute religiousness of the law and the general rules of law, including the criminal laws of nature and nature, and consists of three important sections; first, the necessity of conforming to all laws and regulations to the standards of Islam II, the rule of this The principle is based on the general and universal applica-

tion of all the principles of the constitution and the other laws and regulations of the third, the reference authority that will be discussed in its place. (Raiee, 2006, p. 32)

Therefore, the fourth principle of the constitution forms the basis for the establishment of the Islamic Republic of Iran. In Iran, like in other countries, law, legislature, and legislators are important as the three major factors in the political and government system. The relationship between the legal system of Iran on the one hand and the sources of jurisprudence, on the other hand, is an irrefutable form of written law. Legal rules are not eternal and non-existent, and the possibility of changing them in the face of the new needs of the day exists. (Khoieini, 2011, p. 82)

This is one of the most important old issues in which the relation between jurisprudence and law is, and whether there is a need for law despite the Shari'a rulings in the Islamic society and the existence of jurists who give religious and religious affairs the issuance of decrees and decrees?

In Iran's legislative system, what is necessary is the use of a policy based on science and religion that, in addition to helping the human sciences, establish a relationship with religion and be the answer to a religious community. The key question is, what kind of criminal policy can establish security in the society in dealing with social norms and deviations, and ultimately important crimes, and the laws that are implemented do not conflict with the spirit of the people's beliefs. (Ebrahimi, 2012, p. 111)

Criminal politicians are required to observe the values of the society, that is, planning must be such that the maximum demands of the society are to crystallize the beliefs and beliefs in the laws of everyday life.

Therefore, the criminal law of the Islamic Republic of Iran is more than morally re-

sponsible for the criminalization of prohibited practices, and most of the laws and principles in the field of criminal law are based on moral and religious rules. (Varvareai, 2014, p. 35), but about the legislative framework in the area of crimes, in other words, the criminal law of the Islamic Consultative Assembly can be criminalized in the constitutional limits, and these limits can be found in Principles 9 and 40 in general and in Principles 24, 26, 27, 28, and Specified in a specific way. (Najafi Tavana, 2013, p. 149)

But in general, the principles related to the criminal law of the constitution of the Islamic Republic of Iran to about thirty principles, including Principles 4, 8, 10, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 40 and (Varaei. 2006, p. 34)

After the victory of the Islamic Revolution and the establishment of the Islamic Consultative Assembly, the reform of the customary criminal law was considered one of the main concerns of the legislator under Islamic and religious standards. In this paragraph, the same amount of legislature and a parliamentary debate will be discussed in the same way as the expanded discussion of the criminal law process in the constitution of the Islamic Republic of Iran and the further elaboration of the Assembly and the Guardian Council will be published in the second chapter of the fourth part of the dissertation. But at the end of this paragraph, we are going to look at the criminal laws and criminal laws of the Islamic Consultative Assembly since its inception; in the case of laws that have been criminalized in the form of the laws of law, that is, the subject matter of the regulation is, Complete and independent of crime and punishment, or that it has been referred to as other types of criminal law, or that a non-criminal law has been provided with a criminal law guarantee that all three cases are ap-

proved by the Islamic Consultative Assembly Can be seen.

The legal issue in the Shiite jurisprudence government is, naturally, the meaning of the law is valid and in Islamic law, the rules have been falsified and the jurists have to discover and deduct these religious rules. However, in the case of Malay, it is possible to legislate it. It is also possible by observing the conditions and we can use them to state orders and secondary rulings. (Mansour Nezhad, 2014, p. 95)

In countries with a parliamentary and legislative system, each of them is influenced by sources as inspirational sources on which to impose regulations and, of course, they have their fundamentals. In the penal system of the Islamic Republic of Iran, based on certain principles of the constitution, and especially its principle 4, explicitly and fully under the influence of the Imams' jurisprudence and the Shi'a jurisprudential texts and the standards of the Islamic religion, it is necessary to establish and approve laws such as Criminal laws.

Therefore, Imam Mahdi's jurisprudence must be the source of inspiration for all laws. In this section, we will highlight some of the most important rules and principles governing the legalization of Imam's jurisprudence.

