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Investigating the Realism or Idealism of Iran's Legislative Criminal Policy

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Abstract

This document addresses problems and questions that arise about realism or idealism in the context of the criminal policy of the double legislature in Iran, with the aim of revealing the available skills and capacities of the laws that govern the matter. Has the Iranian lawmaker followed an idealistic criminal policy? Is realism what is necessary for a dimensional criminal policy in Iran's criminal laws? What is the solution to the transition from religious idealism to a realist perspective preserving the status quo? What is certain is that, when examining existing criminal law, criminal policy based on religious idealism and dimensional realism can be seen in terms of criminological data; from the oldest data in criminal law to the latest criminal paradigms. Methodologically, documentary research technique and legal hermeneutics were used. It is concluded that traditional theologically based laws and sharia-based oversight bodies need a new dynamism and a new ijtihad. In this study, the dimensions of the subject and the form of transcendence from idealism to realism are given while preserving religious values.

Keywords: Idealism and realism; restricted criminal policy; controversial criminal policy; Dynamic fiqh; Shiite theology.

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Investigando el realismo o idealismo de la política penal legislativa de Irán

Resumen

En el presente documento se abordan problemas y preguntas que surgen sobre el realismo o el idealismo en el contexto de la política penal de la doble legislatura en Irán, con el objetivo de revelar las habilidades y capacidades disponibles de las leyes que rigen la materia. ¿Ha seguido el legislador iraní una política criminal idealista? ¿Es el realismo lo que es necesario para una política criminal dimensional en las leyes penales de Irán? ¿Cuál es la solución a la transición del idealismo religioso a una perspectiva de realismo preservando el statu quo? Lo que es seguro es que, al examinar el derecho penal existente, la política criminal basada en el idealismo religioso y el realismo dimensional se puede ver en términos de datos criminológicos; desde los datos más antiguos del derecho penal hasta los últimos paradigmas criminales. En lo metodológico se empleó la técnica de investigación documental y la hermenéutica jurídica. Se concluye que, las leyes de base teológica tradicional y los órganos de supervisión basados en la *sharía* necesitan un nuevo dinamismo y una nueva *ijtihad*. En este estudio, las dimensiones del sujeto y la forma de trascendencia del idealismo al realismo se dan preservando los valores religiosos.

Palabras clave: Idealismo y realismo; política criminal restringida; política criminal controvertida; Fiqh dinámico; teología chiíta.

Introduction

If we take into account the reality of the criminal phenomenon, the phenomenon is essentially attributable to human behavior (human reality) and against society (social reality) is. It is a social reality, so it disrupts the social order and is a danger to that order. At every level, it disrupts the security and tranquility of the community and imposes costs on taxpayers to maintain order. But while crime is a social reality, it is also a human reality. In a realistic view, the perpetrator's consideration of the crime is not due to the degree of criminal responsibility, but especially to the determination of the factors that led the perpetrator to commit the crime, and possibly «In the future, it will provoke him to repeat the criminal behavior, it is worth considering.

From a realistic point of view, this issue is not only considered in terms of external appearance and the disturbances it has created in public order,

but also in terms of the causes that are the source of this phenomenon. Therefore, recognizing the causes of crime requires that this time the criminal phenomenon be looked at from a scientific perspective, and since the source of this behavior is man, it is in his existence that the root causes of these real factors must be sought and discovered (Ardabili, 2013). In a realistic view, the causes of the criminal phenomenon in personality dimensions and the factors affecting it are examined in biogenic, psychogenic and sociogenic branches.

The opposite of realism is idealism, which the legislature of the Islamic Republic of Iran, in terms of the obligation to abide by the above laws and the regulatory bodies, has considerably formulated and approved idealistic materials with a religious ideological sub-branch. Idealism, which is rooted in a criminal policy in the narrow sense, is in fact a single legal view of the criminal phenomenon that forms part of the ideal society in the criminal law of our country. The ideal society is a society in which human perfection or the attainment of happiness is achieved in the most perfect way. In religious idealism, the universe, including human society, is made by God, and the fixed principles established by the Holy Shari'a guarantee the happiness and well-being of humanity. Such principles give rise to a moral order that must govern all human societies and create a law of supremacy that all social arrangements, including human rights issues, seek to approach. (Chinhangaru, 2015)

In this study, we intend to examine the existing criminal policy in terms of idealism or realism by examining the existing law. The realism or idealism of the legislature's criminal policy in sub-branches such as Hudood, Qisas, Diyat, Shari'a prescribed punishments and other punishments are issues that can be explored in the plant of idealism or realism in criminal policy to be understood with precision. From the strengths and weaknesses of ways to move from a narrow definition of criminal policy to an up-to-date and comprehensive definition in terms of criminological, sociological and psychological dimensions, let's start with the help of dynamic thinking.

