

Survey Political Misdeed in Jurisprudence and Law Iran

Mohammadreza Khosravi Nezhad*, Ali Jamadi and Mehdi Niknafs

Bandarabbas Branch, Islamic Azad University, Bandarabbas, Hormozgan

Corresponding author:

ABSTRACT: In this article, we intend to recognize the criterion or criteria meant by the constitution in defining political crime by questioning about the identity of political crime. Does the constitution intend to support all political criminals or just some special ones that criticize the government and its structure and governors while they accept the basis of the Islamic Republic? So, with reviewing the philosophy and background of separation of common crime from political crime in Iran, and reviewing the criteria of recognizing political crimes, we will present criterion and by dividing political crimes to inter-system and outer-system groups we will conclude that political crime in the Islamic Republic is a crime with term punishment or preventive in which a person without the intention to damage the basics or framework of its system (religion, Faqih, Islamic or Republic), but with the intention of criticizing governors' performance or to gain or keep power has done something that is considered political crime.

Keywords: Political misdeed, jurisprudence, law, religion, political crime, fixed punishment.

INTRODUCTION

Punishment has a long background in human's history and since people gathered to live civically, crime has existed and human constantly used punishment to confront crime. Some believe that crime, apart from being a social and economic phenomenon, is also a political phenomenon. In some countries to determine and define political crime, they use a direct legal definition and sometimes a part of a crime is called political and sometimes by an indirect method, without defining or determining examples of political crime, sentence political criminals. In India there are issues such as Siks, Kashmir, and Tamils, in France maltreatment toward anti-Zionist thinkers and girls who have hijab, in England aggression against N. Ireland and in the US government's behavior toward blacks and Indians in the past and now Davidian sect and in Canada is the same; as an example, officials of the immigration office deported a Jew English author for prognosticating disgusting matters in this country (J. P. Alexander, travelling from India to Britain, London, 1828: 182). In the domestic law section, definition of political crime has faced many problems and complexities because legislators and governors have always tried to look at them from a special perspective and analyze them in the common crime framework. In Iran also, before revolution and after revolution no definition is given for political crime and such crimes are considered among the common crimes. Threatening the domestic and foreign security, threatening people's benefits in political, cultural, social terms, are conditions of a political crime in Iran whose domain can be stretched or restricted by religious or contribution interpretations (terminology of law, Langerudi, 2008: 190). This article aims to analyze aspects and definition of political crime in Iran and whether there a phenomenon called political crime, or whether there is a predetermined and fixed punishment for that.

2. Research Questions and Hypotheses

- What are aspects and definition of political crime in religion and law of Iran like?
- Is there a phenomenon called political crime in Iran?
- Is there a predetermined and fixed punishment for political crimes in Iran?

- Political crime in the religious and Islamic texts refers to wrongdoing and invasion.
- In recent years, a lot of attempts have been made to set comprehensive law for political crimes.

- Rules of political crime are referred to in Islamic criminal law that was set after revolution.

3. Theoretical Framework

The history of political crime:

It has had three periods:

