

Determining the Advantages and Disadvantages of the Iranian Legal System's Selection Policy in Response to Violent Crimes

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Received: June 15, 2016 Accepted: July 9, 2016 Online Published: July 31, 2016

doi:10.5539/jpl.v9n6p55

URL: <http://dx.doi.org/10.5539/jpl.v9n6p55>

Abstract

In addition to being a social need, fighting against crime, has a political function and provides the acceptance and legitimacy of political systems. For this reason, the government's policy of suppression, reduction and prevention of crime, concerns the public opinion. It is necessary that, the best and the most efficient way is selected to fight crime with the help of scientific technology. In the present article entitled "Determining the advantages and disadvantages of the legal system's selection policy in response to violent crime" we have been trying to serve the purpose of determining the advantages and disadvantages of the legal system's selection policy in response to violent crimes and explain the best way to fight against violent crimes, taking into account social needs, the analytical methods and the use of all library resources to answer the questions; what processes has the criminal policy of Iran regarded to prevent violent crimes? How has the Populist criminal policy been expressed in legislation of Iran? Finally, what are the results of the populist criminal policy? The results of the study show that the Populist criminal policy has always existed in the Iranian legal system, the example of which is seen in the law of intensification of punishments for the perpetrators of embezzlement, bribery and fraud.

Keywords: violent, Iranian legal system, fight against crime

1. Introduction

The first thing that comes to mind about the so-called crimes of violence, is crimes such as assault, murder and conflict. But these kinds of crimes have a wider range. Depending on the definition of violent offenses, we can consider the crimes against the moral personality of people as violent crimes such as accusing and insulting. Analysis of the criminal policy of Iran in this regard is important because in recent years, some types of violent crimes have severely affected the Iranian society. The murder of some sports figures and several counts of acid attack indicate the necessity to deal with this kind of crime in the form of a coherent and systematic plan.

The concept of violence

Throughout the history of human life, violence has been a mean of survival of different social groups and their superiority over others. Violence has always been present in the development of societies, in relations of countries with each other, also in the relations between rich and poor. There is still no consensus on the meaning of violence. Basically, the word's meaning has such a diversity that doesn't allow us to provide a comprehensive definition. The definition of violence is as follows in one of the sources of law: Abuse of authority, improper and unauthorized use of power without a license, which in most cases is accompanied by intensity, profane or anger. The word in Persian means the coarseness and roughness, hardness, anger, rage, being bold, contempt, profane, tyranny, oppression and coercion. Criminologists, divided crime into two categories: violent crimes based on "Calcium of arm" and misdemeanor criminality or based on "Phosphorus brain." Political and social science experts also have similar interpretations; *Ted Robert Gurr* defines violence as the clear violent use of power. *Edward Burns* believes that violence is a form of political suicide, mixed with the evil actions of power. *Anthony Arbi Aster*, states: "Any physical attacks against human being motivated by the tendency of injuring or harming, shall be considered as violence."

Weiner and Sine have defined violence as: The use of physical force or threat applied in a way that could cause, physical or spiritual harm to a person or a group of people. In these cases, the will and consent of the individual or individuals are not evidence; and this condition is taken place against their will.

Galtung defines violence as inevitable action that prevents the self- knowledge, and the self- knowledge is the satisfaction of human needs. Carl Taylor says: "Violence is the final form of assault." One of the scholars of violent crimes define the word as "illegitimate and illegal use of force". Alan Perfit the chairman of the crimes committee, believes: "initially the abuse of power was called violence, but today, many people, consider violence as any illegal assault against the freedoms that each community explicitly or implicitly recognizes for the people". Denying the previous definition of violence, he states that the violence is an action that brings insecurity for the individual or the community. According to him, in addition to predicted misdemeanors and crimes of the law, violence, include other actions even if they do not have a criminal aspect. He divided violence into two types:

- a. Illegitimate violence, violence that creates public insecurity
- b. Legitimate violence, including violence accepted by society, such as dangerous sports or violence accepted by the law as self-defense.