In terms of research background, there are no books or articles that deal directly with the research topic. Articles such as Mohsen Borhani and Bashari Mohammadi's Criminal Perfectionism published in the Journal of Criminal Law Studies; Saeed Ghomayshi's New Criminal Law Foundations in the Islamic Law Magazine; Legislation in the Islamic Government by Mohammad Mansour Nejad in the Islamic Government Quarterly; Written by Khadijeh Kurdistani and Kamran Oveisi, published at the 3rd International Congress of Religious Culture and Thought, as well as philosophical books such as Philosophy of Law, Fundamentals and Functions by Thomas Morautz, translated by Behrouz Jandaghi; Self-contained and similar as well as books on earth Criminal policy has consistently and keyly included keywords from the present study that bring

our meaningful and purposeful communication following the research method closer to the hypotheses of the research.

1. Definitions and Concepts:

1.1. Idealism: Idealism is a sub-branch of naturalism

Idealism is one of the topics of naturalists. Naturalists argue that rights can best be interpreted in terms of natural moral principles, that is, the inseparable principles of an idealistic society and the moral abilities of individuals. According to naturalism, the ideal legal system is part of the idealist society. The ideal society, in its place, is the society in which human perfection or the ways to achieve happiness have been achieved in the most perfect way. Idealist theories suggest that human nature can be objectively redefined; in this sense, the true picture of happy living conditions for all citizens can be grasped given the facts about cruelty and happiness. Brought, Although the roots of such a theory can be traced back to the works of Plato and Aquinas, the theory in question is in fact a kind of approach to the Enlightenment. Naturalism, therefore, is based on the premise that human nature, which can be discovered through research, is the source of rights, because rights are supposed to be tools for actualizing the hidden powers in human nature. Naturalist theory is the theory that «there is a kind of natural order in which people have a place; a natural order characterized by natural harmony (Morawats, 2012:53).

1.2 Religious idealism

Religious naturalists consider the universe, including human society, to be the product of God's holy nature, which is now under his control. The Holy Shari'a has foreseen the principles of stability, and the happiness, expediency, and survival of human society in the universe depend on the application and adherence to those principles and rules. The principles are presented to mankind through revelation in the scriptures, and these principles are common to all human societies, and are in fact universal. These principles provide a moral framework that should govern all human societies and create a law of superiority that all social arrangements, including human rights issues, seek to approach. Theorists of this world, and in particular of human society, consider it to have a final purpose. Law, as a means of promoting good progress and goodness, is an undeniable social necessity.

Without it, people in society, although naturally well-intentioned, are prone to decay in terms of living conditions in a harsh and unfriendly environment and will not be able to achieve the desired goal and destination or even purposeful activity to achieve it. It was. According to these theorists, religious idealism tends to evaluate people's moral attitudes in society. Hence, they interpret what is perfection and moral principles as what should be. Based on this, they decide how the desired result can be achieved through the rules. Theorists in this view are trying to extract a "must" from a "being" and discover that the "is" is the existing attitudes of real morality, and the "must" is what should be desirable and therefore as a result. Properly regulates social arrangements (Chinhangaru, 2015).

Religious idealism in a criminal policy in the narrow sense with a single legal view can be seen in a large part of our criminal laws, laws that sometimes offer fixed and irreversible solutions based on expediency and sometimes to ensure the continuation of human life. They give.

1.3. Realism

Legal realism, revolutionary thought among practitioners of « Hyatn « the history of law schools early in 1890 America had. It was closer to the spirit of affirmation than natural law, but the New Realism movement, which peaked in the 1920s and 1930s, took a view that was not worthy of any of these two traditions. It should be noted that not all realists have a single point of view, nor is there a conscious effort to articulate the concept of law with precise interpretations (Tebit, 2007).

