

Legal Criminal Policy of Iran in Relation to the Criminal Responsibility of the Government from the Point of View of Legal and Criminological Theories

States have always been one of the most effective institutions in any legal system, which on the one hand have had heavy responsibilities in ensuring order, security, peace and welfare of their people, and on the other hand, if they abandon their duties or violate their rights towards their people and nation, they must be held accountable for the circumstances that have arisen; therefore, the criminal responsibility of states has long been a source of conflict among jurists. The lack of recognition of the criminal responsibility of states can be considered one of the biggest problems of any criminal system, which must be addressed. On the other hand, the obligation to hold the state accountable can extend its umbrella of protection to the nation as much as possible and, therefore, better protect the rights of its people. Of course, it goes without saying that excessive criminal responsibility of legal entities and states also has adverse consequences; In this case, they cannot use the usual defenses in criminal cases to deny the completion of the elements of the crime and are convicted of most crimes, which discourages them from continuing their activities and gradually destroys prosperity in various fields. Thomas Hobbes, an English philosopher, in his most famous book, believes that states arise with the aim of establishing peace and security and can be freed from civil wars by concentrating power and authority in the ruler. In fact, what is considered the primary principle according to Hobbes is to ensure the survival, welfare and comfort of the people; but if, through the realization of the welfare and comfort of the people, their basic rights are violated by the state, how can society react? Now, the main question is that while states can be beneficial, what is the duty if they refuse to fulfill their assigned duties and commit crimes specific to themselves? What is the criminal policy in the stages of prosecution, investigation and trial? The author's initial hypothesis is that, given the policy-making power that is in the hands of the state, it seems unlikely that it will be held accountable through criminal liability. This hypothesis is reinforced in the face of the judicial practice of Iranian courts when the number of such cases is very small. It is worth noting that by examining the realities of society, today the range of crimes that the state can commit has expanded. Committing economic crimes, abuse of power, environmental pollution and ecocide have all violated the rights of the nation and caused chaos and insecurity. In recent years, the increasing power of states has led to irreparable harm and losses in communities and nations. The response to crimes committed by the state can be legal, political, social and organizational. Legal response refers to all criminal or civil responses to crimes committed by the state. Impeachment by the parliament, or dismissal by the Supreme Leader, can be among the political responses. The reactions of the people, the main pillar of society, can be considered a kind of social response to crimes committed by the state. What is intended in the following article is a criminal response by competent domestic investigative institutions. Since states, in the sense of the ruling body, have the ability and power to define a crime, in very few cases they can be considered criminals and blamed for violating the laws they have approved. To oblige the state, the largest example of a legal entity, to respond equally to any violation of rights, one must refer to the regulations related to the criminal liability of legal entities. The definition of a legal entity states: It is an organized community of persons or property to achieve a common goal in a legal framework. Some are against accepting the criminal liability of legal entities and in this regard, they cite the lack of power of perception and authority, the failure to meet the goals of punishments and the lack of appropriate guarantees of execution; of course, these differences are more evident in the area of criminal liability of the state. Accepting and attributing responsibility to the state is much more difficult; therefore, in many countries - such as the United States - the criminal liability of private law legal entities is accepted and the criminal liability of state-owned companies is considered meaningless. The meaning of the state in this article is in a general sense and the three powers that exercise power and sovereignty. It should also be said that the crimes of the state are not considered; of course, it is obvious that the criminal liability of legal entities

appears with the actions of a natural person, in the name of or in the direction of the legal entity. Now that the importance of the criminal liability of the state in the country has been revealed, the role of criminal policy in this category should be addressed. Since any hasty and unreasonable action can have irreparable consequences for the nation. This article, which is written in a descriptive-analytical manner, in addition to briefly explaining the concepts related to the criminal responsibility of states and examining the legal and criminological foundations and theories proposed about it, also examines Iran's legal criminal policy in this regard and identifies the approach of the legislator and the ruling power regarding the criminal responsibility of the state, as a public law legal entity in Iran.

The increasing spread of crimes committed by the legal entity of the state in every country confirms the importance of accepting the criminal responsibility of states in every legal system and in order to realize public interests and strengthen social defense. A state crime is any criminal act or omission that is committed by a legal representative or representatives of the state in the name and in line with the interests of the state and leads to some kind of violation of rights and for which a penalty has been determined in accordance with the Islamic Penal Code and which, by its very nature, the legal entity of the state has the ability to commit it; therefore, according to the above definition, crimes committed by the state do not have a specific legal and material element and are considered general in this respect, like other natural persons. Regarding the basis for accepting the criminal responsibility of legal entities or the state, there are the policy theory, the theory of employer or superior liability, the theory of vicarious liability and the theory of the mastermind. There is a difference of opinion regarding which of the latter theories is accepted in the Iranian legal system; However, relying on the laws and legislative history, it seems that the legislator has accepted the theory of employer's liability by developing the liability of legal entities. Also, according to the principles of criminology and the definition of crime through principles, assumptions and functions, and by defining state crimes, the importance of accepting criminal liability was determined, and also, the criminal liability of legal entities, and especially the state, was justified by relying on postmodern and critical criminology theories, social benefit, criminal justice, and attention to the environment. The criminal liability of legal entities, and consequently the state, is one of the most challenging issues in the Iranian legal system and other legal systems; therefore, initially, the Iranian legal system resisted accepting the criminal liability of legal entities; in such a way that there was no systematic regulation in this regard until 2009. After the approval of the Computer Crimes Law, it became possible to explain the criminal liability of the state in computer crimes. This legislative action, although incomplete, paved the way for the systematic acceptance of criminal liability of legal entities and the state, until with the approval of the Islamic Penal Code and Articles: 143 and 20 to 22 of the same law, the criminal liability of legal entities was systematically explained and punishment was determined in proportion to the actions taken by them, regarding all crimes committed by the state or legal entity. By accepting the responsibility of legal entities, the criminal liability of the state was also accepted in the acts of office. Looking at the rules mentioned in the Islamic Criminal Code, it is clear that crimes committed by the legal entity of the state are independent of crimes committed by state officials and members of the state; however, the commission of a crime by the state requires the determination of the guilt and fault of its legal representative or representatives. In this regard, the legislator determined a differentiated procedure for these persons and specified it in Articles: 649 to 687 of the Criminal Procedure Code. This article was a small step in explaining the legal criminal policy of the Islamic Republic of Iran; however, after 9 years since the implementation of the Islamic Penal Code, judicial practice has not held the government or state legal entities accountable, except for unintentional and fault-based crimes, and a small number of criminal convictions have been issued in this regard. The most fundamental limitation regarding the criminal liability of the government is the unwillingness of judicial practice and judges to hold the government and its subordinates responsible; therefore, in this regard, it is suggested: By amending existing laws and regulations, issues such as:

ambiguity of the rules mentioned in the Penal Code and Procedure, failure to mention the obstacles to criminal liability and aggravating and mitigating factors and factors of proportionality of punishment to the crimes committed, failure to determine the accepted basis for the criminal liability of a legal entity, failure to define a legal representative, failure to consider conciliatory and suspended institutions in order to achieve reform goals, and failure to precisely define instances of governance matters should be avoided. It is hoped that the legislator will try to address recent shortcomings by changing its thoughtful and cautious criminal policy.