

Measures for the Recognition of Ifsad fi al-Arth Emphasising on Drug Crimes

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Abstract

Death sentence for Drug crimes perpetrators arises out of two precepts; firstly, in the divine criminal law, the crime of the Mofsed-e-Filarz (corruption on earth) is punished according to rule of “Hadd” (definite punishment), and secondly, the perpetrators of these crimes are considered to be subject to “corruption on earth”. Similarly, based on the Jurisprudence, fulfillment of both mentioned precepts should be ascertained so that a crime qualifies for death penalty. In other words, while the major argument is that whether or not such a definite punishment has been prescribed by Holy Legislator in Jurisdiction, the sub-issue is that assuming such a decree being accepted, what kind of behaviors may be treated as Mofsed-e-Filarz (corruption on earth). So far, great deal of discussions have focused on the ruling aspect of this issue, and jurisprudential justifications in favor or against the verdict of Fisad-e-Filarz (corruption on earth) have been scrutinized. Meanwhile the question of who could be applicable to this decree and what measures should be used to recognize the examples of “corruption on earth” has not been sufficiently addressed. Moreover, assuming the conformity of the specified measures on drug crimes law, are the punishable by execution crimes, really wide corruptive in nature? The significance of this issue is getting even greater as, in Article 286 of the Islamic Penal Code, the legislator has tried to provide a definition of the “corruption on earth” and clarify this concept. Regardless of major controversies around the religious decree of “corruption on earth”, this article seeks to address the corrupter recognition criteria and accordingly to show that some subject-to-death cases are out of the inclusion circle of these criteria and ultimately, rejecting the excludability of anti-narcotic law to Article 286, intend to prove the validity of Article 286 over the Counter Narcotics Act.

Keywords

Execution, Corruption, Philosophy, Tradition, Ifsad, Falsehood, Drugs.

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An Assessment of the Approaches Taken by Judges towards Exercise of the New Leniency Programs: A Case Study of the Criminal Courts of Kurdistan Province

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Abstract

Pursuant to enactment of the Islamic Penal Code in 2013, some new Leniency Programs were introduced to the Criminal Justice System of Iran. These programs have leniency approach as such that, while imposing punishment, provide for reconciliation of the offenders. But, to what extent are these tools consistent with the judicial culture? The present study employs quantitative and analytical-comparative approach in assessing the judges' approach towards 'Leniency Programs'. This survey research is an applied one as far as its objectives and subject of study is concerned and, a descriptive one insofar as it concerns itself with social research. The study approaches its problem through descriptive-analytical methods. The statistical population includes the definitive verdicts issued by courts of first instance and appeal courts of Kurdistan Province in the first half of the year 2018 regarding which 'Leniency Programs' could be exercised. Out of the 440 definitive verdicts for the 2200 cases considered, 440 definitive verdicts were chosen through convenience sampling. Based on the statistics, the findings of the study show that the judges still take traditional approach towards 'Leniency Programs'. It seems that factors such as statisticalism, non-acceptability of the leniency tools by the judicial bodies and populist approaches have led to a kind of laxity towards 'Leniency programs'.

Keywords

Leniency Programs, Islamic Penal Code, Judicial Procedure, Criminal Courts of Justice

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Iran's Judicial and Legislative Criminal Policy on Sexual Offenses against the Children in the Light of International Documents

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Abstract

As the future makers of the human society, from among the victims of the crimes, children victims who are one of the most vulnerable members of the society need more support. From among all of those victims, sexual victims face more dangers such as repeated crime or delinquency in the future, prostitution, being rejected from society or friends and finally venereal disease.

The key question of this leading research is whether our law and judicial practices have a differential view of the children who have caught sexually transmitted diseases or not? Also the applied research method has been analytical _ descriptive.

The main purpose of this paper is to criticize survey and refer to Iranian legal and judicial procedure deficits. And to emphasize on taking specific supportive criminalization policies and the mechanisms of compensating material, moral and psychological damages imposed on juveniles. This is done by regarding guidance of the international documents and international criminal court and also international court of Rwanda.

Therefore, according to the above findings, it should be said that the children victims of such crime must be more strongly supported. These support whether primitive, secondary or clinical may be in the form of differential criminal policy both judicial and legislative.