It goes without saying that this is what we are looking for here. We are not merely a philosophical explanation of the realism of criminal law, but of examining a realistic view of the criminal phenomenon, the foundations of which are sought in criminological, psychological, and sociological data; in fact, a realistic view of the factors influencing it. In the formation of a criminal phenomenon and the adoption of a criminal policy based on the fact that it has been used effectively, it is possible to control, prevent and deal with this fact. Xiagenic in cultural and economic environments and human reality in biogenic and psychogenic dimensions.

It also looks at how penalties evolve in order to determine whether developments have been in the direction of development and improvement; and finally, the effects and consequences of each type of punishment in society are examined and critiqued (Abdolrahmani and Habibzadeh, 2018). In a realistic criminal policy, the function of criminalization and punishment is considered according to the surrounding social realities and not with unattainable and dysfunctional idealisms.

In the biogenic dimension, the realistic view of genetic aspects, the effects of biochemicals, hormones, as well as gender and heredity on the occurrence of crime in dimensional criminal policy is the place of study and reflection. In this dimension, the biological aspects of crime are examined (Suri, 2016). But the psychology of crime and other law is then a realistic criminal policy that the application of the ideas of its scholars in the interdisciplinary study leads the legislation towards the realities governing the criminal phenomenon; psychology Crime refers to the application of psychology to the study of criminal behavior. Its main areas are explaining and understanding criminal behavior, direct research on the prison population of criminals, suspended sentences, juvenile delinquency, and related sessions.

This research can be done in the form of longitudinal studies on the evolution of delinquency and related social problems, or in the form of a study of other antisocial actions, such as bullying at school. This area, as expected, is not limited to one branch, it focuses on a variety of criminal behaviors and places particular emphasis on violent, sexual, and drug abuse. Also, some of this work involves the study of the relationship between crime and mental disorders, which is linked to psychiatry and is sometimes called clinical criminology. The psychology of law deals with psychological factors that are widely used in law. In fact, in terms of psychological data in today's field of legislation, we are confronted with realistic criminal policies to have laws influenced by the principle of individualization of punishments (McGrayer, 2011).

1.4 Criminal policy: Legislative criminal policy

As we have seen in the philosophical - research dimension, realism, with a realistic view of the criminal phenomenon, contains a holistic and search-oriented view of the roots of this unbelievable phenomenon, and the idealistic view has a single legal view of the issue. Important and solely based on concepts such as justice and moral tone is based.

Criminal policy itself has internal divisions such as legislative criminal policy, executive criminal policy, judicial criminal policy, police criminal policy, and participatory criminal policy. But what is at stake here is legislative criminal policy (Marty, 2014), which is generally applicable to both narrow and broad concepts of realism and idealism so that we can finally Find the correct analysis of the criminal laws in question based on the findings. Legislative criminal policy should not only be considered the» first layer of criminal policy□, but should in fact be considered the «main center of criminal policy « and determine the type of response to criminal phenomena.

This is because the principles governing criminal law, as well as the principle of legality of crimes and punishments and their inevitable obedience, are indicative of the style of criminal policy designed by law. On this basis, legislative criminal policy is defined as: the legislator's plan and solution to the crime and the response to it, which, of course, attracts attention to the dependence of criminal policy on the ruling political regime in each country, attracts different situations. Legislative criminal policy is the expediency of various legislators and their selection in all kinds of crimes and punishments and in general how to deal with the criminal phenomenon and criminal proceedings (Rahmani, 2015).

2. The result of realism and idealism in criminal policy in a comprehensive and narrow understanding

The enumeration of rational and empirical requirements governing the criminal policy process may be considered one of the most difficult current issues in the realm. Developments in the concept of science and rationality have severely limited the scope of prescriptive and universal prescriptions that can be proposed in this regard. Previously, in the light of the knowledge of scientific knowledge and relying on deep empiricism, problem solving, criminality and its aftermath, criminal response strategies were sought within the framework of mechanical cognition of factors and backgrounds that claimed to be human.

They somehow lead to crime. In the context of the most influential approach branching out from this intellectual current, prescribing the transformation of the foundations of the criminal policy system from a technical context to the boundaries of social work (with extensive preparation to prevent the formation or continuation of criminal personality and reactive measures for rehabilitation and reform of the criminal entities) to bring « as we extend the scope of delinquency through the diversion or segregation and marginalization, have grown . «Employment and the concerns of criminal policy must be generalized to the prevention of criminal dysfunctions, that is, the social factors that lead to the commission of a crime, and even to the limits of social policy" (Laserj, 2003).

