

The Role of Victim's Consent in Iran's Criminal Policy: Comparative Meta-Analysis

The commission of a crime and the occurrence of a crime often require the presence of a victim who is harmed by the criminal act. In many legal systems, the victim is a person who is directly harmed by the crime and must be considered a plaintiff or legal representative in the criminal proceedings; but in some cases, there are special circumstances in which the victim himself consents to the commission of the crime or even in some cases, he himself acts as a stimulus to the crime. This type of case is clearly visible in some specific crimes, such as: mercy killing, abortion with the consent of the woman or even in sexual crimes and other crimes; for example, a person who invites himself to a fight or a person who, in the final stages of his illness, consents to the doctor taking his life, in these cases the role of the victim's consent in the commission of the crime can be seen. In Iranian criminal laws, which are considered mandatory laws related to public order, the victim's consent cannot change the nature of the crime or remove the criminal liability of the perpetrator. The principles of Islamic criminal law and Iranian laws are based on the belief that in cases where a crime is committed against one's physical integrity or life, the victim cannot consider his consent as a reason to justify the commission of the crime by the perpetrator. Even if a person consents to a crime or assault being committed against him, the criminal act is still considered a crime and the perpetrator must be held accountable. This approach has also been explained in Islamic jurisprudence; because a person is not the owner of his own soul and cannot deprive it of it; therefore, even if a person voluntarily consents to murder or harming himself, the act of committing the crime must still be subject to legal prosecution. One of the issues that has been considered in Iranian criminal law is the effect of the victim's consent on the decline of the legal element of the crime and the extent of its impact on the criminal liability of the perpetrator. In fact, this issue has been raised not only in Iranian law, but also in many other legal systems. The victim's consent in some cases can lead to the non-fulfillment of the crime, especially in crimes such as theft, breach of trust, or unauthorized entry into a home, in which cases, the victim's consent can be considered one of the elements of the crime and lead to the non-fulfillment of the crime. This shows that in some crimes, consent can lead to the decline of the criminal liability of the perpetrator; on the other hand, in some other crimes, despite the victim's consent, the criminal act is still considered a crime and the victim cannot present his consent as a reason for removing the criminal liability from the perpetrator. In this article, in particular, an attempt has been made to examine the position of victim consent in Iran's criminal policy. The importance of this issue stems from the fact that in many cases, criminal laws have directly and indirectly examined the issue of victim consent and have considered it an effective factor in the analysis of crime and criminal liability; while Iranian criminal law in general seeks to maintain public order and the survival of society, and criminal laws are known as mandatory rules that cannot be changed based on private agreements of individuals; especially considering the major changes and innovations of the Islamic Penal Code in recent years, the need for a reanalysis and a deeper examination of the impact of victim consent in Iranian criminal law is clearly evident.

Historically, in some legal and jurisprudential systems, the victim can declare his consent to the commission of a crime, and this consent can have certain effects. These issues have been examined in areas such as abortion, mercy killing, or even in some sexual crimes. However, in Iranian law, such issues are raised under certain conditions, and the prevailing view is that the victim's consent cannot be accepted as a justification for a criminal act. This view is more in favor of preserving public rights and establishing social order, according to which, even if an individual consents to committing a crime against himself, the crime must still be punished. The concept of victim consent is one of the most complex and challenging concepts in criminal law, which has always undergone many developments throughout history and in different societies. This concept has a special place, especially in Iran, given the integrated nature of the country's legal system, which is a combination of Islamic jurisprudence and civil law. Victim consent means the informed and free agreement of the individual against whom the crime was committed, to perform or not perform an action that would normally be considered a crime. This concept is in a complex interaction with the fundamental principles of criminal law, such as: the principle of legality of crime and punishment, the principle of the necessity of proving the crime, and the principle of individual criminal responsibility.

In the Iranian legal system, victim consent is linked, on the one hand, to the principle of freedom of will and individual choice, and, on the other hand, is limited by the need to maintain public order and the rights of society. This conflict between individual rights and social interests is one of the most important challenges that makes it difficult to understand and interpret the concept of victim consent in the Iranian legal system. The concept of victim consent in Iranian criminal law has always faced challenges in the interaction between Islamic jurisprudence and civil law. Analyzing this concept in the context of Iranian criminal law, especially considering the integrated nature of the country's legal system, seems necessary. On the one hand, the victim's consent is a tool for facilitating the resolution of disputes and promoting justice in some crimes, and has been emphasized in the context of new approaches to criminal justice, such as restorative justice and victim participation; on the other hand, adapting this concept to jurisprudential and civil rules in Iranian law has led to issues and difficulties in its interpretation and application in judicial practice.

