

A Look at Legislative Criminal Policy of Iran against Violent Crimes

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Abstract

According to the opinions of the experts in the field of law, recognition of crimes and fighting against them is a social need combined with favorable political consequences that result in the acceptance and legitimacy of all political systems. The present article, with the descriptive-analytic method and application of all library resources, attempts to examine the designated policy of legal system of Iran in response to violent crimes. The results of the study indicate that the legislative-criminal policy of Iran includes different stages of prosecution, investigation and trial and even criminalization and sentencing. Populist criminal policy has been always considered in the Iranian legal system that instances of it can be observed in the act of intensification of punishments for the perpetrators of embezzlement, bribery and fraud. But in the late eighties and early nineties populist criminal policy emerged in the form of plans, bills and even multiple rules and unfortunately this trend is growing. At the end, it should be noted that in the populist legislative policies, due to lack of causal connection between the actions, the expected results are often not achieved and ineffectiveness of this policy on crimes and incapacity and inefficiency of this criminal policy is clear and obvious. It is hoped that the findings of this study can pave the way for further efforts in understanding and adopting wise policies and strategies to deal with all kinds of crime.

Keywords: legislative criminal policy, violence, populist policy, zero tolerance

1. Introduction

According to the opinions of the experts in the field of law, recognition of crimes and fighting against them is a social need combined with favorable political consequences that undoubtedly would result in the acceptance and legitimacy of all political systems. It worth mentioning that numerous procedures and policies have been proposed in respect of criminology that one or several of them have been adopted at different time and place intervals and since the authority of government and state depends on their ability to maintain order and security, it is essential to utilize scientific techniques to select the best and most efficient method to fight against crimes. Hence, adoption and application of effective policies by each country is very necessary in the suppression, reduction and prevention of crime. It is obvious that the commission of crime, more or less, disrupts the social order that among them, violent crimes possess a special importance. These crimes have widespread political and economic applications. Journalist and masters of social media, with economic incentives, reflect such offenses in large scale and intervene in the creation or loss of the sense of security; consequently, members of society become sensitive to these crimes and the manner of dealing with them and demand special attention of the criminal justice system. On the other hand, by having knowledge about the status of violent crimes among the public, politicians play an effective role in the areas of politics. In the present article, through the use of descriptive-analytic method, we try to study the legislative criminal policy of Iran against violent crimes and answer the following questions: What stages does the Iranian criminal policy have gone through to fight against violent crimes? How does the populist criminal policy have demonstrated itself in statutory laws of Iran? Furthermore, what are the results of the populist criminal politics? And in the end, the obtained results will be utilized and mentioned in order to improve and develop wise policies and practical measures in dealing with crimes. Nevertheless, the present study possesses some practical aspects that include the policymaking and planning of the government, in future, on the issue of the research. The data are the rules and regulations adopted in respect of violent crimes which must be analyzed. It is hoped that the findings of this study can pave the way for further efforts in understanding and adopting wise policies and strategies to deal with all kinds of crime. In the following parts, we are going to provide theoretical concepts and principles of criminal politics and violence,

then, the legislative criminal policy against violent crimes, before and after the revolution will be briefly reviewed and finally, the discussion and conclusion will be presented.

2. Theoretical Concepts and Principles of the Research

2.1 Criminal Policy

The term criminal policy, as a scientific field of study, was used by Anselm von Feuerbach for the first time. Criminal policy is the science, which with the aim of fighting against crimes and also taking advantage of the findings of the science of criminology, seeks to provide the possibility for the provision of best practices for formulating laws and regulations. According to Feuerbach, the criminal policy consists of series of repressive methods that the government employed to fight against crimes (Christine Lazerges, 2003). He considers the following components for the criminal policy:

- The component that is based on coercive and punitive measures and instruments
- It has an official and governmental aspect, that is, it can be only executed by general powers of the sovereignty
- It only focuses on fighting against crimes and does not care about other deviant behaviors that do not have criminal aspects and criminal executive guarantee
- Criminal prevention of crime is realized only by repression and execution of the punishment (Lazerges, ibid., P. 11)

Von Liszt, in the definition of criminal policy, refers to systematic regular set that the state and society organizes the struggle against crime and delinquency. He does not consider about the nature of the facilities and the principles of criminal policy in the mentioned definition. His view is very close to Feuerbach's opinion in this area and by criminal policy he primarily means the penal policy. He emphasized that for the detection of criminal policy two things should be considered: social prevention with the aim of complete removal or limitation of the social conditions of crime; fighting against offenders (ibid., P. 11).