Indeed, in the philosophy of criminal law, there is a debate about the origin and the source of crime, and what are the principles and criteria for the crime. Criminal lawfulness also has the works and benefits, including the fact that crime is one of the most effective tools of criminal policy. The more rational and rational the criminalization process, it will be rational and rational, along with guaranteeing The better are the norms of public morality and the guarantees of the interests of the government and social issues, family matters, economic interests, natural

resources, and the environment, materials in the international arena in the fight against organized and transnational crimes. All of this can be of great significance and logical significance. The cost of a criminal policy is considered efficient.

Also, with the precision of the criminal offenses listed in the International Human Rights Document, there are similar characteristics that can be found in some of the following: the adherence to the principle of legality contained in numerous documents and conventions Internationally, including Article 29 of the Human Rights Convention (1948), Articles 4 and 8 of the International Covenant on Economic, Social and Cultural Rights of the United Nations General Assembly (1966), Articles 12 and 19 of the Covenant on Civil and Political Rights of the General Assembly The United Nations (1966) and the European and American human rights conventions (Shams Natteri, 2011, p. 268)

Another feature of the discussion is the need for criminalization, which represents the entry and intervention of criminal law at the last stage, and as the last resort considered essential, in this case, both the European and American human rights conventions, as well as the materials 4 and 8 of the Covenant on Economic, Social and Cultural Rights and Articles 21.22 and 23 of the Covenant on Civil and Political Rights and the third character in this regard is the prosperous and measurable nature of the crime, in other words, criminalization should be profitable and beneficial.

In this regard, in addition to the conventions relating to children and adolescents, Article 11 of the Convention on the Elimination of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment may be specified. And the fourth common feature is an effective and enforceable crime. A key

feature of the fifth is that criminality must be transparent and reflect the motive and purpose of the process, and the last is the complexity of criminalization.

Therefore, according to the principles of Articles 71 and 4 of the constitution, the legislature, the Islamic Consultative Assembly, is required to establish a law in the framework of the constitution and religious law in the framework of the constitution and detailed descriptions of these two principles in the second chapter of the fourth section of this thesis.

In addition to the fourth principle, Article 72 of the Constitution also prohibits the Islamic Consultative Assembly from legislating conflicting with the principles of the state religion or the constitution. In each country, the doctrine of affairs is undoubtedly relied on the theoretical and philosophical rules of the legal-criminal system and relies on the same ideology and system of the same system. The judgments are mainly based on some principles and principles, but these Principles and foundations are often not subject to the legislator's stipulation, and it is usually not possible to derive the grounds for criminalization explicitly from the texts of the laws. In general, under the constitution, the legislature aims to achieve the objectives of criminal law and legal and penal procedures. Takes? And the important thing is that the ordinary municipality has limitations in the use of a criminal instrument, or to achieve any goal and in any way possible resort to a repressive system and instruments? Earlier it was said that criminal law was a set of rules related to the safeguarding of punitive acts in violation of the norms and fundamental values of the community. Therefore, the important reliance on the criminal system is to preserve public and social order and criminalization and punishment in this regard. Which

actions should be considered a crime? What are the goals of the criminal justice system?

The evaluation of the Islamic Republic of Iran's penal code based on the theory of instrumentalism and the consideration of the constitution in the system of criminal law is two important perspectives: first, in the country, the basic law is at the top of the pyramid, and other rules must abide by this law. Therefore, it is impossible to Without complying with the rules and principles of the constitution, the Criminal Code was drafted since the constitution is the guideline for regulating other laws and defining and guaranteeing citizenship rights. Second, Iran's legislative criminal law is based solely on abstract perceptions of crime and punishment Since the beginning of the Islamic Revolution, it has caused many problems (Ghazi, 2004, p. 103, & p. 115) What are the goals and objectives of the Islamic Republic of Iran's criminal justice policy? Is the Islamic Republic of Iran's criminal law limited by the use of criminal instruments? It should be noted that the values and objectives that can be enjoyed by the Islamic Republic of Iran to gain access to them are required under the constitutional principles and Particularly the aims outlined in the second and third principles of the Constitution of the Islamic Republic of Iran, the safeguarding of the personal immunity referred to in article twenty-two, the prevention of harm to the non-public interests mentioned in Article 40 as well as The Islamic goals of maintaining the necessary materials and general conscience in this area are noteworthy.