The first period is from the ancient times to the 19th century: then there was no distinction between common and political crimes and political criminals did not enjoy any privileges. The second period is the period of development and burgeoning political crime from 19th century to the world wars: in this period the society was under the influence of the 18th century philosophers like Montesquieu (1689-1755) who wrote *Ruhol Ghavanin*, Velter (1694-1778) with *Zadig* and John Jack Russo (1712-1778) with *social contract*. They paved the way for changes in governments. After the revolution in France, no big change occurred in conditions of political criminals because the political opinion desired harsh confrontation against proponents of the revolution. However, by Napoleon's period, liberal thoughts were distributed in France and it caused separation of political crime from the common crime in 1810. The term political crime was first used after Napoleon. The third period is the time of wane of political crime after world wars. World wars and fights of parties had a great role in increase of political crime. Political criminal included militarists and politicians. Most of governments believe that political crime results in changes in the governing system by the use of aggression so they have set hard punishments for such crimes. In Iran also, political law has passes some phases. Madha did not have a strong legal system so the condition of political criminals is not clear in that period. In Achaemenian dynasty the judiciary was ruled by the king and for crimes such as betraying the country or the royal family the punishment was executed by stoning or feeding poison or hitting stone to head. In Sasanian dynasty clergy men set punishments. Political criminal were placed in a disgusting place or were killed by being limbered. Avesta divides crimes into three groups of common, religious and political and this was the basis of their judgment (Mortazavi Radvandi, the history of law and office of justice in Iran, 1989: 10). In post-Islam period, punishments were set based on Islamic law except Yaza of Genghis and yarligh of Ghazan and Tazukof of Timor (Ali Pasha Saleh, discussions of law history, 138). Since Constitution period, law in Iran considered merits for political criminals under the influence of Western laws but they were still considered among the common crime and they were punished harshly (Seyed Jamaledin Madani, Iran's contemporary history of politics, Qom, Eslami publication, 1982: 71-).

3.1 Definition of concepts and phrases

3.1.1 Definition of political crime

For jurists, political crime does not have a specific approach in classification of crimes. Some jurists have classified political crimes in terms of nature and identity of crime. Some others have classified it in terms of subject and some others in terms of legal element. Political crime includes political and crime terms. The definition of politics is clear to some extent but adding crime to it makes it more complicated. So we say political crime is crime against the government by violating laws to change social circumstances and crimes the government's crimes, both domestic (violations and invasions of an official organization occurred in borders) and international (violations and invasions of an official organization occurred outside borders) (Beiron & Constitution period, 1991: 240).

3.1.2 Suggested definition of political crime

The most important definition given for it ever is "doing or avoiding doing actions that without influence of foreign factors are done with the aim of opposing the governing system and result in disturbance or damage in an element of the political system that are deserved to be punished based on law".

Features of this definition are:

- It is in accordance with the principle of legitimacy of crimes and limits governments for free behavior with political crimes.
- Political crime is limited and follows its specific rules by being initiated.
- By mixing mental and objective theories a merit is given to criminals.
- It pays to intervention or lack of it of foreign factors in the crime so that the way is not paved for invasion of foreigners.
- It refers to disturbance and damage while in some other definition collapse and change of the government are used that is the example of *baghi* in Islam.
- It is useful in legal schools for the term "legal" because opposing the political system that is legal is a political crime and in some texts a legal system is a system that gains power by people's election and in some others the one set by God.

3.1.3 distinction of political crime from common crime in Iran's law

It is one of the most important classifications. Some consider mental factors the criterion of this distinction meaning that any action with political intention is a political crime in a way that the objects of it are the government and its agents or the citizens. Some focus on the objective element meaning that only those crimes are political that are naturally political that is the object and the damaged ones are government's agents, so crimes such as rally and protests are not political crimes. The effect of this classification is different. Democratic systems have merits on political crime and totalitor systems follow intensity system. The reason of having merits is peaceful disobedience is basic human right. Peacefulness of the political crime is of its essential features because terroristic and aggressive crimes are excluded from this which per se means aggressive crimes are not considered political. Our constitution also follows such an approach in trial phase as a basic that is the obligation of judgment and presence of a jury. This minimum basic must be observed in the phase of sentence, too.

3.2 Types of political crimes

In crimes that the purpose is to damage the government or politicians, they can be divided to two major types:

- pure (simple) political crimes:
 - It is the type that is merely against the government and the political system that is the political intention.
- Relative political crimes:
 - That is the crimes that are originally among the common crimes but are related to political crimes that by this relation cause numeration of crime. This type is divided into two:
- Crimes compounded with political crimes:
 - This is the type of crimes whose subject is common but with a political intention that is, a crime is compound when it damages public benefit and the political system for example, attempting to assassinate the president to change the government. It is a common crime done with a political intention (Estanboli, Adib, Sharhe Ghanunol Oghubat, 2nd edition, 1990, 1st VI, : 300).
- Crimes related to political crimes:
 - This type is related to political crimes. Pr. Puza says "common crimes that are committed due to political events and are related to political crime causatively are called related" like breaking into a gun selling in condition of a revolution or a riot. So terrorism, social crimes, and crimes against security of a nation are of this type (Motamed, Mohammad Ali, 316).

