

Investigation of the Principle of Proportion of Punishment and Effective Substitutes to the Prescribed Punishments in Drug Crimes

Given the complex nature of addiction and its increasing prevalence in recent decades, the production, supply, and consumption of various drugs are one of the most important social anomalies that are easily and cheaply distributed among different groups through drug distribution networks, and they create a dangerous future for nations and societies, which is one of the main crises of the current world. Looking at the Law on Combating Narcotic and Psychotropic Substances Crimes, it becomes clear that this law, by determining heavy penalties, especially death and life imprisonment, has centered a criminal policy based on repression and punishment, and has paid more attention to repressive measures than to preventive measures, and in fact emphasizes punishment more than reform and treatment. The criminal policy governing drug crimes basically revolves around government responses, both punitive and non-punitive. Therefore, this law and its heavy penalties for drug-related crimes have not been effective in preventing drug trafficking and its consumption, because, based on official statistics and the admission of relevant authorities, after several years of the enactment of this law and the issuance of heavy judicial sentences, not only has the severity and prevalence of committed crimes not been reduced, but their scope and diversity in the field of drugs and psychotropic substances have increased. Also, the severity of the punishment for drug trafficking and its consumption does not have the necessary deterrent effect, because social and individual factors and the causes of committing and contracting drugs must be identified and eliminated. Drug-related crimes are considered crimes that are related to social abnormalities and must be examined and studied with psychological and social pathological approaches. Therefore, without a doubt, planning and investing in addiction prevention is very necessary at the national and public levels, and people and government agencies must work to prevent people from becoming infected with drugs. Various programs and measures have been implemented at the national and provincial levels by the responsible organizations in order to provide an appropriate model equivalent to the penalties prescribed in the law in order to prevent and control addiction, identify and destroy drug trafficking gangs; however, the pathology of these existing programs and models indicates their low effectiveness, one of the most important reasons for which is the lack of organizational coordination, parallel work, and lack of participation of all actors involved in this harm, especially the target community of addiction, in planning, providing solutions, and implementing them; because most of the models presented as an alternative to legal penalties are less contextual and specific preventive solutions that are in line with the needs of groups affected by addiction and have been presented with a top-down approach in the form of a national version for the entire country, with different conditions.

The Iranian legislator in the Anti-Narcotics Law and its amendment of 2010 has always focused on a criminal policy based on repression and punishment by determining disproportionate and heavy penalties, especially death and life imprisonment; however, this criminal policy has not been very popular with the judicial criminal policy (approach of the judiciary). The criminal policy governing drug crimes basically revolves around government responses, both criminal and non-criminal, but in the non-criminal responses regarding prevention and treatment, the role of non-governmental organizations and bodies is tangible. Given the existence of ambiguous and unknown points regarding the determination of the nature of crimes in substantive laws and the absence of appropriate criteria and criteria for the application of formal regulations regarding drug crimes. Also, drug-related penalties are a clear example of crimes that are difficult to deal with due to the lack of clarity in their nature, the way in which formal regulations are applied, and the application of some of the mitigating institutions in the Islamic Penal Code. There is no single and clear standard and basis for determining legal penalties by the legislator, and no effective alternatives or suggestions have been explicitly stated for legal drug penalties. The implementation of this principle in drug crimes is initially the responsibility of legislators; in such a way that they determine the amount of punishment based on the severity of the harm caused by the crime. In the second stage, this task falls on court judges who, in determining punishment for different cases, observe the principle of proportionality within the framework of the law, and finally, this principle must have a place in the stage

of execution of sentences and by the judge executing the sentence. In the meantime, the role of legislators is very important; Because the severity of the crime in this type of crime is based on various factors such as the perpetrator's behavior and the way he played a role in the crime and the type and amount of drugs. Applying the aforementioned factors requires a delicate and meticulous approach by the legislator, and ignoring them will undermine criminal justice and even question the deterrence of punishments. This has led countries to implement changes in their criminal policy in this area; for example, in recent years, some governments such as Argentina, Brazil and the United Kingdom have reviewed their drug laws in order to implement the principle of proportionality as an important criterion for determining punishment. In addition, the need to apply this fundamental principle is clearly evident in the European Union's efforts to harmonize the punishment of drug offenders. In domestic law, legislative developments have also taken place in the field of drugs, especially in the law of annexing an article to the Anti-Drug Law approved in 1396, which indicates the legislator's effort and desire to apply the principle of proportionality in this area. In addition, today, the scope of the principle of proportionality of punishment has increased; explaining that in the traditional view, the predominant application of the principle of proportionality is limited to the need to establish a proportion between the severity of the social harm caused by the crime and the amount of punishment, without raising the question of the necessity or non-necessity of criminalizing instances of drug-related behaviors. While today, the scope of the principle of proportionality of punishment has gone beyond its traditional meaning and also includes the discussion of decriminalizing some drug-related crimes. In fact, in today's criminal policy governing drugs, punishment is no longer considered a necessary response to all types of drug-related activities, and the application of the principle of proportionality is carried out without any prior desire for punishment. This type of perspective can be seen in the recent trend in some countries towards decriminalizing the possession of drugs for personal use, which, from their perspective, provides a more desirable outcome than imposing punishment. This different perspective on the principle of proportionality of punishment begins with the question of whether there is a need to impose punishment at all? The present study, while analyzing the principle of proportionality of punishment in drug crimes, examines the effective components in applying the principle of proportionality in these crimes and criticizes and analyzes the prevailing law in this regard.

Proportionality of punishment is considered a fundamental principle in criminal law and involves predicting a legal punishment that is consistent with the social harm caused by the crime. Meanwhile, observing the aforementioned principle in drug crimes requires greater precision and subtlety due to the complexity of measuring the social harm caused by them. The diversity of criminal behavior, the diversity of drugs in terms of harm, and the diverse roles played by actors in this field, affect the severity of the social harm caused by the crime. A look at the Anti-Narcotics Law shows that the legislator has focused more on the proportionality of the weight of drugs in determining punishment than on any other component; which poses a serious challenge to the fairness of punishment in the field of drugs; In many cases, minors, carriers, and those who do work for others, as well as consumer-seller sellers, who are more subject to prosecution and arrest than large-scale traffickers, suffer a punishment that is very heavy and has been predicted and determined by neglecting the principle of proportionality between crime and punishment. The recent approach to drug crimes includes considering and applying components in determining punishment that help to observe the principle of proportionality in these crimes as much as possible. The behavior of the perpetrator, his role in committing the crime, and the severity and seriousness of the crime are the most important components that have been given attention by various legislators in the world today and in order to more accurately apply the principle of proportionality in drug crimes. In the spectrum of behaviors and types of crimes, on the one hand, commercial behaviors and consumer-oriented behaviors can be distinguished; On the other hand, there are also differences between commercial or consumerist behaviors that affect the amount of social harm caused by the crime; for example, we can mention consumer sellers and those who keep drugs for personal use. The role of the accused in committing the crime is also another factor for measuring the amount of social harm caused. From this perspective, the perpetrator can vary from a simple carrier to the leader of a smuggling gang, which makes it necessary to determine a proportionate punishment. In addition, the type of drugs and their amount are variables that affect the severity and seriousness of the crime and, consequently, should be considered by the legislator in applying the principle

of proportionality of punishment. Our legislator has placed the greatest emphasis on proportionality in the Anti-Narcotics Law and has neglected other components. Attention to the role of perpetrators is also seen in Article 45 of the Anti-Narcotics Law, which indicates the legislator's tendency to better provide the basis for implementing the principle of proportionality of punishment; however, existing laws have a long way to go before implementing the principle of proportionality of punishment.