Violence caused by the lack of substantive criminal law

Justice process is started with Legislative activities of legislature and it should be based on the collective wisdom and the common good. The legislator tries to present fundamental values, which represent our beliefs and our way of life and then uses the weapon of punishment as a mean to strengthen and uphold these values and ensure their compliance. In this way, criminal law seeks to protect not only the individual but also seeks to support the community's structure and composition. It should be noted that any society that values freedom should use criminal law only as a last resort for social control and behavior of individuals in an emergency condition. Therefore, the legislature shouldn't use criminal law to control the behavior that can be solved through executive guarantees. The solution for preventing abnormalities is not criminal. For this reason, we are seeing a loss of monopoly and specificity of criminal law in favor of other legal disciplines. The development of new strategies in response to crime, such as punitive mediation, reduction of victim's damages and administrative penalty are examples of this issue.

Many forbidden acts such as addiction and absolute prohibition of the use of satellites should be removed from criminal description, and an appropriate non-criminal responses should be adjusted for them. The description of criminal acts and the protests against them should also be clear, unambiguous and precise to determine the social norms. Since the Indiscriminate increase in legal and administrative regulations, especially in the field of criminal punishment called criminal inflation, results in the confusion of the Citizens even lawyers, in a way that citizens, may consider it as a kind of "passive violence" on the part of departments and governmental agencies.

The stage of criminalization

The first comprehensive and critical role of legislature is observed in determining the crime. At this point, the legislator should pay attention to social reality and conception of the way the society identifies criminal acts. If there is no correlation between public expectations and criminal law, errors inevitably arise in the penal system and alter its nature. In the sense that the enactment of criminal laws, instead of supporting and protecting the rights and freedoms of individuals, may result in suppress and eventually violence. Since the collective consciousness is impressionable and changeable, the determination of acts contrary to social order are granted to legislator. Although this process supports the individual against arbitrary procedures of police and court; it should be noted that the guarantee, only applies against the executive branch and the judicial branch; not the legislature which with full power, decides on the anti-sociality of an action. So this power must be limited and the legislature should as far as possible, consider a behavior as crime that in action is against the social order and this order is apart from the moral order and religion.

Laying pandemic criminal titles

Another principle which is concerned in criminal law today, is the principle of quality of the law; this means that on the definition of the crime, legislation, should not be too broad (extensive), but clear and incontrovertible. For example, in the legislation of Iran, the political crime is not defined yet, as a result, the implementation of the provisions of Article 168 of the Constitution is still pending and perpetrators of political crimes who have acted with the intention of reform, have been punished behind the closed doors under the titles of general offenses and without a jury and counsel. Also the challenge of the definition of corruption of blood under paragraph C of Article 295 of the Penal Code, is entitled to be murdered and is effective in intensification of social violence like political and religious murders. Article 226 of the Islamic Penal Code states, "The intentional murder can entail Qisas if the victim is not legally entitled to be murdered and if the Victim is eligible to be murdered, the murderer shall prove the victim's eligibility in accordance with the standards".

Naturally a legislator that aims to establish order and security and remove violence in society, must not allow the

citizen to commit violence and private revenge; While the mentioned article implies that the legislator, has given a license to commit murder which is the most severe type of violence, to ordinary people.

Article 26 of the Press Law states that: Whoever insults Islam and its sanctities through the press and his/her guilt amounts to apostasy, shall be sentenced as an apostate and should his/her offense fall short of apostasy he/she shall be subject to the Islamic penal code. The way of drafting this provision is contrary to the principle of "quality of law" as well as the laws of the crimes and punishments. In addition, the title of the crime and punishment should be defined by law, not the judges, because according to the narrative "*Al-Ta'zir Bema Yarah al-Hakim*" and other texts, Hakim is "the management of community Islam." According to the organization of the Islamic Republic and Article 71 of the Constitution, the legislature is the exclusive jurisdiction of the legislator. The theme of "unlawful act" is not defined in Article 638 of the Penal Code; as a result, executives and individuals who are involved in crime detection, can define and interpret unlawful act according to personal taste, and their social and religious vision. It is also contrary to the principle of criminal law.