3.3 Theories of political crime

3.3.1 Psychological theory

Psychological theories are caused by focusing on individual levels processes. Preferential association theory is also included in this. In it, crime is considered accusative that the person learns it by relation or interaction by others. Proper information and the way of committing the crime are learnt through close friends or relatives. The person socializes with definitions or tendencies that are for crime (Sutherland, 1947).

3.3.2 Structural theories

By focusing on social structures that people should behave according them, describe human's behavior. Although some structural theories can explain political crime, many scholars prefer the paradox theory. To make it more complex, there are several types of paradox theories that include a continuum from conservative to extremist but they all paradox is a natural social phenomenon. Its extremist and critical type includes Marxism, neo-Marxism and paradox (Koini, 1977: 53-54 and Bohem, 1982: 570).

3.4 Elements of political crime

They include three groups:

- The material element: The committer: when two or more persons intend to do something against the security of a nation, the subject: crimes against domestic and foreign security of a country.
- Criminal behavior: betraying the country by military up-rise against the government, contribution with a foreign government while planning a war, contribution with a foreign government by encouraging soldiers to disobey or surrender, contribution of soldiers with the enemy, threatening to bombing, vandalizing state property to bring the government down, making corruption and spying (Sarikhani, Adel, crimes against security and public comfort, 2005).
- Spiritual element: Public bad intention or action that is meant to endanger the security of the country: Specific bad intention to oppose the security of a country;

- Legal element: The article 610 of the criminal law states that a population of two or more that intend to do actions against the domestic or foreign security of the country or make contribution to this must be sentenced to 2 to 5 years of imprisonment. In punishment system of our country, there are no legal criteria to distinguish political crime from other types. Except some rules that are expired now this title has not been used anywhere. In addition, the purpose of article 168 of the constitution to define political has not been met yet so recognition of the identity of political crime may not be easy. Juristic process has had no contribution to this so what remains are the ideas and therefore some new ideas based on them.

4. Comparative analysis of different views about political crime

4.1 In foreign legal schools view

Some scholars recognize it directly and sometimes and sometimes a part of a crime is called political and sometimes by an indirect method, without defining or determining examples of political crime, sentence political criminals. Law of some countries like England and Spain does not pay to political crime and does not refer to it in their legal system but they have considered special conditions for political criminals so that if they wish, they can change the condition (Madani, Jalaeddin, basic law in Iran, 6th VI.: 332). Although the constitution of France has not defined political crime, in the introduction of 1927 law it states "a political criminal is a person who is under their inclination to the extent that they commit violation of law" (Estephani, Gastun & et al: 280). Article 3 of 1929 law of Germany: about return of criminals "political crime is any action that deserves punishment that is done against the country or its security or against the president or anyone of the governors or the parliament or the elected or the selectee or against the relationship with another country (Asghari, Muhammad, comparative analysis of political crime: 33). Article 8 of criminal law in Italy: in terms of criminal law, the action that is done against the benefits of a country or political rights of a citizen is a political crime. Also the non-political actions that all or a part of their intention is political are political crimes (the same: 198). In the law of Egypt, there are not specific rules for determining and defining political crimes. Even in terms of punishment, political crime and common crime are not distinguished and those actions are considered political crimes that have political intention like actions against the security (article 102 of criminal law of Egypt) (Mahmud, Mahmud Mustafa, Sharhe Ghanune Aloghubat (Alghesm alam) 5th edition, 1960: 39-40). Of course some Egyptian jurists believe that dividing crimes to political or non-political is not important except for returning criminals that according to the article 140 of the constitution of Egypt, it is illegal (Abdul Malik, Jondi, Almusua Aljenaiya, 2nd edition, 3rd VI., Bit: 49). Criminal law of Libya: according to this, any crime that is against political benefit of the government or political right of any citizen and any common crime that has political intention is considered political crime (Ali Hassan Abdullah, Al Ashrafi, AlBaes va Asra fi Almosulia Aljenaia: 334-335). Criminal law of Iraq: political crime is a crime that is committed with political intention or against individual or public right (Sabah Sadeq, Ghanun Aloghubat va tadilate (Iraq): 11).

