

Protection for Women as Victims of Domestic Sexual Violence in the Criminal Justice System of Iran

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Abstract

Legal systems in various societies have emphasized on state intervention by enacting special laws to protect the victims of domestic sexual violence. In Iran, lack of criminalization of sexual/domestic violence, especially domestic sexual violence, has caused challenges in recognizing the victimization of this type of violence in the courts. The main question of this research is how the criminal justice system of Iran reacts to the phenomenon of domestic violence and what mechanisms support women as victims of this type of violence. To answer this question, a qualitative approach and a case study method including deep interviews with 15 victims, 10 criminal justice judges and a content analysis of 15 cases in Tehran province have been used. The findings indicate that women's criminal complaints often fail to be responded under this title, which has resulted in prohibition of prosecution. It could be said that only the cases of injury and damage would lead to punishment. In practice, the difficulty of proving and the lack of objective criteria in determining the scope of woman's sexual submission have led to personal interpretations of judges, deliberate neglect, and various judicial approaches to the problem. Therefore, considering the inadequacy of existing criminal mechanisms, from a substantive and procedural point of view, and the ineffectiveness of evidence in this matter, the first and most important supporting technique is the necessity of criminalization of domestic sexual violence in legal discourse, along with determining an appropriate penalty in accordance with the needs of the victim and a differential procedure in criminal courts.

Keywords

Sexual Violence, Victim, Family, Criminal Intervention, Access to Justice

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A Procedural and Substantive Analysis of the Anti-Smuggling of Goods and Currency Act

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Abstract

In directed economic systems –vs. free market economic systems – the government interventions are maximised. Since the economy is the fundamental pillar of any governance, in such systems the role of the market is not taken into account. In this approach, crime perpetrators of this area are known as unreformable rational criminals rather than normal reformable deviants. This strict approach has been shown in the spheres of legislation and enforcement of law and has often led to violation of the framework of legal principles and access to fair trial. This strict criminal policy can be evaluated along two dimensions. The substantive and procedural aspects of such policy are addressed and examined in this paper.

Keywords

Good and Currency Smuggling, Criminal Policy, Criminalization, Penalization, Jurisprudence

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On the Criminal Responsibility of Media in Juvenile Suicide

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Abstract

Developments in the digital world and the advent of the electronic age have brought human societies into a new environment that has been welcomed by human beings, without taking advantage of its services in view of its challenges and threats. The presence of the media in the teenage world, which until recently caused concern about bodily harm such as obesity, has led to the violence or mental disorders. In this regard, the present paper, using a descriptive-analytical method, examines the impact of media on the formation of violence and harmful behaviors of adolescents towards themselves and the criminal law attitude in the responsibility of designers and companions of these media through analysis of the existing criminal laws and rules. The result shows that the designers and companions of these media have criminal responsibility and are punishable if they influence adolescent harmful behaviors and suicide.

Keywords

Criminal Law, Media, Computer Games, Teenagers, Suicide, Criminal Responsibility

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The Relationship between Social Capital and Developmental and Community-Based Prevention of Crime (A Case Study of Malard , Autumn 2015 - Summer 2016)

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Abstract

New approaches in the field of criminology and crime prevention indicate this fact that strict responses can not be corrective. With this view in mind, the present paper examines the nature of developmental-based society approaches in exploring the community-based infrastructures and attempts to answer the question of how the effective measures and mechanisms can lead us to achieve organizational goals regarding the components of social capital in the dimensions of the rule of law, social contract, social participation, and the mutual norm. In fact, the purpose of this research is to identify the potential and actual capabilities of society as social capital which explains the meaningful relationship between developmental and community-based prevention patterns along with social capital components. The sample studied in this research includes 382 cases in the city of Malard. This research is applied in terms of goal and descriptive-correlational based on data collection method and has been conducted in the period of 2015-16 in a random order. The statistical analysis shows a meaningful relationship between the components of social capital and developmental and community-based prevention.