2.1.1 Legislative Criminal Policy

Legislative criminal policy consists of a series of measures for fighting against crimes, which have been reflected in the law, and also possesses criminal executive guarantee. These types of criminal policy, while having legal authority, also indicate the general principles that govern criminal justice system of the society. The mentioned policies sometimes emphasize on the deviant or criminal acts and sometimes on character of the offender who has committed those deviant or criminal acts. Legislative criminal policy is based on criminal or deviant personality and by having this kind of view, the law will be based on criminal policy when the "individualization" of criminal executive guarantee provides the possibility for the social control to facilitate and pave the way for the return of criminals and deviants to society. In this case, the penalties and in general, executive guarantee may not be certain and definitive and they would not be congruence to the committed crimes; because what is important is the personality of criminal or deviant not the committed acts (Lazerges, 2003).

2.2 Violence

Throughout the history of human life, violence has been the means of survival of different social groups and their superiority over each other. In the development of societies, in the relations of countries with each other and also in the relationship between rich and poor there has been always violence (Perfit, 1999, p. 26). This term has the same meaning in Persian including harshness, roughness, anti-softness, hard, anger, wrath, bold, sharp, disrespect, oppression, aggression and use of force (Ramazani Noori, 1994, 778). Political and social experts have also different interpretations of the term; Ted Robert Gurr has defined violence as the harsh and apparent use of power (Eftekhari, 2000, P.11 and 12) Edward Kearns considers violence as a form of political suicide in which any physical aggression is along with improper exercise of power (Kearns, 1996, p. 9). Anthony Arbi-Aster believes that the existence of human- when it is along with the incentive for causing damage, or suffering or harm- is considered violence (Arbi-Aster, 1993, pp. 700-702).

3. Legislative Criminal Policy of Iran against Violent Crimes before the Revolution

3.1 Violent Crimes in the Laws of Pre-Revolutionary Iran

Violent crimes, in the laws of pre-revolutionary Iran, are examinable from two aspects of violent crimes in the General Penal Code and violent crimes in other laws.

3.1.1 Violent Crimes in the General Penal Code

Violent crime in the General Penal Code can be examined from two perspectives: crimes against persons and crimes against properties.

3.1.1.1 Petty Violent Crimes against Persons

Here, initially, a brief definition of petty crimes is presented. Violent crimes have been categorized in the two main categories of petty violent crimes and other violent crimes. In this classification, violent crimes that required discretionary punishment and with the degree of punishment of 6 to 8 (with the exception of crimes against the security) were among the petty violent crimes and the violent crimes against the security, violent crimes deserving legal punishment, qisas (retribution) and diyat (blood money) are among other violent crimes(Norouzi,2005). With a little investigation in the General Penal Code in 1925, the tendency of legislator for stipulating severe penalties for violent crime can be observed clearly. Many of the crimes, which in pre-revolutionary laws were recognized as the petty crimes of violence, in the general penal code were considered as important misdemeanors and even criminalities that this issue indicates the severity of legislator's reaction against violent crimes as compared to the approach of the legislator in the laws after the revolution. Following cases include the titles of violent crimes against persons. It is worth mentioning that due to the limited number of words in this paper, we just provide the headlines of Penal Code. Detailed description of each Article is available in the legal documentations. They include:

Make an attempt on life of the head of state, insulting the president of a foreign country, compulsion to confess, more severe penalties, rebellion, consulting formal authorities, on misdemeanors and crimes against people, crimes against children, and crimes against chastity.