Criminal law of Syria: 1. Political crime is one that the one who commits it has political intention. 2. Crimes against individual and public political right whenever the one who commits it does not have individual intention or has done it for a position (Mamduh Atri, Ghanun Aloghubat (Syria): 75).

Political crime in Islamic jurists' view: Some of them consider political crime equal to *baghi* and the definition of it is equal to *baghi*, too. Political crime is an action that a group of Muslims do because they have gained power and disobeyed the Imam due to some non-sense doubts and have converted, either the action is done through corruption or war or spying or armed fight with an Islamic Government. Political criminals are the group that possesses the abovementioned characteristics (Abdul Hussein Ali Abadi, Law, 1989). *Baghi* means invasion, wrongdoing and disobedience and in political terminology *baghi* is a Muslim who opposes the Islamic government and disobeys and stands against the Imam (Abdul Vahab Hamed, Alajram Alsiasi). In Islamic texts political crime refers to *baghi* like Quran in Ayahs (Yunes Surah Ayah 23) and (Surah Ghesas Ayah 76) and (Surah Hojarat Ayah 9). Islamic Faqihs define political crime disobedience against the Imam.

The best definition in Islamic law seems to be " Political crime is an action that a group of Muslims do because they have gained power and disobeyed the Imam due to some non-sense doubts and have converted, either the action is done through corruption or war or spying or armed fight with an Islamic Government" (Marashi, Mahmud, new ideas in Islamic law). Bill of political crimes and how to solve them that is provided by the judiciary should define it. However, it has some vagueness that makes it complex. It states: political crime is a criminal action that is done without aggression, by real persons, with political intention or by legal political groups against the government and the political system of IRI or against political and social rights of citizens, conditioned that the intention is not personal benefit (political crime in Islamic jurists' view: 46-47). The shortcomings of this definition are: real person is not vivid and can be interpreted differently, the crime of a real person with political intention is considered political. The political group is legal: it seems that this theory follows outer-system theory so that whenever the crime is against the governing system, it is political crime whether the group has political intentions or not. (Citizens' social rights) that is

parallel to (citizens' political rights) is also unclear because it seems that it wishes to define aspects and examples of political crime clearly and so what it does not refer to is not a political crime.

4.2 Political crime in the cabinet's view

Political crime is doing or avoiding doing an action that that deserves punishment whenever done with political intention against IRI or its government or against political or social rights and freedoms of citizens except the intention is individual and personal (Hedayatollah Falsafi, devising and describing human rights: 16-17). Because the committed crime (social rights and legal freedoms of citizens) do not necessary have the characteristics of political crime. We can say that acceptance of the outer-system theory is relative and crimes of social rights and freedoms are due to political intention and follow inter-system theory. The abovementioned article considers political intention the necessity of political crime. However, in the 2nd article of government's bill there are some examples of political crime that their being political crime is contrary to the first bill because there is in them political intention not political effect (Parviz Sanei, general criminal law, 1993).

4.3 Political crime in parliament view

Political crime is doing or avoiding doing an action that is punishable whenever it is done for a moral change, political and economic development and provision of public freedoms that are done against the regime of IRI or its government or against political and social rights and freedoms of citizens (Pirooz Sanei, general criminal law: 1993). The definition given here expands the domain of political compared to definition of it according to inter-system theory or outer-system theory. In fact, this definition is neither limited by the neither inter-system nor outer-system theory because by this definition intention of a political crime is not necessarily political and it can be moral or for economic development. The effects of the crime of a political criminal are not necessarily political because it can be against political or social rights or freedoms of citizens. So this definition proves that a crime can be considered political without having political intention or effects.