It should be noted that the enjoyment of criminal instruments in the Islamic Republic of Iran, under the preamble of two important principles of Articles 71 and 72 of the Constitution, is subject to the principles and constraints that are considered in Islam and the constitution. As an example in the Islamic

Republic of Iran's system of law, it is merely the admission of the fact that in the Islamic law, especially the Shia criminal law, the illegitimate relationship of the two sexes to the contrary is prohibited and criminal conduct is punishable and that the conduct is sufficient for the crime and for the necessity of criminalizing illegitimate sexual relations, there is no need to lay the foundations for any other legislative instrument.

The main problem of finding the bases of the crime of behaviors in the Islamic Republic of Iran's criminal system is at least in many cases, rather than researching in the area of the will of the legislature, to study those principles in the context of holy law and religious law. One of the most important rules of jurisprudence can be found in the principle of "the subtlety of the act of the Muharram", which its implementation, as the author and examples of acts, has a difference between the jurists and thus is a direct result of the execution of the Islamic system of the Islamic Republic of Iran and Islamic law. The key question is: what are the rules and practices of this rule, and which behavior can be considered a criminal offense and enforced by criminal law, using the rule?

It is imperative that the legislature, in particular the Legal, Judiciary, Islamic Consultative Assembly, when examining bills or projects from criminological theories and paying attention to relevant sciences and data, carefully study the criminal offenses and make appropriate amendments. do it. The use of relevant experts and attention to their views will strengthen the legislator's mandate and ratify the laws rationally and comprehensively. For example, paragraph 1 of Note 17 of the First Program of Economic, Social and Cultural Development of the Islamic Republic of Iran approved on 11/11/1368 and Clause 11 of Article 3 of the Law on the Col-

lection of Some Income and Use of the State in certain cases, approved on 28/12/1373 by the Islamic Consultative Assembly of the Islamic Consultative Assembly, has made the punishment for driving crimes a criminal offense, which is a criminal offense for the rich and rich people in violation of the relevant laws (Mahmoudi Junaki, No. 8, p. 183).

References

- Ardebili, Mohammad Ali and Habibzadeh, Mohammad Jafar & Fakhr Bonab, Hossein (2006). Genocide and the necessity of its criminalization in Iranian law, *Journal of Modares University of Humanities*, 2010, Volume 10, Issue 3, Autumn
- Babaei, Mohammad Ali (2011). Globalization: The Necessity of Criminology Studies and Researches, *Criminal Law Doctrines*, Razavi University of Medical Sciences, New Volume, Issue 1, Spring and Summer
- Baldeser, Robert and Buscock, Bosland, (1996). translation by Parsa, Alireza, *International Culture*, Qods Publishing,
- Convent and University Research Institute, (2002). *An Introduction to Islamic Law*, Side Publishing, Volume I,
- Delmas Marty, M. R., (2014). Translation; Najafi Ebrandabadi, Ali Hossein Major Crime Policies, Publishing the Legal Foundation, Second Edition, Tehran, Autumn
- Ebrahimi, Ebrahim, and Ebrahimi, Javad (2012). Criminal Policy in the Equilibrium of Science and Religion, *Criminal Law Doctrines of Razavi University of Science*, No 4, Autumn and Winter
- Falahi, Ahmad (2014). *Principle of Necessity in Crime*, Judicial Publishing, First Edition, Tehran, Summer
- Ghazi, Seyed Abolfazl, (2004). *Basic Rights and Political Institutions*, Publishers, Twelfth Edition, Tehran,
- Gholami, Hussein (2012). *Principle of Minimum Criminal Law*, *Quarterly Journal of Criminal Law*, First Year, No. 2, Winter
- Ismaili, Mohsen and Rashidi, Reza (2015). Semantics of the term ruling in the fourth principle of the constitution, *Islamic Republic Newspaper Quarterly*, No. 75,
- Janipour, Karam and Maroufi, Mokhtar (2013). *An Analysis of the Need for Money Laundering (With a Comparative View of the Model of Criminality Refinement)*, *Criminal Law Doctrines*, Razavi University of Medical Sciences, No. 6, Autumn and Winter
- Khoeini, Ghafour and Zolfaghari, Soheil, (2011). Legislative vacuum and execution of fatwa in the judicial system of Iran, *Islamic Law Research Journal*, Vol. 12, No. 2, Autumn and Winter
- Lazarez, Christian, translation; Najafi Ebrandabadi, Ali Hossein (2003). *Introduction to Criminal Policy*, The Nazarian, First Edition, Tehran, Spring
- Malek Afzali, Mohsen (2007). Position of the Expediency Assembly in the Legislative Process, *Islamic Republic Publication*, July 12, issue 2
- Mansour Nezhad, Mohammad, (2014). *Legislation in the Islamic State*, *Islamic Republic Publication*, Year 3, Issue 1,
- Markaz Malmiri, Ahmad and Mehdizadeh, Mehdi (2015). *Dispersed Legislation in the Legislative System of Iran*,