3.1.1.2 Violent Crimes against Property

The number of legal articles of this type of crime is limited. Theft, threat and coercion can be considered as the titles of violent crimes against property.

3.2 *The Adopted Legislative Criminal Policy*

It should be said that in the General Penal Code severe penalties have been considered for many of the violent crimes that it indicates the adoption of strict approaches in the face of violent crimes, including murder, assault and injury leading to permanent illness and lack of concentration, conflict, abortion, rape, robbery, threat and coercion. In sum, it should be concluded that the legislator's policy towards violent crimes in the General Penal Code is a strict one and he has considered severe penalties for violent crimes against persons, whether physical integrity and moral integrity, crimes against chastity, types of violent sex crimes and violent crimes against property. It is well recognized that the legislator, in the years before the revolution, has adopted customary and of course stricter policy against violent crimes.

4. Legislative Criminal Policy of Iran against Violent Crimes in Post-Revolutionary Iran

4.1 *Violent Petty Crimes in the Islamic Penal Code*

In accordance with the criteria set for diagnosis of petty crimes in the Islamic Penal Code, a wide range of offenses have been raised in this regard, but in this article only the petty crimes, which are somehow related to violence, have been studied and examined. Due to the diversity of these crimes, at first, petty crimes of violence against persons are examined and then we will study petty crimes of violence against property. Nevertheless, in this section, like the former, due to limitation of the space of article, only the titles and descriptions of some legal materials will be presented and the responsibility of detailed study of these cases is on the dear readers.

4.1.1 Petty Crimes of violence against Persons

These offenses include: Insulting the head of the diplomatic representatives of foreign countries, rebel, insult, injuring somebody with a knife or other weapon, conflict, extortion and show of force with a knife and disturbing public order and peace, insults and harassment of women and children, obtaining a document by threatening others, threats, slander and spreading lies.

4.1.2 Petty Crimes of Violence against Property

Petty crimes of violence are not limited to physical or spiritual integrity of people but also they may occur against property of the individuals. Titles of the mentioned crimes are as follows: killing someone else's halal-meat animal, wasting papers and business documents, destroying someone's palm garden, unlawful possession or disruption of rights.

4.2 *Legislative Criminal Policy of Iran against Violent Crimes*

4.2.1 The Law about the Islamic Penal of 1982

Unlike Article 7 of the General Penal Code in 1925 and 1946 that started the discussion with crime and considered that "crimes, in terms of intensity of penalties are divided into four types ",Islamic penal code had

focused on punishments. Article 7 of this Law stipulates that "the penalties, according to offenses, are divided to four types: 1- Hudud (limits), 2- Qisas (retaliation) 3-Diyyat (blood money) 4-Tazir (Discretionary punishments). Articles 8 and 11 of this law define the four types of these punishments. Therefore, the previous division of crimes and misdemeanors was removed and new classification was performed in accordance with the Sharia (religious rules). The fact that such a classification did not exist in the General Penal Code of 1925 was obvious; because this law, had separated its way from the penalties stipulated in the criminal and legal punishments. As Article 1 stipulated, this law will be executed in the country for maintaining security rules and for the enforcement of law in the Courts of Justice and the crimes that have been discovered and prosecuted in accordance with the Islamic principles will be punished in terms of Hudud (limits) and Tazir (discretionary) punishments. It is interesting that in 1973 there was no such provision in the General Penal Code. Because after 1925, religious courts were never established and there was no place for Article 1, and the like.

4.3 Types of Adopted Legislative Criminal Policy of Iran against Violent Crimes in the Laws of Post-Revolutionary Iran

4.3.1 Strict Criminal Policy against Violent Crime in Iranian Legal System

Strict criminal policy (zero tolerance) can be observed in Iranian legal system in many violent crimes including the petty or other types of crimes. These policies include the procedural and substantive rules. Substantive rules are strict codification and determination of heavy penalties. Procedural rules also include the lack of tolerance at the stage of the prosecution, violation of the defense right of the suspect, suspension of punishment, temporary arrest, whether voluntary or compulsory (Ardabil, 2005, p. 143).