At this level, the preparation of response policies based on the knowledge of the set of biological, psychological and social factors underlying the occurrence of criminal behaviors is introduced as the only scientific method of dealing with the criminal phenomenon, so that the strategy Responding to this situation, in line with modern patterns of crime detection, has become one of the manifestations of the emergence of scientific policy": One of the actors involved in the regulation and formation of criminal policy, in fact, experts in science Crime is in its broadest sense.

. Therefore, a reasonable criminal policy must be « of the latest scientific developments and the results of scientific research in the field of crime by experts of the criminology, sociology, criminal, forensic psychology, scientists mass-seeking and .... uses» (Najafi, 1984: 24), in the human performance level of influence within the framework of structural and social infrastructure, psychological and analyzed and the moral responsibility of the offender in relation to the crime is also significantly limited is (Irvanian, 2013). As we will see, some of the current criminal laws of the Islamic Republic of Iran, influenced by the latest paradigms of criminology and criminal law, have found the necessary coordination with criminal policy in its broadest sense, including judicial instruments such as mitigation and punishment. , The Semi-Freedom System, Suspension of Sentencing, Suspension of Execution of Punishment in the Islamic Penal Code and Suspension of Prosecution as a Root Institution in the Theory of Labeling Criminology Showed .

In contrast to the broad definition of criminal policy, there is a narrow view that in our criminal law it can be sought in a jurisprudential approach to criminal law. In this view, relying on the human factor in committing criminal behaviors and analyzing delinquency as a selective situation, the main focus of any criminal response has been drawn in the context of incapacity and criminal punishment. The effects of this policy can be clearly seen from the 16th century onwards and even until the beginning of the present century.

For example, in the age of the emergence of the classical school of criminal law, in view of the consideration of idealistic philosophical and moral justifications for the necessity of punishment and punishment of criminals, the criminal acts committed by those involved in the legal system at that time were answered in the strongest possible way. This can be illustrated in the form of the logic of «the lowest level of tolerance» which is reminiscent of the common justifications of the management model of « zero tolerance « in the field of criminal law (Javanmard, 2014).

That tolerance has a detrimental effect on criminals, and so establishing proper social order and security is the intensity of dealing with most criminal acts. D. However, the mere criminal response to criminal acts and the interference or restriction of civil society intervention in connection with it at all levels, including struggle, containment and prevention, has a historical background and roots that in different historical periods, different aspects and divisions. It has been experienced (Foucault, 1990).

What is certain is that both criminal policy approaches are well visible in Iranian criminal law. At present, the emergence of data on criminology, criminal sociology and criminal psychology in criminal law, and better yet, the generalities of criminal law, more than ever, has injected a scientific criminal policy into our criminal law, while dealing with the rate. Significant

crimes such as hudud, qisas, and shari'ah punishments can be well understood by the legislature's approach to the narrow-minded criminal policy inspired by ideological naturalism.

2.1 Jurisprudential approach in criminal policy

With the beginning of jurisprudence in criminal policy, the tendency to introduce jurisprudential concepts and indicators in criminal law became apparent from the first years after the Islamic Revolution, and jurisprudential issues related to criminal affairs entered criminal law texts with increasing speed. And occupied important parts of criminal law. In this context, several laws were passed that included jurisprudential issues and criminal rulings. Among these laws, the law of retribution, the Twentieth approved in October 1361 and the Islamic Penal August eighteenth year of 1362 can be mentioned.

From the very beginning, the three main chapters of the penal code, namely the issues of Hudud, Qisas and Diyat, were completely dominated by the rules of criminal jurisprudence, as well as the concepts and definitions of jurisprudence with the same details and quality as in the books of jurists. Translated and included in the texts of criminal law. Among these cases, we can mention the legal articles related to the limits and including the limit of Qazf in the Islamic Penal Code approved on August 28, 1991, which with minor changes, are translations of the issues of the book written by Imam Khomeini.

This procedure, which was established in the criminal policy of the Islamic Republic of Iran, was repeated in criminal law, including the Islamic Penal Code adopted on May 1, 2013, and in this law, as in previous laws, the issues of limits, retribution and diyat are absolutely « Religious idealism was based on the rules of jurisprudence□ (Rahmani, 2015). However, some believe that the school of Islamic religious law is not like the school of natural law, which considers the index of laws and legal rules to be only objective facts. And it is not just like the school of rational law that presupposes only the instructions of practical reason as the criterion of rights and regulations.