4.4 Political crime in Islamic criminal law

In Iran punishments of political crimes are not still devised and about some crimes that have political features punishment of term crimes or wars are set. Maybe the reason of this is that never a real system of merits has been set up because such punishments are given to ordinary criminals. Some scholars categorize punishments for political criminals this way (Muhammad Reza Eslami, political crime, 1993: 345). Article 5: any Iranian or non-Iranian who commits one of these crimes out of Iran's borderlines is considered criminal and shall be punished and if the punishment is to be conducted out of Iran, the domestic court decides for it:

- Act against the system, domestic or foreign security, borderlines, and independence of Iran
- Forging seal, signature, order and handwriting of the supreme leader
- Forging seal, signature, order and handwriting of the president or the head of judiciary or the head and members of Majlis, the head of Assembly of Experts, the head of Supreme Court, prosecutor the general, members of Guardian Council and members of Expediency Council and the ministers.
- Forging the votes or orders of an official of the government of the court.
- Forging official bills or treasury bills and commercial papers or coins (Muhammad Ali Ardabili, Islamic criminal law, 2007).

So some punishments for political criminals are the ones mentioned: because in them the legislator can show different behavior according to the crime and the judge is free to observe the conditions and judge. If some consider only criminal punishment and leashing suitable for this, that is wrong, preventive punishments are the best kind for political crimes.

5. Conclusion

168th principle: the court and trial of political and press crimes must be public and with a jury. All conditions and authorities of the jury and judging are set by rules of Islam. This principle has two aspects: the definition of political crime is by law and so not by anyone such as the president and also the definition is by Islam. According to political crime in Islam, we can say that although there are no direct and clear statements about political crime in Islam, because there are some merits and support for baghi, it considers some advantages for criminals and they are not discriminations. However, any crime that is politically oriented is deprived of this support based on 177th article. The notable point about is in the text of the constitution that says the basic legislator has had the same opinion. When this law was passed, some elites disagreed that crime such as betrayal must not enjoy support but saying that such are not political crimes, this law was passed with 57 for votes and 2 against and 2 neutral (final discussions of editing Iran's constitution, 1985: 1678-1681). Another aspect related to the religion is that while judging a political crime,

there is a jury and this can be possible if there is no Atonement or execution for it because such crimes are decided for by the religion and presence of a jury is contradictory with God's rules. According to articles 2 and 11 of the Islamic criminal law and vote 45 of 25.10.1365 the principle of being legal crimes and punishments excludes criminal crimes and because political crimes are among major crimes, so all aspect of analyzing and judging such crimes is in the hand of the judge. According to the 4th principle of the constitution and the 168th one, for the crime whose rules exist in the religion, presence of a jury is wrong. Every country defines political crime based on its constitution, Iran does the same thing, but presence of a jury is obligatory in the court. Like the case of other countries, there is no clear definition of political crime in Iran's criminal law. But this definition seems to be the most perfect "doing or avoiding doing an action that is punishable whenever it is with a political intention against the government or the benefit of the country or the political and social rights of conditioned that the purpose is not personal". In article 24, 26 and 27 of the constitution personal freedoms are limited that include: avoiding disturbance in law of Islam and IRI and avoiding violation of independence, national unity and freedom of the country. Another case devised is that the political criminal in case of repetition of the crime is excluded from the punishment and this is so surprising. In the 156th principle, paragraph 5, the judiciary is required to do the needed action to prevent crime but in political crimes, that devising the crime is an encouraging factor, it is preventive form correcting criminals. Analyzing the plan of political crime, Guardian Council had 13 disagreements and 34 deficiencies and there are these issues:

1) In the 4th article of the first chapter insulting the president in the soil of Iran is a political crime by observing the collateral conditions. If by observing the collateral conditions it is meant the foreigner president who is in our land has good relationship with us, and the other country is reliable on collateral commitment, then this is logical only in one case: Iran has full practical commitment to the other country and that president does not violate any of our rights. But if our country violates responsibilities toward the other nation or if the president of the other country violates our rights, then actions like criticizing him or rally against him must not be political crime. So this case should be distinguished because insulting a foreign president who has not violated our rights is a political crime.

