

The Tendency of the Judiciary to Increase the Amount of Whipping

Gholamhossein Elahm*

Associate Professor in Criminal Law & Criminology, University of Tehran

Younes Poursaadi

MA. Student Imam Sadiq University

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Abstract

Criminal courts have recently sentenced to more than 74 lashes while maintaining the nature of punishment, relying on the multiplicity and necessity of aggravated punishment. The basis for such a judicial action is sometimes the title of the multiplicity of criminal behavior and, in fact, the imposition of punishment on multiple crimes and not a single act. However, the legislature has explicitly banned the collection of punishments for criminal offenses. Sometimes, the multiplicity of different dignity on a single verb, including the soul of multiplicity, is the basis for justifying whipping. This approach, while leading to the development of the whipping penalty in a quantitative manner and in many cases exceeding the whipping limit, is contrary to the jurisprudential principles, the limitation of the punishment of whipping; On the other hand, it is not compatible with the legislative policy of reducing the corporal punishment and the desire for social punishment. The practice of recent years has been adopted in a situation where the Islamic Penal Code enacted in 1392, by classifying the punishments of whipping, considers flogging as a punishment of sixth degree and the maximum punishment of this class is 74 lashes. Punishment for more than the aforementioned amount has no legal definition except in the prescribed cases, and it goes beyond the limits of the penal classes, and therefore it is not possible to comply with the Penal Code. The formation of this procedure has also undermined the "principle of legality of punishment" emphasized by Article 36 of the Constitution.

Keywords

Ta'zir, Intensification of Punishment, Mansoos Ta'zir, Less than Ha'd

* dr.elham@ut.ac.ir

“Nothing Works?” (The Myth of the Failure of Rehabilitation)

Farhad Allahverdi*

Assistant Professor in Faculty of Law and Political Science, University of Mazandaran
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Abstract

Rehabilitation has a long history. Undoubtedly, Martinson's work and the phrase “Nothing works” that has been emerged from his assessments of the concept of rehabilitation are important milestones in this history. The term has gained a vast influence among criminologists and criminal policymakers which might be unparalleled in the history of criminology. However, several evaluative studies have shown that the idea of "Nothing works" has been widely criticized in many ways. In this paper, we examine the methodological weaknesses of Martinson's research. Some of the rehabilitation programs that Martinson has addressed in his meta-analysis have been successful, and some of such programs he has described as "unsuccessful" have not been well-funded. We then turn to the question of why, paradoxically, competitor traditions in criminology have come to a consensus of “Nothing work” and have highlighted it in an unwritten complicity and given it a mythical aspect. Finally, we focus on the political implications of this myth and its impact on the formation of the “Punitive Era” and strict policies. From the perspective of this paper, the literature on rehabilitation, despite all its failures and limitations, provides a fertile theoretical tradition that can be used to rethink and reconstruct rehabilitation. Any attempt to revive rehabilitation without this critical rethinking and theoretical reconstruction will fail.

Keywords

Rehabilitation, “Nothing Works”, Rehabilitation Interventions, Robert Martinson, Treatment Programs.

* Farhad.allahverdi@yahoo.com

The Effect of Conflicting Testimonies on the Lapse of Qisas and Diyah from the Persons against whom the Testimonies Are

Seifollah Ahadi*

Assistant Professor of Jurisprudence and Islamic Law, Azarbaijan Shahid Madani University, Tabriz, Iran

Ali Mohammadian

Assistant Professor of Jurisprudence and Islamic Law, Bozorgmehr University of Ghaenat

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Abstract

According to the Islamic Penal Code, testimony is considered to meet the threshold of acceptable evidence in court of law. However, there might exist several testimonies on the issue in contradiction to one another that would complicate the proof of the claim. In this descriptive-analytical study, the author analyzes the aforementioned problem and reviews the existing opinions on the matter. Due to the findings of the present research, if testimonies are in conflict, the authorization to enforce the punishment would lapse. Therefore, in cases of murder where the given testimonies are in conflict, it is on the government to pay the laid down Diyah.

Keywords

Conflict of Testimonies, Talion, Diyah, Lapse of Punishment.