Keywords

Social Capital, Developmental Prevention, Community-Based Prevention, Social Participation, Mutual Norm

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The Foundations of Criminal Policy Evaluation

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Abstract

Although the necessity of evaluating criminal policies is of evident issues, the study of the foundations of criminal policy evaluation is essential for Iranian criminal policy makers. The aim of this article is to search for some rational foundations for criminal policy evaluation. Taking a descriptive-analytical approach, this article reviews evaluation and its relationship with public policy in general, briefly. The article, then, studies three major foundations of criminal policy. Rationality is the first major basis of criminal policy making. It means that evaluation is the very requirement of every single rational public policy making including criminal policy. The second foundation of policy making, according to this article, is good governance in its public law sense and as conceived in the literature of Human Rights. Indeed, there is a dire need to improve the quality of governance by applying effective policies, especially in controlling crime and delinquency. Due to the fact that transparency and accountability are two necessary indicators of good governance, evaluating numerous policies is needed. This, in its turn, helps to achieve human and economic development goals and makes policy makers more aware of the results and side-effects of the programs, if any. Evaluation has its own economic aspects and dimensions. Due to the resource limitations of the society, it is necessary to implement the most efficient policies at the lowest financial cost. Without evaluation such an objective seems not to be achievable.

Keywords

Evaluation, Public Policy Making, Criminal Policy, Transparency, Accountability

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The Complementary Jurisdiction in the Jurisprudence of the International Criminal Court: The Sameness of Person and Conduct

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Abstract

After two decades of practice, the relationship between the International Criminal Court (ICC) and domestic jurisdictions is still a matter for debate. Under the complementarity principle, states' action prevents the ICC to step in. However, such an action should be qualified. According to the ICC's jurisprudence, states should prosecute the same case before the Court if they intent to disactivate the ICC's jurisdiction. The 'same case' standard requires sameness in 'person' and 'conduct' as constitutive elements of a case. The same person test requires states to prosecute exactly the same suspect wanted by the Court. As to the same conduct test, the Appeals Chamber stipulates that the conduct could be substantially the same. This article seeks to find out the meaning of the 'substantially same conduct'. According to the Appeals Chamber, the substantial sameness means that in prosecuting a case the legal characteristic of the conduct does not need to be the same. However, the Pre-Trial Chamber in the Libya situation goes further, and states that 'the substantial sameness' allows states to choose incidents different from those selected by the Court. The lower-level Chamber's opinion seems to be more consistent with the complementarity principle. The ICC should refrain from competing with states in selecting cases. This approach requires a broad interpretation of the same conduct test.

Key words

Complementary Jurisdiction, Incident, Same Case, Admissibility, National Proceedings

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Unlawful Obtainment of Property in the light of Money Laundering Regulations

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Abstract

Obtainment of property through unlawful means, which was criminalized in the Article 2 of the Act of Increasing the Severity of Punishment for Bribery, Embezzlement and Fraud in 1988, is again provided in the Anti-Money Laundering Amendment Act 2019. This Act, does not contravene the provisions of the above-mentioned Act, each of which is applicable in a particular situation. Unlawful obtainment of property in the first Act can only be committed by persons with special privileges. Article 2 of the Anti-Money Laundering Act also applies where there is a "suspicion close to certainty" for unlawful obtainment and the legitimacy of the obtainment is not established as a criterion. In this case, the suspicion is reinforced that the property is most likely obtained through a criminal behavior, but the type of the criminal behavior is not specified for the judge. If it is proven that the property is obtained through a specific crime, the acquisition of such property is considered as money laundering and is not subject to the aforementioned provision. Charges of unlawful obtainment will not be admissible if it is established that the obtainment of property is not the result of a crime but the outcome of a civil violation. The provisions of Anti-Money Laundering Act include property which the source of its obtainment is in serious doubt. In this case, it is assumed that the money is obtained through the commission of a crime.

Keywords

Unlawful Obtainment of Property, Money Laundering, Unlawful Source, Dubious Assets, Suspicion Close to Certainty

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Complementary Punishments; Nature and Quality in light of Jurisprudence

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Abstract

Complementary punishments are provided by the law and are applied by the judge only together with a main punishment and only when the judge considers the main punishment insufficient. Even in cases that the main punishment is legally mitigated, the judge is allowed to add one or more complementary punishments stipulated in the Penal Code to the main punishment to ensure the best punishment regarding the circumstances of the crime and the personality of the perpetrator. Considering the Penal Code which states that complementary punishments are applicable in *Qisas*, *Hodud* and *Ta'azir* crimes of the first to six degree, it can be argued that these types of punishments are also applicable in unintentional offences. It should also be noted that the imposition of complementary punishments can be suspended or reprieved.