Violence resulting from non-compliance with the principles of criminal procedural law

Establishing security and peace in society, through punishing the offenders or imposing educational measures, is the responsibility of public power, i.e. the state that is embodied in the criminal justice system. However, the offender, should be sentenced only after the early stages of the criminal process by the court established for this purpose. Organization, the process and the issue of decision are to be regulated by rules and principles whose compliance or non-compliance with those standards can be considered as legitimate and illegitimate violence in modern criminal law like the principles of substantive criminal law. The importance of these principles is so much that Mario Pagano, an Italian lawyer in the eighteenth century says: "If we put steps into an unknown country and attempt to know the rights, freedoms and the value of the community for them, it will only suffice if, we look at the due process of law." Compliance with these principles not only is useful for society that is damaged by committing a crime; but it is also important for the person who is accused. Procedural discussions, set of rules and principles relating to crime detection, prosecution and trial of the accused, competent authorities, normal and abnormal ways of the commandments and the judicial and law enforcement authorities' handling should be regarded. The right to have a fair trial, is consisted of the right of defense and the right to petition. The value of this right and the necessity of it for the citizens, is approved in the International Bill of Human Rights and in the constitutions of countries. Constitution of the Islamic Republic of Iran, has accepted the right to a fair trial in Articles 32, 34 and 39, and has expressed its general principles Inspired by the sources of Islamic law.

Strict criminal policy (zero tolerance) in relation to violent crimes

After a period of multiple studies on criminology and the implementation of criminal policy on the reform of offenders, the authorities of criminal policy of some countries, particularly the North American countries concluded that since the displacement of the center of the criminal justice system, has taken place from the severity and gravity of the criminal act to the character and motives of the perpetrators, the criminal law has taken the nature of social and medical treatment aspects. Following such a change, not only the strength of punishments and power of deterrence penalties has been weakened, but the principle of proportionality between crime and punishment has been greatly shaken. In other words, from the perspective of theories based on considering criminals as patients, the public intimidation of penalties has lost its real function and caused the acts of criminals to be seemed like a habit and even a potential. In addition, the inability of the criminal justice system in curbing criminal phenomenon, has created a growing feeling of insecurity among law-abiding citizens, and has formed a high wall of distrust between society and government. Accordingly, the public demand has increased for a return to severe repressive penalties. This claim led to the main function of the penal system change from the reformation to punishment; the main concern of criminal justice system is the definite and absolute guarantee of penalties based on a simple equation of proportionality between moral evil and its perpetrator's qualification and deserve to receive an appropriate criminal response. This return to the certainty of punishing the perpetrator, called the new neoclassical school, includes all social crimes, even the abnormal behavior; the lack of tolerance for acts that previously were considered as an aberration reached to the extent that such deviations are now considered criminal acts with criminal sanction. Such a policy, especially at the beginning of the seventies was influenced by the theories of American criminologists and gradually swept around the world. American models of Crime, inspired criminal legislative and judicial policy makers in many countries. One of these strategies, which is the interpretation of the broken windows theory is the strategy or policy of zero tolerance for petty crimes; it is now almost 30 years old in the United States of America and in European countries such as France and Germany is experienced less. Adoption of a zero-tolerance policy against petty crimes, the created a new wave of engineering the police organization in the world whose effects can be seen in the police of the Middle East, including Iran and after a quarter century. Reflection of this new approach

to the conscious or unconscious issue of maintaining order and quality of life, has found its way to the discourse of the executive and legislative directors of Iran. So that in 2006 in order to deal with anti-social crimes, a plan called the social security improvement plan was carried out across the country whose contents is in compliance with the American model of policing in some cases.

The concept of strict criminal policy (zero tolerance)

Zero tolerance, is a term in the criminal law used to describe the non-discretionary enforcement of policy, which means the implementation of law in a violent and consistent way, regardless of any negligence. This strategy is more of a policing strategy to maintain order as a part of a strict approach to fight crime in certain areas. The following definition is provided for Zero tolerance in foreign texts: "The policy or the strategy of intolerance towards undesirable behaviors such as violence or illegal drug use through the involuntary imposition of severe sanctions for committing the crimes or extreme intolerance towards the behaviors opposite to social customs as the use of a rigid and uncompromising law or refusing to accept anti-social behavior, typically through the implementation of strict, uncompromising law without the connivance." According to these definitions, we can say that zero tolerance means the implementation of discipline strategies for antisocial behavior. The people in charge of the strategy (usually the police) are required to react and apply mandatory penalties regardless of the severity of the act and the intention of the perpetrator, for those who violate the provisions. Zero tolerance in the area of police performance means that the police must act without personal involvement and decision-making, and fully implement the law.