* ahadi@azaruniv.ac.ir

Divisibility of Criminal Conditional Confession in Imamia Jurisprudence and Iranian Law with a Comparative View to the Law of Muslim Countries

Rouhollah Akrami*

Associate Professor in Criminal Law & Criminology, Qom University
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Abstract

Confession is divided into several types based on its composition. Conditional confession is one of those types in which the Confessor, in addition to accepting the claim, adds a favorable condition to it, in such a way that the nature of the first part changes in terms of its legal effects. The most important effect on this division is divisibility of confession. Criminal law of different countries has adopted different approaches in this issue. The regulations of our country do not contain any provision on the divisibility of conditional confession.

Therefore, in the present article, while reviewing the legal system of some Islamic countries, the subject is examined from the perspective of Iranian legal doctrine. We have concluded that conditional confession cannot be divisible according to the existing evidence and principles.

Keywords

Conditional Confession, Divisibility of Confession, Criminal Evidence, Imamia Jurisprudence.

* r.akrami2013@gmail.com

Legislative Challenges and Problems facing the Enforcement of Aggregation of Sentences

Elham Jafarpour*

Ph.D. Student in Criminal Law & Criminology, University of Tehran

Saman Siavashi

Ph.D. Student in Criminal Law & Criminology, University of Tehran

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Abstract

Committing multiple offenses by one person may increase the punishment. Determining and enforcing intensified penalties and enforcing regulations concerning the multiplicity of cases where one court has the jurisdiction over all offenses is not particularly challenging. But there are numerous legal and enforcement challenges to enforcing regulations regarding plurality of offenses which may lead to issuance of different sentences from multiple jurisdictions. The legislator has come with Article 510 of the Code of Criminal Procedure to address the challenges of enforcing the regulations of plurality. Examination of the numerous opinions of various judicial authorities indicates that there are numerous difficulties and disagreements in the courts with regard to the application of the provisions of Article 510. The examination of some of the opinions on this Article indicates the necessity of revising this Article in relation to some of the problems encountered in the courts, including the challenges to the application of regulations of plurality of crimes including ideal or real, the manner in which a higher court is designated by the courts of first instance, the possibility of mitigating the punishment after the application of provisions of plurality, etc.

Keywords

Plurality of Crimes, Multiple Verdicts, Increased Punishment, Verdict Enforcement, Single Convicted Person.

* e_jafarpour@ut.ac.ir

Victimization of the Whales in Iranian Criminal Law: Protections and Challenges

Mehdi Sabooripour*

Assistant Professor, Faculty of Law, Shahid Beheshti University

Asghar Ahmadi

MA. in Criminal Law and Criminology Isfahan University

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Abstract

Whales, as one of the rarest aqueous species of the world, which also include the largest animal known to have ever existed (blue whale), need special protection in criminal law. International environmental law has protected this species, which is in danger of extinction, by ratification of the International Convention for the Regulation of Whaling 1946 and the formation of relevant commission (IWC) and some other international instruments. But there are some challenges in the international system of protection of whales in relation to the definition of this species and the sanctions of violation of the Convention. Iranian criminal law has protected aquatic animals by the ratification of some general codes and criminalization of damaging acts like excessive fishing and polluting of sea waters. Despite these protections, Iranian criminal law faces some challenges like the ambiguity of the definition of the whale, the lack of convergence between domestic laws and international convention and the weakness of criminal responses as well as the identification of different species and the lack of special protection for the whales, lack of a comprehensive approach to the criminal protection of whales and identification of different sources of pollution.

Keywords

Whale, Green Victimization, Marine Environment, International Environmental Law, Environmental Criminal Law.

* M_sabooripour@sbu.ac.ir

The Role of Judicial Precedent in Criminal Legislation

Saham Sedaghati

Ph.D. Student in Criminal Law and Criminology

Hassan Alipour*

Assistant Professor, Faculty of Qom

Karim Salehi

Assistant Professor, Shahrekord Azad University

Mehdi Dehshiri

Assistant Professor, Shahrekord Azad University

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Abstract

The hypothesis of this article is that judicial precedent plays a very important role and prevails upon other secondary legal sources in criminal legislation. Judicial precedent means judicial decisions which indicates the Supreme Court decisions as a unified judicial precedent or total or partial unity of courts decisions in certain issues.