Keywords

Sexual crimes, Legislative policy, judicial policy, differential criminal policy, Children victim

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The Need for and Manifestations of Public Participation In Criminal Procedure

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Abstract

Increasing criminal phenomenon in modern societies, the need to use different means and tools needed to prevent and respond well to it. The use of civil society participation is considered crucial utilities. In criminal proceedings and in the proceedings on the authority of the state and its representatives, public share some more light to be seen. However, the use of public participation in the various stages of criminal proceedings from the discovery of the crime to criminal penalty policy approved today in various countries.

Necessities such as reducing the gap between the people and the criminal justice system and increase public confidence in the system and also utilizes the power of the people in order to enhance the effectiveness of the criminal justice system has necessitated such a partnership.

In our laws, before the Criminal Procedure Code of 2013, the share of the public in the investigated area was small. In the Criminal Procedure Code of 2013, we can see the various effects of public participation in criminal proceedings. Among them is the prosecution of citizenship, the participation of NGOs in the process and the use of the public in the formation of courts.

Keywords

Public Participation, Citizens Arrest, NGOs, Jury, Criminal Procedure

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Juridical and Legal Review of Reasons for Criminalization of Non-registration of Marriage

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Abstract

Article 49 of the Family Protection Law, approved in 2013, criminalizes the non-registration of marriage, divorce and returning, imposing a grade 7 discretionary imprisonment (from 91 days to six months) or grade 5 cash penalty (more than 80 million to 180 million Rials). This study is aimed at harmonizing the Islamic Republic of Iran laws with religious and rational standards as much as possible. This comparative and analytical research jurisprudentially analyzes the first part of this Article, which deals with the non-registration of marriage, as well as jurisprudentially analyzing the reasons that have been used or may be used to prove its legitimacy. It ultimately concludes that the criminalization of non-registration of marriage is contrary to the religious laws; since the enactment of punishment without a religious permission is contrary to the religious law and the juridical principle of unlawfulness of causing harm to others. According to this law, no one, including the legislator of the Islamic system, is permitted to consider a punishment for an action without a definite and authoritative permission from the religion (Sharia). If this happens, then that punishment will be forbidden and unlawful, and Article 4 of the Constitution will prevent it from being approved; since, according to this principle, all laws in the Islamic Republic must be in accordance with the religion (Sharia). The present research proves the distortion of the juridical reasons for proving this Article and concludes that these reasons cannot be a sanction for neglecting the general principle of unlawfulness of causing harm to others and being specialized to it. Furthermore, legally, respect to the individual freedoms and rights is a basic principle, and in the absence of a firm and definite reason, the principle cannot be ruled out. According to Article 9 of the Constitution, the individual freedoms and rights of the people in the society cannot be limited even by enactment of laws or the imposition of punishment, or in any other way.

Keywords

Marriage, Registration, Crime, Family Law, Jurisprudence

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Scope of Criminal Liability of Legal Persons, in the Law of Iran and Scotland

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Abstract

Criminal liability of the legal entities or development of its related issues provide some fundamental problems. First, based on which method or methods can the responsibility be attributed to one who lacks the body and spirit? Second, which range of crimes can they commit? For example, are they eligible for crimes such as murder? Third, due to the specific nature of the legal entities and with respect to the objectives of the criminal law, especially consequentialism, what kind of sanctions can be applied to enforce them in a timely manner? And fourth, will the defense of due diligence by the legal entities in the prevention of the crime taken by the members suffice them to avoid from criminal responsibility? This article would compare criminal justice system in Scotland as a pioneer in the adoption of the criminal liability of the legal persons, under the influence of the criminal justice system of England, and the Iranian criminal justice system, which adopted this liability later. The findings of the study explains: 1- Solutions for attribution of responsibility to the above mentioned people and analysis of the behavior of the human representative (vicarious responsibility) as well as their organizational culture (direct responsibility); 2- Reasoning for the legal entities concerning their liability for deliberate and non-deliberate crimes with and without mental factor; 3- Referring to the basic criminal reactions proportionate to the legal persons' nature and satisfy the penalty goals such as crime prevention and supporting the victim; and 4- Efficiency of the legal persons' efforts to prevent the crime.

Keywords

Legal entities, Crime, Criminal liability, Penalty, Iran Law, Scotland Law

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Preventing the Bullying of Juvenile through School-Based Interventions with an Emphasis on Enriching Social Skills (Look at the SEL program)

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Abstract

Desirable education has the power to transform communities into a single generation.