Violent crime recognized in law before the Islamic Revolution of Iran

Violent crime in pre-revolution laws are studied from two aspects: First, violent crimes in the Penal Code and violent crimes in other laws.

Violent crimes in the Penal Code

Violent crimes in the Penal Code can be studied in two formats. First crimes against persons and second crimes against properties. Looking at violent crimes against property in the Penal Code, we realize the integration of legislator's approach toward violent crimes committed against persons or properties. Legislator, in dealing with this kinds of crimes, as well as former category has used intensity and considered them in the form of penalties with the significant degree of misdemeanor or felony in violent crimes against properties; In this sense it can be said that such a strict approach in the Penal Code is well visible both in offenses against persons and against properties.

Petty violent crimes in other laws

Violent crimes from the past to the present has been the attention of lawmakers in Iran (whether before or after the revolution). Other legislations on violent crimes, are often created in response to public pressure affected by the events in society, calling for the severe rules in dealing with some illegal behavior in society. Among these laws, two kind of laws having severe penalties are mentioned being armed robbery approved in December 27, 1959 and the Act on the Punishment of having knives and cold weapons and disrupting the public order and security Act of June, 17 1957. The two laws are regarded as instances of petty violent crimes which will be investigated in this part.

Reviewing legislative criminal policy of Iran towards violent crimes in the laws adopted after the revolution

With careful consideration of the Iranian penal law (including procedural and substantive), it can be said that the three legislative criminal policy in the Iranian legal system are recognized. First strict legislative criminal policy, and second the negligent legislative criminal policy second and third populist legislative criminal policy.

Strict criminal policy against violent crime in the Iranian legal system

Strict criminal policy in the Iranian legal system is observed in many violent crimes, whether it is petty or not. Basically, the Iranian legislator uses this policy in dealing with crimes that influence public opinion.

Determination of heavy penalties

The Determination of heavy penalties is one of the most obvious and visible symbols of legislative criminal policy. Basically, the impression is formed in the minds of lawmakers of Iran that imposing severe penalties are deterrent. Therefore, where the legislator is sought to protect a precious theme is setting severe penalties is needed. Rape is one of the best examples of violent crimes against persons that strongly influences the society. Thus, the legislator before the revolution and after it, has stipulated strict penalties for rape. Protection of women and children are deemed as heavy punishments. For example, while in accordance with Article 608 of the Penal

Code, the punishment of the insult to an ordinary person is up to 74 lashes or a fine of fifty thousand to one million Rials, in accordance with Article 619 of the Penal Code, the punishment of Insult to children and women in public places, is a prison term of two to six months and up to 74 lashes. In violent crime against the welfare of the public, the Legislator has also used strict approaches. Other instances of severe penalties is the armed robbery that the legislator of Iran has dealt with without any tolerance; the punishment of armed robbery differs from death penalty, imprisonment of three to fifteen to three to ten years.

2. Conclusion

In addition to being a social need, fight against crime has also political function and causes the acceptance and legitimacy of political systems. For this reason, the governments' adopted policy in suppression, reduction and crime prevention, concerns public opinion. Criminal policy is a science that seeks to enable the possibility to provide the best way of legislation and rules with the help of criminological findings, and aims at combating crimes. Methods and techniques in the field of criminology has been suggested in each temporal and spatial periods. And since the authority of the state and government is in maintaining order and security, it is essential to use scientific techniques with to select the best and most efficient way to fight crimes.

Committing any crime more or less disrupts the social order and violent crimes are of utmost importance. These crimes have a broad political and economic function. Journalists and social media masters, with economic incentives, reflect such crimes on a massive scale and interfere in the creation or destruction of a sense of security. Consequently, individuals become sensitive to these crimes and demand the special attention of the criminal justice system. On the other hand, the politicians play a role in the attention of the people towards the violent crimes.