In traditional approach, judicial precedent is source-based not rule-based. In such approach, judicial precedent is a source for judgment and legal analysis, but in our approach, judicial precedent is a source of legislation.

In the new approach, judicial precedent has a strong bond with famous principles of law such as custom, social culture and norms and presents them to law makers with regard to necessity and elitism.

In this article, we have examined several Supreme Court decisions and judicial proceedings and have tried to show that judicial precedent has a powerful legislative role in Iranian legal system.

This research is based on the assumption that judicial precedent has a “didactic”, “re-educative”, “instructive” and “pioneer” role. In this regard, making a policy to evaluate and to connect legislation and judicial precedent more efficiently seems necessary.

Keywords

Legislation, Criminal Codification, Judicial Precedent, Interaction between Legislation and Judicial Precedent.

* hassan.alipour@ut.ac.ir

Stalking; A Comparative Study on Criminal Law of Iran and the USA

Jamshid Gholamloo*

Assistant Professor in Criminal Law & Criminology, University of Tehran

Mohammad Karami

MA. Student in Criminal Law & Criminology, University of Tehran

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Abstract

Stalking is a form of harassment. Sometimes people with different motives, good or bad, constantly follow and watch others. This behavior has been criminalized in some countries such as the USA with differential policies and measures. In criminal law of Iran, there exists no crime with this title exactly but its manifestations and examples, such as Article 619 of the Penal Code adopted in 1996, have been considered as a crime, with no special punishment and security measures. It seems that it has become much easier to commit stalking crimes than before regarding the increasing role of cyberspace in our daily lives. Therefore, general criminal policies do not work as an effective deterrent. Victims in stalking crimes need legal protective and preventative measures like Protection order and Restraining order. Lack of preventive and security measures before proof of stalking crimes and conviction of the offenders are the most important legal shortcomings in criminal justice system of Iran. A comparative study on successful countries in this regard seems useful.

Keywords

Stalking, Harassment, Violence, Criminalization, Security Measure.

* jamshid.gholamloo@ut.ac.ir

Fighting against Money Laundering in Iranian New Criminal Policy and International Documents

Mohsen Ghojavand*

Ph.D. in Private Law, Lecturer in Isfahan University

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Abstract

In line with increasing the commitment of economic crimes such as organized money laundering, financial crimes, terrorism, human and drug trafficking, international instruments have focused on enacting and updating criminal acts in order to fight against these crimes effectively.

In accordance with the mentioned policy, the Iranian legislators have amended existing rules and substantive and procedural criminal policy against money laundering in 2018. These reforms have been taken in order to proportionate responses to offenders (substantive criminal policy) and to increase the pace and accuracy in discovering crimes and preventing their occurrence (procedural criminal policy). In this article we try to examine the new criminal policy achievements and survey shortages of it and to offer necessary suggestions through content analysis and comparative method.

Key Words

Economic Crimes, Money Laundering, International Instruments, Criminal Policy, Iranian Law.

* ghojavanddonlaw@gmail.com

Challenges of Iran's Legislative Criminal Policy against Crimes and Violations of the Capital Market

Mahboubeh Monfared*

Ph.D. Student in Criminal Law & Criminology, Shahid Beheshti University

Hossein Mirmohammad Sadeghi

Professor, Faculty of Law, Shahid Beheshti University

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Abstract

The link between criminal law and criminal policy and financial economy has become an inevitable necessity. Revision of economic systems in advanced countries shows that their growth is due to principled policies and systematic intervention of criminal policy planners. Given the importance of stock market and necessity to protect consumers and capital owners, governments set regulations appropriate to capital market, regarding value-added and legal responses. In our country, in criminal policy applied by Iranian legislator in capital market, it is penal and disciplinary criminalization as well as the provision of punitive responses and prescribing procedures and decision-making authorities that distinguish legitimate from illegitimate transactions. In this article, an attempt has been made to critique legislative criminal policy adopted in this field. An important question that has occupied the mind of the writers is the confusing model of criminal policy in this market. Is it categorized as a strict and security-oriented criminal policy, or is it a minimal criminal policy or even none of them? Findings of the present research indicate some confusions in the legislative criminal policy of this area such as lack of clear criterion in the definition and classification of economic crimes, disproportioned guarantee of the anticipated disputes; idealism and chanting slogans in the field of prevention and adoption of purely strict approaches. Updating criminal provisions, adopting rational approaches, principled separating of capital market crimes, and establishing centralized management, both in the field of criminal policy and preventive measures, are necessary to organize this area.