- Quarterly Journal of General Law Research, Vol. 17, No. 47, Summer.
- Mohammad Janaki, Firooz, No. 8, Security and Insecurity from the Perspective of Criminal Policy, Journal of Legal Views
- Najafi Ebrandabadi, Ali Hossein (2011). Criminal Policy Papers (Pragmatic Criminal Law), Ph.D. Degree in Criminal Law and Criminology, Faculty of Law, Shahid Beheshti University of Tehran, second semester
- Najafi Ebrandabadi, Ali Hossein (2013). Criminal Sociology Papers, Ph.D., Criminal and Criminal Law, Tehran University, Qom Secondary School
- Najafi Ebrandabadi, Ali Hossein, (2000). Criminal Policy Statements, Ph.D. Course of Criminal Law and Criminology, Faculty of Law, Shahid Beheshti University of Tehran, second semester
- Najafi Tavana, Ali and Mostafa Zadeh, Fahim, (2013). Crime in the Islamic Republic of Iran Criminal System, Jurisprudence and Islamic Law Studies, Vol. 5, No. 8, Spring and Summer
- Nobahar, Rahim and Safari, Fatemeh (2016). Observing Victims in Crime, Journal of Legal Justice, 1980, No. 93, Spring
- Pak Nahad, Amir, (2009). Risk Policy Criminal Policy, Pricing, First Edition, Tehran, Autumn
- Pourbaferani, Hassan, (No. 75). Duties and Necessities of Crime in Iranian Criminal Law, Journal of Parliament and Strategy, Year 20,
- Qiyasi, Jalal al-Din (2006). Principles of Ease and Tolerance in the Criminal Policy of the Islamic State, Journal of the Islamic Educational Association, no. 2, summer
- Raiee, Masoud, (2008). Islamic Republic of Iran, and international commitments, challenges and solutions, Islamic Republic Journal, Vol. 13, No. 3, Autumn
- Salari Athareh, (2011). Trafficking of immigrants in the Palermo Convention and the necessity of criminalization in Iranian law, Master's Degree in Criminal Law and Criminology, Al-lameh Tabatabai University, Law and Political Science University, Winter
- Salimi Turkamani, Hojjat, (2012). Criminalization of the Use of Nuclear Weapons in the Context of Emerging Bessarhem International Law, Quarterly Journal of Criminal Law Research, Vol. 1, No. 1, Autumn
- Sarikhani, Adel and Fathi, Morteza (2015). Thematic elements of money laundering in Iran's money laundering law and international conventions, criminal law studies and criminology, Volume 2, Issue 4 & 5, Autumn and Winter
- Shamloo, Baqer and Kazemi, Ghobad (No. 5), New criminal offenses in Iran's criminal law in the light of organized transnational crimes, Special Letter of Legal Research, Shahid Beheshti University of Tehran
- Shams Natteri, Mohammad Ibrahim and Es-lami, Davood (2015). The Criminal Nature of Terrorism Financing, Criminal Law Studies, and Criminology, Volume 2, Issue 4 & 5, Autumn and Winter
- Shams Natteri, Mohammad Ibrahim et al. (2011). Characteristics of Crime in the Light of Human Rights Docu-

- mentation, Strategic Quarterly, Year 20, Issue 58, Spring
- Unnamed (2013). Criminal Policy-Tools-Authorities and authorities involved in criminal justice policy, Detective journal, Volume 2, Issue 7, No 25, Winter
- Varaei, Seyyed Javad (2006). Basics and Constitutional Documents by Legislator, Publication of the Secretariat of the Assembly of Experts on Leadership, First Printing, Tehran,
- Varvaraei, Akbar and Saadati, Reza and Hashemi, Hamid (2014). Effect of Ethics in Crime and Denial of Criminal Law in Iran, Criminal Law Research, Third Year, No. 8, Autumn