On the other hand, like the schools of positivist law, it does not consider law and order to have a purely « contractual and credit « theme, but the rules of Islamic law to have a two-way and mixed theme, that is, it has a « credit - real « nature . Yes, it is credible because it belongs to the will and creation of God, and it is realistic because the divine legislative will is in line with his creational desires, and as a result, Islamic regulations are based on the facts, interests, and corruptions of the soul. Has and has. Thus, it

can be said that the rules of our religious law are not merely « discovered reality « and not merely « contractual credit," but are credits based on realism, credits of which the legislator is the Lord of the universe and the wise (Active, 2014).

As mentioned earlier, what is understood from the above statement is criminal idealism, which is attributed to natural rights as an ideological - religious sub-branch. Reality is the need to update jurisprudential data, which in many cases has emerged in the form of ancient intact heritage in our criminal law. The unique feature of Shiite jurisprudence is the possibility of dynamism based on expediency and time and place, which in some cases has positive effects in the form of equality of Muslim and non-Muslim blood money, the need to achieve adult criminal development under eighteen years in the maximum punishment and Retaliation and whispers for the equality of the blood money of men and women, although in terms of quantity, can be seen in a few cases. What is certain realism and impact of scientific data on leading to the discretion of innovative and pursuant to the legislation up to date in some cases been and in this way simply « can not rely on the data in criminal law ancient responsive to shortcomings in society It was today.

3. Observers of the idealism of criminal policy in criminal law

The dignity of legislation in Islamic Iran based on the theory of legislation has been established as a plan for the implementation of strong religious laws. This perception of the dignity of legislation in the Iranian legal system is rooted in the principles of Islam, which is evident in the views of the founder of the Islamic Republic and some jurists of the Constituent Assembly. In the constitution also explicitly « does canonization of God « and « a fundamental role in setting forth the laws revelation « is mentioned (Dabirnia and Naghavi, 2018).

Accordingly, legislation in an Islamic government consists of three stages:

The first stage: the stage of legislating the rules, which, based on the Shiite beliefs about the uniqueness of the legislation to God, is the only competent authority in this period of the divine essence .

Step 2: Identifying the rules by jurists :Although the divine laws are quoted in the book, tradition and hadiths of the infallible Imams, not all people have the ability to use it, because it depends on the ability to specialize in a field, so During the absence of Imam al-Asr, jurists derive laws from sources and make them available to the people . The point to be

studied at this stage is that the jurist has no right to legislate. Rather, his task is to discover the rules on which it was previously written, and this is based on the comprehensiveness of the Shari'a. Therefore, the Shiites believe that Islam has a law on all matters, and that everything includes a specific text or a general text by the holy shari'ah.

The third stage, the planning stage: the laws of the holy shari'a, which are extracted from the sources through the mujtahids, cannot be directly applied in the Islamic society. At this stage, the government needs to develop rules and mechanisms for compliance and coherence. In this idealistic theory, Islamic society does not need customary laws, because Islamic law contains a variety of laws and regulations that make up a complete social system, and in this legal system everything that humanity needs is provided.

Remove the appeals court relied on a single stage of the charge of Islamic as well as the abolition of prosecutors in 73 of the country's legal system to the west of the mechanism emanating from the thought that (Khaleghi, 2015), but deadlock ago It has led some scholars to point out the distinction between fixed and variable laws, according to which the practice of the changing world requires dynamic and changeable laws and must be prepared by experts and specialists. Obviously, this legislation does not mean legislation; rather, it should be done within the limits of the general laws and general principles of Islam, and the diagnosis of non-compliance with the rules of Islam is in any case with the mujtahids (Dabirnia and Naghavi, 2018).

4. The fourth principle of the constitution

One of the principles on which the above theory is crystallized is the fourth principle of the constitution. This principle states that: "All civil, criminal, financial, economic, administrative, cultural, military, political, and other laws and regulations must be based on Islamic norms." This principle governs all the principles of the constitution and other existing laws and regulations of the government, and it is the responsibility of the jurists of the Council of Ministers to determine this .» The result of the reflection on the present principle in the present issue is to point out that each of the regulations, laws, articles and notes approved by the Parliament of Islamic Iran must be in line with Islamic standards. Therefore, in this regard, Articles 72 , 91 , 94 and 96 of the Constitution explain the details of this issue . These principles state that the laws passed by the Islamic Consultative Assembly must comply with Islamic norms, and that none of these laws should be contrary to Islamic law (Javan Arasteh, 2003).