4.3.2 Populist Legislative Criminal Policy

Populist criminal policy, unlike the strict criminal policy (zero tolerance), is not based on the science and empirical methods of trial and error and is analysis of legislative measures in relation to the criminal issues. But what is certain is that such a policy is seen in the Iranian legal system. Features of the mentioned policy in the Iranian legal system are as follows: policy making on the basis of direct intervention of people (Balvig, 2004),

Overcoming of emotional aspects on the legal analysis (Najafi Abrandi Abadi, 2011), instrumental use of the demands of the people (Mahmoud Janki and Moradi, Hassan Abad, 2011) and projections in the acceptance of inefficiency of adopted policies (Moghadasi, 2011).

5. Discussion and Conclusion

Let's return a little back. In this study, initially, we expressed the vital need of fighting against the crimes in the society, then, we emphasized on the importance of the study of legislative criminal policy of Iran against violent crimes and by relying on theoretical principles of criminal policy, crime and violence as well as through the detailed examination of legal documentation and legal-judicial activities in Iran, before and after the revolution, about the legislative criminal policy against the violent crimes, we sought to find answer to questions posed at the beginning of the article. In response to the questions of the present research it must be said that legislative criminal policy of Iran consists of the various stages of prosecution, investigation, trial, and even criminalization and sentencing. In response to the second question, it must be said that populist criminal policy has been always considered in the Iranian legal system that instances of it can be observed in the act of intensification of punishments for the perpetrators of embezzlement, bribery and fraud. But in the late eighties and early nineties populist criminal policy emerged in the form of plans, bills and even multiple rules and unfortunately this trend is growing. In response to the last question, it must be said that in the populist legislative policies, due to lack of causal connection between the actions, the expected results are often not achieved and ineffectiveness of this policy on crimes and incapacity and inefficiency of this criminal policy is clear and obvious. The ambiguity of the theoretical foundations of populist policies and its formation in an emotional condition causes that these reactions, despite ideal promises, fail to meet the claims about the provision of expected security in the long term. The use of projection-based techniques in the analysis of the failure of crime control policy, stimulating the public opinion against lawyers and defenders of human rights standards and the development of dialogues that consider the defendants and offenders as enemies that populists consider them as the main cause of unattainability of the violating security of interests of the majority of citizens, must be analyzed in this regard. Finally, we should deal with the effects of strict legislative criminal policy or in other words, criminal policy of zero tolerance that is the dominant approach of criminal policy of Iran in dealing with violent crimes, both large and small. In Iran, the success or failure of a plan is announced by government agencies and all surveys are conducted within the organization. Therefore, in this part, the facts and figures, provided by officials and official institutions, will be utilized and the results will be analyzed. According to the findings of previous studies, it can be said that the strict policy of the Iranian legislator against crime and the slogan of more punishment, lower

recidivism, has not been successful in the case of drug crimes and addiction. In the recent years, in relation to the strict approach, a project known as the Social Security Promotion Plan has been executed that the manner of its implementation and also its results were discussed excessively. Many discussions have been taken place about the matter that whether the implementation of this kind of plans possesses scientific justification or not? But enforcement organizations of these projects, on the basis of the polls that have been conducted by them, claim that majority of people have supported the implementation of such a plan. Also there have been many differences of opinion about the type of reactions in a way that the head of the Iranian criminal justice emphasizes on the prevention of social pathologies and non-interference in the area of treatment, but the police as judicial and law enforcement officer, supports sever and strict manners in dealing with offenders. However, this plan was executed in a concentrated form throughout the country, for some time before the tenth presidential elections and the police organization provided various facts and figures about the satisfaction of people with the implementation of this project that all of them were based on the intra-organizational surveys of this governmental institutions. In short, we hope that the results of this work and other studies that have been conducted in this respect could be helpful in the quality and application of effective approaches in the fight against crime, especially the violent crimes.

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