Without any controversy, the scholars believe that the educational system of each country has a unique and decisive role in the upbringing of the next generation and hence the prevention of crime and delinquency and, as a result, the eradication of crime in adulthood. Can not be used to prevent crime and delinquency in society, but ignore the important and effective role of the school, the second home. The school and educational system in support of juvenile at risk of victimization, a unique place of residence is an alternative. Prevention in schools is remarkable in two respects: on the one hand, how to normalize normal children and prevent them from entering the world of delinquency; on the other hand, the prevention of children's school delinquency, which has important consequences such as escape from school and even suicide. While bullying is a common problem in many schools, schools can take specific measures to improve school conditions and encourage positive interactions to reduce or prevent bullying.

Through descriptive and analytical methods, this research analyzes and evaluates the role of school-based prevention programs, including strengthening social skills, by looking at the SEL global program to reduce students' harm and victimization, especially bullying victimization. The study suggests that school interventions, focusing on social-emotional skills training programs, can help all those involved in bullying by promoting positive engagement and enhancing feelings of belonging as the core of this program.

Keywords

Victimization, Prevention, Bullying, Juvenile, School-based intervention

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The Challenges of Absolute Application of the Principle of Coincidence of Mens rea and Actus reus

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Abstract

Along with the accepted principles of criminal law, both in written and unwritten systems, the mere existence of material and mental elements of a crime is not sufficient, but their coincidence is also necessary. To substantiate this necessity, different and solid reasons have been raised; however, the acceptance of the "principle of the coincidence of material and mental elements", despite the pursuit of positive effects for the realization of justice, as the highest objective of criminal law, in some cases, also causes negative effects and injustice in the criminal justice system. The negative effects of the principle of "coincidence of material and mental elements" have not been widely and deeply discussed with a single intellectual approach. There is also no in-depth debate about the way and method by which these negative effects can be zeroed or reduced. This research examines the adverse consequences of the traditional or absolutist approach to the principle of coincidence between material and mental elements. It is concluded that a "relativistic" approach to the principle of coincidence can help the criminal justice system to avoid such negative effects.

Key words

Coincidence of mens rea and actus reus, Challenges of absolute approach, Relative approach

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Effects of Differential Trial in Smuggling of Goods (In the light of Fair Trial Principles)

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Abstract

Adverse economic, social and cultural effects of smuggling along with specialized and complex discovery and proof of its realization, prevention of smuggling and deal effectively with perpetrators of acts with fast and sure punishment, quickly replacing the lost rights of the state treasury and at the same time, protection of investors and contributing economic prosperity in the country are the most important requirements for special rules for dealing with cases of smuggling. In this regard one- way vision and overcoming the repressive approach; prevents the realization of the principles and guarantees of fair trial, including the presumption of innocence, the principle of access to justice, the principle of equality of arms, the principle of independence and impartiality of courts and exercising the rights of defense such as the right to have adequate time and facilities to prepare a defense and the right to object to the vote in the accepted cases of retrial.

Key words

Fair trial, Differential Trial, Smuggling goods

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Functional Ideas and Proactive Criminal Investigations

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Abstract

Functionalism is a prominent social science ideas rooted in positivism. The notions of this school in the sense of the existence of a social system separate from the people of the society as an organism with the particular value and normative necessary for its functioning and emphasizing the necessity of the conformity of all members in the direction of the functioning, order and stability of this whole, in the views of Durkheim And Parsons led to statements about the necessity of supervising each system on its potentially destructive behavior in its members and in controlling destructive conflicts. In this paper, through descriptive-analytic method, it has been tried to identify functional theories, how to interpret the readings derived from these theories in the domain of criminal investigations and its impact on the formation and development of a new type of criminal investigation with a proactive approach. In analyzing functionalist propositions in sociology, these theories have been criticized in terms of radical, abstract, imaginary, the concept of society as a package of value, rigidity with the negation of will, freedom and individual rights. In the same vein, the consequence of functionalism's influence in criminal investigations is on orbital information, the focus of prevention, the standard diminution of the initiation of research, the extension of the scope of research, the advancement of administrative rights in criminal procedure, the violation of individual rights and the principles of criminal procedure and the potential for discriminatory effects of the investigation process. Human factors have become obsolete.