5. Guardian Council and Supervision of Planners

Therefore, the role of the jurists of the Guardian Council in the fourth principle of the constitution is nothing more than a comparative role in the theory of legislation as a plan for the implementation of divine laws. According to Article 2 of the Constitution, revelation plays an essential role in the expression of laws, and its way is ijtihad. This continuous ijtihad in the legislature is enforced through the Guardian Council; in comparative ijtihad, the faqih seeks only to answer the question of whether the subject or decree is contrary to the teachings of Islamic law and regulations. In this type of ijtihad, inference has played a minimal role, and its only function is to examine the inconsistency of approvals with religious data (Kaabi *et al.*, 2008).

Some people consider this attitude to be in accordance with the comprehensiveness of religion and therefore, they suggest the adequacy of non-contradiction of the relevant laws with Islamic rules (Khorasani, 2013), and 68) In contrast, those who looked realistically at the legislative process in the Islamic Republic of Iran, acknowledge the passive role of jurisprudence and jurisprudence in this system. In passive dealing with issues, jurisprudence is only in the role of an observer or plays the role of an obstacle and declares its position against the issued rulings which have negative and sanctioning aspects, so that in this sub-role, jurisprudence and Ijtihad is marginalized (Jahangiri, 2008).

It is necessary to believe in the comprehensiveness of the religion of Islam, to believe in the ability of Islamic jurisprudence to meet all the needs of society and human beings in the face of the law. Therefore, dynamic jurisprudence, which considers the role of time and place in the range of rules of inference of religious law, has the ability to update the religious laws of society. On this basis, the reduction of the field of jurisprudence to comparative ijtihad in the legislative process causes the law to distance itself from Islamic jurisprudence, and gradually the laws in question move away from the goals of Shari'a and it is not far from the law to perfect society. Don't be in a situation (Shariati, 2001). However, limiting ijtihad in jurisprudence in the scope of implementation, depriving society of realistic and up-to-date Islamic rules as single rules is around a single system (Dabirnia and Naghavi, 2018).

6. Dynamic sectarianism, the way of transition from idealism to realism

Dynamic jurisprudence is the opposite of traditional jurisprudence. Each of these two words carries its own meaning: Proponents of traditional jurisprudence give originality to the book and tradition, and look at consensus and reason as the discovery and attainment of the book and tradition, but proponents of dynamic jurisprudence strive. To adapt the two to the intellect and the requirements of the time. The first group, fearing the disintegration of people's beliefs, has taken a defensive stance, considered it their duty to protect former traditions, and the second group is concerned about the inability of religion to meet the needs of the day and is evolving. And change in minds, and in some cases by reconsidering some of the teachings, to create the necessary harmony between religion and time (Feyz and Hosseini Sanani, 2008).

The recent split was the result of a deviation in the institution of ijtihad . The school of jurisprudence, which was presented as a way to empower the school in solving new emerging problems, after the defeat of journalism , stagnated and stagnated itself until Imam Khomeini, the requirements of time and place as He introduced two determinants of expediency in ijtihad and established a new sect (Mousavi Khomeini, 1985).

Accordingly, today, due to a new movement in Shiite jurisprudence based on comprehensive needs and requirements in the system of the Islamic Republic, extraction of laws from jurisprudence, based on judicial needs and international interests and economic, cultural and ... it has become an inevitable necessity.

Among the conditions that affect the dynamism of jurisprudence and ijtihad is the presence in time and confrontation with new events in the realm of social, cultural, economic, political, governmental and international relations, so that the mujtahid can be as clever as possible, to understand the issues of his time and by presenting it on religious principles and rules, he will present his appropriate and up-to-date answer and determine the ground for the flourishing and growth of jurisprudence and following it the application of ijtihad to the surrounding social facts.

Where Imam al-Sadiq (AS) says: It is upon us to convey the principles to you, and it is your duty to return the new subdivisions to the basic principles (Ameli, 1412AH)

Among the conditions of dynamic jurisprudence is the aristocracy over the knowledge that is considered the secret presuppositions of the science of jurisprudence and the great jurists have considered arc in them as a condition for the perfection of ijtihad (Qomi, 1999).

