

# **A Comparative Study of the Principles Governing Judicial Sentencing in Iranian and German Criminal Law**

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## Abstract

Judicial Sentencing is a link between punishment legislative and its enforcement, which judges in courts are in charge of. In order to determine the appropriate punishment, it must be governed by principles so that it does not cause injustice. Each country may foresee certain principles for this stage, which derive from the type of its legal system and goals. With the aim of examining the principles that govern the sentencing, this article has chosen Iran and Germany legal systems as two civil law countries. This study has been done by descriptive-analytical method. Examining these codes shows there are common principles in these legal systems that govern the imposition of punishment and determination of its amount and type. The most important principles are the legality principle of punishment, the principle of non-retroactivity of punishment and the principle of proportionality. Principles such as the fairness of punishment and the non bis in idem are provided in German penal code, but in Iranian law, despite its acceptance, it has not yet entered the penal code. However, both countries suffer from deficiencies in the field of principles governing the determination of the amount and type of punishment in the sentencing, which can be partially compensated by issuing guidelines such as sentencing guidelines in common law.

Key words: Punishment, Judicial Sentencing, Comparative Study, Sentencing Guidelines, Civil Law

# **Volitional Impairment as a Partial Defense in International Criminal Law and How It has been Influenced from Common Law**

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## **Abstract**

The theoretical basis of excuses such as “Diminished Responsibility”, “Provocation”, “intoxication” and “accused mental condition”, is impaired volition. Volitional Impairment as a partial defense is not explicitly mentioned in the Statute of the International Criminal Courts; However, according to the clause 3 of article 31 of the Statute of the International Criminal Court, the court may consider other grounds for impunity and pay attention to the impaired volition from this point of view. Despite the acceptance of concepts such as mental disorder in the legal framework of the International Criminal Court and the International Criminal Tribunal for the former Yugoslavia, which can expand the range of potential reasons for mitigating the punishment; a very cautious approach has been adopted regarding cases of disturbance of volition in the statute of criminal courts.

In fact, according to adhering to the philosophy of establishing strict laws in international crimes, examples of impaired volition have been limited just as a judicial mitigating excuse. This is despite the fact that in the Common law system, especially in the law of England, impaired volition is addressed as a partial excuse (partial defense) in some cases of intentional homicide, and it reduces the punishment for homicide to manslaughter.

**Keyword:** Diminished Responsibility, Provocation, Intoxication, Mental Condition, Volitional Impairment

**Tendency to Imprisonment and Exacerbation of Prisons;  
Problems in the mirror of Note of Article added to Narcotic Drugs Act**

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Nowadays, increase of prison population (convicted criminals for narcotic drugs and psychedelics) is an important aspect of the problem of narcotic drugs and psychedelics. Considering the studies' results and experiences of the past, therefore, it is reasonably prospected that policies in this aspect should be revised. In the viewpoint of incarceration penalty, however, not only the prospect has not been occurred, but the penal policy of narcotic drugs and psychedelics over imprisonment has been exacerbated in the middle of 1390 decade with ratification of Acts that was favorable with the last incarcerating policies including the note of Article added to narcotic drugs and psychedelics Act that represents severity and tendency to imprisonment. This article by descriptive-analytical method examines reasons and quality of the Act and evaluates it with the viewpoint of decarceration policy and concludes that the Act enacted for satisfying adherents of execution and to response to their populist applications of penalty, instead of relying on jurisprudential-legal bases or scientific reasons. The Act develops and strengths tendency to imprisonment on the contrary to general policies of the State, development programs, and approach of the statutes. It also confronts criminal justice system with several problems like increase of prison population, increase of costs of prisons, raise of problems of convicted person's family and engagement of juveniles in criminal justice system.

Narcotic Drugs, Psychedelics, Tendency to Imprisonment, Prison Population.

## **Recidivism and its Indicator in the Advanced Systems of Criminal Statistics**

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### **Abstract**

The study of recidivism indicator is very important especially for the effectiveness evaluation of the criminal justice system, as well as the policies and programs that are used to prevent or manage the risk of recidivism based on penological and criminological findings. In this regard, this research is conducted with the aim of identifying the available studies and documents regarding the conceptual and operational indicator of recidivism in the advanced criminal statistics systems. In this research, in the theoretical study, a library method and in the field study, a content analysis method through designing of reverse questionnaire, are used. The sample population, including 31 sources related to the recidivism index, among the 41 collected and studied sources, is selected. The findings of the research, like other studies in the world, show that in the United States of America and Australia, as well as in some countries in Europe, the data related to the index of recidivism and returning to prison are regularly and systemically collected in such a way that, with considering of localization component, can be very good model for the determination of conceptual and operational index in Iran on one hand, and can be used for the harmonization at the international level, on the other hand.

### **Keywords:**

Criminal Statistics, Effectiveness Evaluation, Recidivism Indicator, Traditional Penology, New Penology, Criminal Justice System.

## **Problematization of Prisoners' Right to Physical Health?**

### **Critical Discourse Analysis of Criminal Justice System Authorities of Iran**

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Depriving people of their freedom according to the law motivates the obligation for governments to guarantee their physical health by providing facilities and medical care at par with the accepted standards of treatment for other members of the society. This right of prisoners has been confirmed in many international documents and today it has been accepted in all domestic systems at least at the legislative level.

The article tries to compare the laws and regulations of Iranian criminal justice system with international documents regarding the right to the physical health of prisoners, as well as the discourse of Iranian criminal justice authorities regarding 8 cases that according to official comments, illness has caused the death of people in prison. This article attempts to critically analyze and answer the question that to what extent the phenomenon of death in prison as a result of prisoners' illness is a "problem" for Iran criminal justice authorities?

Despite the recognition of the right to health and medical care of prisoners in Iranian criminal justice system, the review of documents and official reports of the cases related to this right of prisoners shows that the access of detained or imprisoned people to health care in practice is less than the amount accepted in related regulations and laws. In addition, the analysis of the discourse of the officials indicates that in their view, jeopardizing the right to the physical health of the prisoners does not entail any responsibility for the managers and staff of the prison.

#### **Keywords:**

Prisoners' Right to Health, Deprivation of Treatment, Illness, Death in Prison, Critical Discourse Analysis

# **Criminal Liability of Factory and Program Designer of Autonomous Car in respect of Their Injuries to Humans**

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Nowadays, development of technology results in the production of autonomous cars. With no doubt, Iran will face the presence of these cars in near coming years. In June 2017, the first autonomous car was tested successfully in Iran, but the chief constable prevented using them because of lack of specific regulation and no clear Statute to the identification of the criminal liability for their injuries to humans. Therefore, this Paper will scrutinize if the current Iranian criminal law has the potentials of imposing criminal liability for the injuries. This research limited the discussion to the Factory and Program designer and analyses the subject by the descriptive-analytical approach. It finally concludes that because of limitation of nowadays science and current regulations, in some limited circumstances, conviction of factories and designers is not possible, however, in most cases, it is possible to prosecute and convict the factory and designer and Iran is not faced with lack of regulation in this respect

Criminal Liability, Autonomous Car, Car Crash, Liability of Factories