Key words

Preliminary criminal investigation, Functionalism, Passive Criminal Investigation, Proactive Criminal Investigation

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Environmental-terrorism in Iran and France Criminal Law

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Abstract

Terrorism and the complexity of this phenomenon in terms of the introduction of its new types are at the head of the concerns of each legal system. In terms of Criminal law, a comprehensive criminal protection should be considered. One of the many types of terrorism, which at the same time is the most dangerous and the most common type is environmental terrorism. Among the legal systems, for the first time, France by codifying materials in the new Penal Code of France adopted in 1992, provided a section on environmental crime of environmental terrorism, the French Criminal Procedure Act also provides for differential treatments of terrorist offenses in a separate chapter. French lawgiver by bringing the phrase in the definition of environmental terrorism in Article 421(2), which is the main element of terrorist crime terrorism, has separated the environment from other environmental impacts, such as contamination of water, air, and so on. there is no separate crime under the name of environmental law in Iran's law, but in many laws there are manifestations of the concept environmental terrorism; one of these items is, Section 286 of the Islamic Penal Code, by stipulating, the author considers the perpetrator to be a "mofsed-fel-arz". In this article, we will deal with the definition and similar cases of bio-terrorism in Iranian law and its adaptation to the country of France as a leading legal system in the field of Criminalization and imposing punishment for environmental-terrorism.

Key words

Environmental-terrorism, Criminal protection, Environmental crime, Criminality, punishment

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The Legitimate Scope for Applying Judicial Discretion in the Light of the Rule of Law (Case Study of Illegal Sexual Relationship)

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Abstract

Sometimes a judge faces a legal problem with two or more legal responses that each of them is legally correct. In this situation, the judge can't find the valid correct legal answer on the basis of the facts of the case in order to do his traditional duty for application a general rule to a case, rather, it is necessary to make decision by applying of judicial discretion and going beyond the legal rules in the set of rules. Under such circumstances, the rule of law may be severely threatened, and this is the biggest challenge faced by the judicial discretion. The normative and theoretical link between the judicial discretion and the cause of the rule of law is an important issue in the philosophy of law, but in the legal literature, and in particularly in criminal law we have not paid much attention to it. this article seeks to understand it with an emphasis on interpretive theory. Also, analyzes the extent of the judicial discretion to construct illegal sexual relationship applicability in the criminal justice system of Iran by using the qualitative research. The result shows that the judges sometimes criminalize the crime of illegal sexual relationship when they need to interpret it. In a judicial discourse, it seems that the applying of judicial discretion is far removed from the criteria of the rule of law in the recognition of instances of illegal sexual relationship

Key words

Judicial discretion, Rule of law, Legal rule, Legal principles, Illegal sexual relationship

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The Elements of National Lands Trespass Crimes According to the Doctrine of Legal Criminology

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Abstract

Policy-making against the national lands trespass has also been propounded as legislation in Iran. The crimes of this area same as other crimes is included three elements: legal, material and mental elements. The scientific evaluation of described structure implies the various legal and judicial objections and interpretations, thus it implies accelerate of onslaught to the national lands. Also, the traditional approach and to know these described crimes similar to the ordinary crimes which threaten the survival of all live creatures and ecosystem stability with other usual crimes which makes the certain value of social stability aggravates the present difficulties with respect to neglect the variety and the components of the material element and comparing with the components mental element. So, quality of trespass crimes to the above mentioned lands which is conformed to the criminology facts and it should improve the current conditions and the abuse channels and trespass should be closed. Nevertheless, recruitment of differential and modern essential and balanced development of their criminology and qualification in all aspects (removing disadvantages in the legal element and explaining and intelligent matching components of the material and mental elements with together, considering the nature of crimes) and finally it is necessary to classify these crimes according to the legal criminology. In this descriptive-analytical research, relying on the legal criminology, it was attempted to investigate the problems of the elements of crimes against national lands and some proposals will be provided to update and improve their effectiveness and to eliminate the damage to this part of penal policy.

Keywords

Penal Policy, Legislation, national lands rape crimes, legal criminology

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Transitional Justice: Methods of Dealing with International Crimes in Transitional Societies

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Abstract

Transitional justice refers to the ways of addressing the large scale or systematic Human and Humanitarian Rights violations in periods of transition from conflict and repression, that the normal system of criminal justice, due to the extent and severity of violations, is not able to provide them adequate and appropriate response. The mechanisms of transitional justice are different, depending on the circumstances prevailing in the transitional society. Transitional justice is using in different societies as a way to confront the legacies of oppression, war and violence. This is accomplishing through mechanisms like criminal prosecution, truth-seeking, reparation, and institutional reforms. This paper, along with the conceptualization of transitional justice and the introduction of its various criminal and non-criminal mechanisms during the transition period, examines the acceptability of these mechanisms in transitional societies and their validity in terms of International Criminal Court.

Keywords

Transitional Justice, Criminal Prosecution, Truth-Seeking, Reparation, Institutional Reform

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