Today, scientific influences such as criminology, criminology, forensic medicine, criminal sociology, criminal psychology, criminal psychoanalysis, criminal economics, and the like on criminal law are undeniable, and ignoring these sciences in a dynamic discipline that leads to legislation. Up-to-date, realistic and efficient, the society is confronted with laws that not only have minimal citations to the procedure, but also confuse the needs of today's human society.

7. Effects Dynamic Recognition leads to the Legislative rooted in realistic criminal policy

Paying attention to the criminal development of the subject of Article 91 of the Islamic Penal Code, paying attention to the equality of Muslim and non-Muslim blood money subject to Article 554 of the Islamic Penal Code, the possibility of replacing the death penalty with stoning if expediency is one of the examples. Dynamic sectarianism enumerated the path of realism and the interests of time and place and the requirements of the day.

7.1 The emergence of realism and criminal growth

One of the cases of legislation that is rooted in dynamic sectarianism and has become a tool for pursuing a realistic criminal policy is Article 91 of the Islamic Penal Code. The ruling of Article 91 is based on the fatwas of the late jurists; Ayatollah Makarem Shirazi has issued the following fatwa in this regard. Whenever different aspects of the issue, including the theory of a trusted expert, are considered, and in general doubt about the lack of sufficient growth in relation to "If there are these crimes, there is no obstacle to turning the age group's punishments into punishments .» Ayatollah Nouri Hamedani replied : « If the people of the above-mentioned age group are at a lower level than ordinary people in terms of understanding and rational growth, the judge can but need to impose severe punishments and retribution on them. "Reject them and impose other punishments on them, but based on that, the criterion is the same as being below the standard level and not for a specific age" (Agriculture, 2014: 332).

As can be seen, in a main sentence, adults under the age of 18, although criminally liable for certain acts and crimes punishable by retribution, but the expertise of jurists in criminal development that is rooted in the psychology of growth led the legislature to one Relative realism has led . However, if we want to achieve an absolute realism, we must leave the principle of non-criminal development of adult children under 18 years of age. What is more,

according to the psychological data of growth, no child is considered to be developed, and this is a proven scientific and experimental matter with a view to considering the age requirements of children (Lotfabadi, 2014).

7.2. The emergence of realism and equality of Muslim and non-Muslim blood money

As mentioned above, one of the ways to achieve realism in terms of material and time and space requirements is to issue a government decree, one of the tangible cases of which has emerged in Article 554 of the Islamic Penal Code: "According to the ruling opinion of the Supreme Leader, the penalty for crimes against religious minorities recognized in the Constitution of the Islamic Republic of Iran is set at the same level as the Muslim penalty".

The blood money of the infidel Dhimmi) ie, the People of the Book who live in the Islamic land and act according to the conditions of the government) is 800 dirhams if he is free and male, whether Jewish, Christian or Magian, and if he is free and a woman, half of it is 400 dirhams. It seems that the diyat of the members of this man and woman and the diyat of their injuries for the blood of their price have the same ratio as the diyat of the limbs and the injury of a Muslim with the blood of his price (Karkhiran, 2013).

As we see in Imam Khomeini's view in the above-mentioned writings, the diyat of a Muslim with a non-Muslim has been inequality, and this is due to the need for the Muslim to dominate the non-Muslim according to Islamic rules, but it is necessary to mention that now, The relationship between Islamic rule and religious minorities can no longer be based on religion, but can be explored in terms of citizenship. Therefore, the Muslim government is obliged to: First of all, to clearly and explicitly mention the level of non-Muslim blood money) religious minorities) in the laws, and in the next stage, to put this amount in front of other subject .

What is more, according to Articles 19 and 20 of the Constitution, the citizens of Iran, regardless of their ethnicity or tribe, enjoy equal rights, and color, race, language, and the like cannot be the cause of superiority, and all people are equal. In the shadow of support are the rules. Therefore, the inequality of the Muslim and non-Muslim blood money was considered an inequality of citizenship based on the above principles, and on the other hand, the jurisprudential obstacles prevented the legislation in this regard. On the other hand, the observance of international principles and interests documented in Articles 1 and 7 of the Universal Declaration of Human Rights and also «in accordance with Article 26 of the International Covenant on Civil and Political Rights, which was approved by the National

Assembly of Iran in 1975, that equality for laws without any limitations because of sex, race, religion and so on, including obligations under international official who follows the harmonization of domestic legislation inevitable due to requirements of time and place (Ebadi, 1994).