Keywords

Capital Market, Criminalization, Reasonable Responses, Criminal Policy

* mahboubeh.monfared@gmail.com

Paradigm Shift from Punishment to Regulation in light of Responsive Regulation Theory

Rahim Nobahar*

Associate Professoer in Criminal Law And Criminology of Law Faculty, Shahid Beheshti University

Iman Shahbeigi

Ph.D. in Criminal Law And Criminology, Tarbiat Modarres University

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Abstract

Framing a comprehensive strategy for controlling criminal phenomena which can achieve legislative goals of intervention is the most important concern of criminal policymakers. Criminal justice has this opportunity to face individual people in a society and as a result it can have an important role in implementing and distributing the social justice and policies. In distributing social justice, unequal share of citizens from social benefits should be covered by affirmative actions, one of the means that states could use as these affirmative actions are interventions and responses to the misconducts of citizens. Therefore, criminal policies should be designed not only to regulate social relations but to take an effective step toward a better distribution of social justice.

Responsive Regulation is an idea which is based upon procedural Justice and hierarchical Structure that by using its unique mechanisms implements three reactionary theories of restorative justice, Deterrence and incapacitation theory in a pyramid of interventions according to a philosophy based on believing in punishment as last resort, interaction between regulator and criminal phenomenon's shareholders, flexibility of responses and taking into account the underlying causes of crime and considers every crime as a problem that should be solved by the best possible response.

Keywords

Responsive Regulation, Criminal Justice, Social Justice, Criminal Policy, Penal Policy.

* r-nobahar@sbu.ac.ir

A Comparative Study on Representation Patterns of Criminality in the Iranian and German Press with An Emphasis on Punitivity

Hamidreza Nikookar

Ph.D. Student in Criminal Law & Criminology, Azad University

Shahla Moazami*

Associate Professor in Faculty of Law and Political Science, University of Tehran

Sattar Parvin

Associate Professor in Faculty of Sociology, Allameh Tabatabaei' University

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Abstract

Despite the emergence of new forms of media, including social networks, newspapers still play a significant role in disseminating information. Important information published on newspapers includes those found in their news on crime and criminal incidents which, neither qualitatively nor quantitatively, correspond to the real-world situations and official statistics. The way crime is represented based on its “news values” or newsworthiness can importantly shape people’s view of crime, punishment, and criminal justice systems. The present paper adopts a comparative approach to examining portrayal of crime, punishment, and victims in Iranian and German press. Using qualitative and quantitative analysis of content, we studied the content of two popular newspapers in Iran and Germany (*Hamshahri* and *Bild*, respectively) for the period January 21, 2020 to April 3, 2020. Our findings on crime representation by 311 titles in *Hamshahri* and 134 titles in *Bild* revealed an insignificant difference in representation of such crimes as murder, manslaughter, and rape. The two newspapers, however, differed significantly in terms of representing criminal justice response as *Hamshahri* dedicated 60% of its stories to “death penalty” and “*qisas*” and only 4% to detention and incarceration while *Bild* covered only one case of death penalty (and that was a case in New Guinea) with 86% of its stories representing detention and incarceration, meaning that *Hamshahri*, the Iranian newspaper, in general adopted a more punitive approach in terms of the quality and the nature of representing criminal justice compared to the German newspaper *Bild*. As far as the way of representation is concerned, both newspapers represented women as innocent victims of violent crimes, particularly in sex offenses, and *Bild* devoted significantly more attention to child victims of crime compared to *Hamshahri*.

Keywords

Representation, Deterrence, Fear of Crime, Penal Populism, Punitivity, The Press.

* hamidreza.nikookar@yahoo.com