2) Paragraph b of article 9: spreading rumors or lies to occupy people's mind. This statement without clarifying what is the criteria of deciding the intention of occupying people's is an escape for criminals because everyone can lie about a politician or spread rumors but say I did not have the intention to occupy people's mind. This is so bad for the security of the nation. Because of some problems like election issues we should say that baghi and political crime are different. If the legislators were more familiar with concepts like war, aggression, national security and effects of globalization on national governance, they would not have made such law and rules. According to the definition of the abovementioned terms, examples of crimes in article 2, 3, 5, 9 and the first paragraph of the 9th article classified decisions related to domestic and foreign policies of security and defense is a baghi. A point that some scholars have neglected is that war is not necessarily physical and now there are more cultural wars, aggression is not just physical but mostly verbal and literal. National security is now dependent on the culture and any anti-cultural action is anti-security.

If the content of the 1st and 2nd article be adapted based on what we discussed, and be limited to criminals who without violating the abovementioned rules and with respect to the IRI, commit a violation against some managers or officials, the disagreement of the Guardian council will be solved. The other notable point in this is that in the 2nd article of the criminal law, by cleverly deleting the preposition "from", it is interpreted symbolic. In the 3rd one crime that are never political are obviously clarified like war, corruption and baghi (the subject of article 186) and excludes many aggressive crimes in law that are paradoxical and the Guardian council has neglected this. It is desirable that our parliament solves the problems and discusses ideas with Guardian council to develop national benefits.

REFERENCES

- Abdul Malik J, Aljenaia M, Darolelm B, Alashrafi B and Abdullah AH. 1986. *Albaes va Asara fi Almasulia Aljenaia*, Beirut, Alzahra lelalam Al Arabia publication, 1st publish.
- Ardabili MA. 2007. *Ardabili's general criminal law*, Muhammad Ali, Tehran, Mizan publication.
- Asghari M. 2008. *analysis of political crime*, Tehran, Etelaat publication.
- Atri M. 1998. *Ghanun Aloghubat, Syria, Damascus*, Moasesa Annavi.
- Danesh Zaman T. 1989. *prisoners' rights and knowledge of prisons*, Tehran, Tehran University publication, 1989
- Eslami MR. 1991. *political crime in Iran's law and its comparative study*, PhD thesis, Tarbiat Modares University.
- Gastun S. 1974. *general criminal law*, translated by Abdul Hussein Ali Abadi, Tehran, Bank Melli Iran publication, 1st edition.
- Langerudi J. 1994. *law terminology*, Tehran, Ganje Danesh.
- Mahmud MM. 1960. *Sharhe Ghanun Aloghubat, Algheshm Alam, Qayra, matbaeye darolketab alarabi*, 5th edition.
- Mohseni M. 1996. *general criminal law course*, Tehran, Ganje Danesh publication, 1st edition.
- Pile R. 2005. *comparative study of political crimes and judgment in Imami knowledge and Iran's and Egypt's law*, Tehran, Imam Sadeqh University, MA thesis.

- Saleh AP. 1971. subjects of law history, Tehran, Tehran University publication.
Saleh AP. topics of law history
Sanei P. 1993. general criminal law, Tehran, Ganje Danesh library, 5th publish, 1st VI.
Sarikhani A. 2005. crimes against public security and comfort, Qom, Qom university publication.
Tabatabai SA. 1984. Riazol Masael fi bayan alahkam beldalael, Beirut, Darolhadi, 1st publish, 1984
The holy Quran