Leaving the deadlocks depended on the pursuit of dynamic divisions, and the best appropriate tool was the provincial decree, which in the form of Article 554 of the Islamic Penal Code now, according to the contexts, temporal and spatial requirements, and domestic and international interests. It comes to the fore. As can be seen, the ruling mujtahid, taking into account the realities of the time and place and the current needs of the international community, has pursued a comprehensive criminal policy and a realistic legalization of the society from the existing deadlocks and corrupt talismans caused by It saves.

8. Dynamic division and the possibility of turning stoning into execution

The basis for the possibility of converting stoning to other punishments in the current situation is according to the opinion of some great jurists, according to which the implementation of some severe punishments may cause the deception of the Islamic society. Therefore, if it is not possible to carry out stoning by proposing the court issuing the final verdict and with the consent of the head of the judiciary, if the crime is proven by (sharia) evidence, it will result in the execution of the product and the product of the product. But if religious reasons do not exist, and commit adultery with the other evidence is, exceptionally", converting a penalty in adultery accepted by the legislator placed and adultery caused a hundred lashes for each party to the crime of adultery will be (Goldozian, 2015: 264).

In fact, the sentence of the second part of Article 225 of the Islamic Penal Code has no precedent in Sharia, but the conversion of punishment is based on rational reason (Agriculture, 2014).

The ruling on stoning a woman or a child with a wife is one of the issues that has been proven by many narrations from the Holy Prophet and the Infallible Imams (AS) and is agreed upon by the jurists, but also as necessary and improvised. Muslims reached a place of reflection and doubt in the sentence does not exist in the early days of Islam at the behest of the Prophet (PBUH) has been implemented (Najafi, 1984).

With the above characteristics, the first principle regarding the implementation of divine limits is non-conversion, but as we see, time, space, domestic and international interests cause jurists in dynamic dynamics to open new chapters for legislating and updating laws. As Ayatollah

Makarem Shirazi asks": In the present age, when the implementation of stoning is in some cases faced with domestic and international obstacles and problems, can it be secondary to another type of Executed? « And the answer is that « in case of questions Tbdylsngsar different kind of death has not hindered» (Makarem Shirazi, 2002: 490).

Conclusions and Suggestions

In the present age, criminal policy in most countries of the world, in a broad definition, outlines the rails required for dimensional and realistic legislation. The criminal policy governing the law of criminal law in the country has not followed a single procedure. What is certain is that in the criminal law contained in the latest penal code, we can not only see the latest paradigms of criminal law that are influenced by criminological data and related sciences, but also the oldest religious idealistic laws. We can see that the laws, the abstract legal point of view of which is the main subject, the laws that are at a minimum in terms of citation, and in the judicial procedure of which criminal courts are rarely issued a ruling.

Unfortunately, the abandonment of these laws on the one hand, and the lack of alternatives with acceptable balance on the other hand, in many cases has left us with a legal vacuum while the law exists. What is certain is that the legislature is willing to move from idealism to realism and criminal policy in its broad definition, but it should not be forgotten that the legislature, according to the above laws, such as Article 4 of the Constitution and supreme regulatory bodies such as The Guardian Council gains the ability to engage in modern ijtihad with dynamic jurisprudence and modern jurisprudence in accordance with domestic and international interests and the temporal and spatial requirements in the field of criminal law, with the attention of experts, and to upgrade the valuable ancient heritage. Take action. In this direction, the Guardian Council will play a key role not only in the implementation of the laws on jurisprudence, but also as the most important institution in dynamic criminal jurisprudence.

The ruling mujtahid in the same way in unresolved issues with the issuance of realistic government decrees opens unopened knots in some cases and the continuation of this process not only removes criminal rights from isolation but also the society in terms of security and the costs of providing it in It convinces domestic and international dimensions. In the examples analyzed in the text, we found that the expediencies in idealistic punishments in the plant of requirements and time and space can be examined and changed by the great jurists. What accelerates this process of sectarianism is the need to anticipate the opinion of experts and the possibility of face-to-face consultations with jurists of the Guardian Council

in the form of legislation, which will hopefully revolutionize the dynamic criminal sectarianism.

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