Keywords

Punishment, Complementary, *Ta'azir*, Convict, Court

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Victims of Identity Theft in Cyber Space with an Emphasis on the Criminal Justice System of USA

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Abstract

Identity theft in cyber space is a criminal phenomenon which has emerged vastly due to development of virtual space in different countries including Iran but because of significant legal and technical weaknesses in controlling this crime, it has brought many losses for the country. Identity theft in cyber space just like identity theft in physical space has many victims who are subject to variant losses, but the number of victims and forms and amount of losses differ between two kinds. But what are the losses caused by this crime and how should they be compensated? What is the role of the victims and what are the difficulties in identifying them? This research will try to define the victims and their subsequent direct and indirect losses using a descriptive method and it will discuss the problems in identifying victims, different ways of compensation of losses and the role of victims and other involved parties in emergence of the crime which are going to be studied comparatively and analytically in this article based on the criminal justice system of USA.

Keywords

Identity Theft, Cyber Space, Victims of Identity Theft, Compensation of Losses

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Consent of Offender as a Prerequisite of Sentencing; Foundations and Reflections

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Abstract

Consent is a complicated concept to define. There are three approaches in defining consent: in the first approach, consent is best understood as a subjective phenomenon. In the second approach, consent is defined with an objective criterion and should be expressed with an action. Regarding the third approach, consent has been argued to be a concept with dual interpretive characteristics. Consent of victim is a conventional subject in general part of criminal law. In this context, consent is considered as an excuse or defense. Therefore, consent of victim would invalidate the accusation of rape. Consent of offender is less discussed in the criminal law. Consent of offender has various dimensions: consent of offender to punishment in philosophy of punishment; consent of offender in criminal procedure and consent to sentencing. This article seeks to explain the consent to sentencing. Consent of offender to punishment is an exceptional issue because in the modern criminal law, punishment is the imposition of pain and suffering by the state as a response to an offense. In Islamic penal Code (2014) the consent of offender to sentencing is deemed necessary in three cases. Semi-detention, electronic surveillance and community punishments. Respecting the right of autonomy and the human dignity and contractualisation of criminal law are the main reasons in this regard.

Key words

Consent, Punishment, Consent of Offender, Right of Autonomy, Probation, Electronic Surveillance, Semi-Detention

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Preemptive Measures: A New Paradigm in Counterterrorism

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Abstract

Today, in restoring the order ruptured by terrorist acts, the mission of the legal systems and governments is not summarized to the legislation of punitive laws and the formation of criminal responses after the occurrence of terrorist crimes. In order to control terrorism, a new strategy has been presented in legal literature, and legislative regimes have been equipped with legitimate mechanisms called preemptive strategies before the occurrence of terrorist crimes. Accordingly, with regard to the ineffectiveness of punitive-based strategies after the occurrence of terrorist attacks, the main question of this article is: what are the preemptive measures in confronting terrorism and their nature, components and the basics of justification? In an attempt to give an answer to the question, this article uses a descriptive-documentary research method. Based on the results of this study, preemptive approaches in order to mitigate the threat of terrorism have a preventive, punitive, retributive, restrictive and obligatory nature, and their components include legal status, early intervention in imminent danger, non-entry into criminal proceedings which would be taken against suspects of terrorist crimes. Preemptive measures have justificatory bases such as precaution, risk management, difficulty in prosecuting perpetrators, changes in the concept of liability and reducing damages.

Keywords

Preemptive Measures, Surveillance, Precrime, Early Intervention, Terrorism

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A Sociological Analysis between Formal Criminal Policy and Punitive Ethics of Society (Case Study: The Degree of Public Favorable Perception of Severe Corporal Punishments in Mashhad City)

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Abstract

The birth and transformation of punishment is the outcome of other social phenomena, and in particular the perception of public opinion about the nature and function of punishment. Due to this dependence, the role of public opinion can not be disregarded when it comes to criminal policy making. Field surveys are a way to decipher the criminal will of the community. The present paper, using a descriptive-analytical method, aims at analyzing the degree of convergence of public opinion with corporal punishments from a socio-cognitive perspective. The statistical population is all citizens of Mashhad in 13 areas in 1395. Data collection was done through researcher-made survey questionnaire. The results of the research show that the extent to which public opinion agrees with severe punishments in crimes which directly offend public feelings, such as rape, acid attack, and embezzlement is high. On the contrary, in crimes based on satisfaction (sodomy) and in crimes with socioeconomic grounds (drug-related crimes and robbery), the level of opposition to severe punishment is high. These diverse views and tendencies of the public should be considered in criminal legislation. Not paying attention to these tendencies would trigger a chain of public resistance against a formal criminal policy.

Keywords

Social Reality of Punishment, Public Opinion, Criminal Policy, Survey, Punitiveness, Severe Corporal Punishment

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