The victim's consent means his/her heartfelt willingness and agreement to commit an attack on his/her rights and freedoms. In many legal systems, especially in Islamic systems, this concept, along with the analysis of the elements of the crime, is considered one of the important elements in determining the occurrence of a crime and its impact on the criminal liability of the perpetrator. In Iranian criminal law, in particular, since criminal laws are mostly formulated to establish public order and the survival of society, the victim's consent cannot be considered a reason justifying the crime; even if the victim is satisfied with the commission of a crime against himself/herself, this consent cannot in any way reduce the criminal liability of the perpetrator. In this regard, Islamic jurisprudence, one of the main foundations of Iranian criminal law, emphasizes the issue of the lack of effect of consent in crimes that harm human life or physical integrity. This principle is based on the fact that a person is not the owner of his own soul and cannot deprive it of it; for example, in the crime of murder, even if the victim has previously consented to his own murder, this does not in any way legalize the act committed. On the other hand, the consent of the victim in some crimes can have a significant effect on the criminal liability of the perpetrator. In some crimes, such as murder, assault, or physical injuries, the consent of the victim has no effect on the occurrence of the crime and the criminal liability of the perpetrator. This is particularly emphasized in crimes that are directly related to the life and physical integrity of an individual. In Iranian law, the crime of murder, even if committed with the consent of the victim, is still considered an intentional crime and the perpetrator will be punished. However, in some other crimes, such as crimes against property and ownership, the victim's consent can lead to the crime being dropped and criminal prosecution not being pursued; for example, if a person consents to the theft of his own property, the crime of theft is not committed. One of the important challenges in Iranian criminal law is the distinction between different types of consent. This is especially important in the field of sexual and medical crimes. In sexual crimes, where the victim's consent may be legally accepted in some circumstances, the distinction between prior and consensual consent and its impact on proving the crime creates complications; for example, in the case of abortion with maternal consent, in some Western countries, the mother's consent to abortion is recognized as a legal and acceptable act, while in Iranian law, this act is generally illegal and maternal consent cannot authorize it. These challenges can also be seen in relation to medical crimes. In cases where a person consents to a surgical procedure, even if the person dies as a result of the procedure, some legal systems, such as Iranian law, may not accept the patient's consent to relieve the doctor of liability, and this may lead to a demand for punishment for the doctor. In the context of new approaches to criminal justice, especially restorative justice, which aims to rebuild damaged relationships and compensate victims, the importance of victim consent, a facilitating factor in resolving disputes and promoting social justice, becomes more apparent. In these approaches, victim consent is not only considered a tool for social reconstruction, but can also play an important role in determining the type of punishment or exemption from punishment. In mediation processes and judicial agreements, victim consent may have significant effects on the type and severity of the perpetrator's punishment, which in turn can help improve the judicial process and promote justice in society. Finally, the concept of victim consent in Iranian criminal law, given the connection between Islamic jurisprudence and civil law, still requires further analysis and investigation. In many cases, victim consent can lead to a change in the way the crime is dealt with and its punishment, but in certain crimes, especially those related to the

life and physical integrity of the individual, this consent cannot lead to the disappearance of the crime or exemption from punishment. In the present study, in order to better understand the position and role of the victim's consent in the Iranian criminal law system, a series of articles and theses related to this issue have been examined, which have analyzed specific cases and legal perspectives in various fields such as murder, euthanasia, sexual crimes, and bodily harm. By presenting comprehensive and comparative research, they have revealed broader dimensions of the issue, especially in the field of cultural, jurisprudential, and legal differences. These studies show that the victim's consent generally cannot justify a crime, but in some exceptional cases, it may lead to a reduction or removal of punishment.

In this study, by extensively examining the role of victim consent in Iranian criminal law, the findings showed that: the victim's consent is not accepted to justify the commission of a crime in the Iranian criminal law system; because crimes, in addition to their individual aspects, have general dimensions related to social order and security. This principle is especially evident in crimes such as murder, which have the most severe criminal aspects; because the victim's consent has no role in removing the criminal liability of the perpetrator. However, the victim's consent can be considered in special cases as a factor in reducing the punishment or even exempting it from it. In crimes such as: qisas and diyah, the Iranian legislator has provided grounds for compromise and forgiveness, which shows the flexibility of the criminal system in considering the wishes of victims and strengthening restorative justice. This study also showed that: the victim's consent plays a decisive role in some specific areas, such as: medicine and sports. In the field of medicine, the informed consent of the patient is a prerequisite for carrying out any therapeutic action, and in contact sports, the implicit consent of the participants is the legal basis for accepting the usual risks of these activities. These specific applications indicate the place of consent in areas that are directly related to the individual's freedom and will; at the same time, there are ambiguities and challenges in some areas, such as euthanasia and sexual crimes, that require further attention and investigation; in particular, the precise demarcation between the victim's consent and forgiveness after the crime has occurred is considered one of the weaknesses of Iranian criminal law, which can lead to contradictory perceptions in the judicial system. Finally, it can be concluded: the role of the victim's consent in Iranian criminal law is multifaceted and complex; while the principle of the rule of law and maintaining public order create restrictions on accepting consent to justify the commission of a crime, in order to achieve restorative justice, the legislator has recognized the role of this factor in reducing punishment and facilitating the reconciliation process.