Considering the violent crimes in Iran's criminal justice has a long history: severe penalties of armed robbers who enter the house of people, approved on June, 10, 1954, the Law for the punishment of having knives and cold weapons and disrupting public order and security approved on June, 17 1957, the law on punishment for armed robbery approved on December 27, 1959 as well as the articles related to the topic of waging a war on the Islamic Penal Code in 1996 and 2013. In recent years, the more severe penalties for crimes of disturbing psychological security are approved on July, 2, 2008 and the plan of intensifying the fight against violent crimes, approved on, July, 31, 2011 and are offered to parliamentary legislator. These acts often seek to expedite proceedings to particular violent crimes in certain courts, such as military or revolution courts and reduce the issuance of decisions and deadlines for appeal, etc.

Although rapid responses to crimes are associated with significant positive effects, due to the heavy penalties against violent crimes, the accuracy and fairness in the proceedings is a crucial issue. So to balance the order and justice, the legislator must choose the most effective criminal policy which requires academic study of this issue. According to the findings of previous studies, we can say that aggressive policy against Iranian legislator's crime and the slogan of increased penalties, decreased crimes have not been successful for drug crimes and addiction issues. In relation to the strict approaches in recent years a plan was designed called the scheme of the improvement of the social security- the extensive discussion took place regarding its performance and results. The scientific justification of such plans, are considered in many debates. But enforcement of these projects were done according to surveys of the responsible organizations, and according to them the majority of people supported the implementation of such plans. Also, there was a lot of disagreement on the kind of action in a way that the head of the Iranian criminal justice recommended the prevention of social pathologies and non-interference in the area of treatment.

References

- Akhondi, M. (2000). *Code of Criminal Procedure*. University of Qom, c 4. p. 319
- Amer Syahooei, H. R. (n.d.). violence in the face of urban development, security, Issue 19&20, pp. 4, 16.
- Arbi-Aster, A. (1993). Violence, In William Outhwaite and Tom Bottomore, The Blackwell. p. 700-702.
- Ardebili, M. A. (2005). *General Criminal Law* (Vol1, 5th ed.). p. 143.
- Ashouri, M. (1999). *Code of Criminal Procedure*. Tehran: Publications Office, c 1, p. 5.
- Cairns, E. (1996). *Children and Political Violence*. Oxford, Black well. P. 9.
- Campbell, H. (1988). *Black law dictionary*. Minnesota: West Publishing Co, p. 911.
- Clarkson,s, M, V, p. 234.
- Clear.Todd, R. (2000). *American Corrections*, Wadsworth, p. 49.

- Dalmas-Marti, M. (n.d.). *the criminal law and criminal policy*, translated by Ali Hussain Najafi Abrandabadi, Qom University, No. 11, pp. 179-195.
- Eftekhari, A. (2000). *violence and society*. Tehran, Safir Publishing, p. 46.
- Habib Zadeh, M. J. (2000). the legal regime of the criminal law an important role in growth and development. *Justice Law Journal*, (23), 31-43.
- Khazani, M. (1998). *process of punishment*. Tehran: Ganje Danesh, p. 166.
- Mohaqeq Damad, S. M. (2000). rules of criminal jurisprudence, the center of Islamic sciences publishing, printing, Tehran, p. 234.
- Najafi Abrandabadi, A. H. (2000). *transition of violence and public safety*. Tehran, p. 11 and 12.
- Perfit, A. (1989). *the answer to the violence*, translator Morteza Mohseni. Tehran: Ganje Danesh, p. 26.
- Ramezani Nouri, M. (1993). *the Modayen encyclopedia of civil rights*. Qom, Modayen Publications, p. 778.
- Safari. (2009). *Penology* (4th ed.). Tehran, p. 109.
- Stephanie, G. et al. (1998). *the Code of Criminal Procedure*, translated by Hassan Dadban, Tehran, Allameh Tabatabaei University, Volume I, Tehran.
- Taylor, K. K., & Soady, F. (1972). *Violence: An Element of American Life*. Boston, Holbrook Press. p. 80.

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