

Basics of criminalization in Iran in administrative jobs

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Abstract

Background and purpose: This article aims to examine the basics of criminalization in Iran in administrative offices. **Methodology:** The research method is a descriptive-theoretical approach that, while reviewing the basics of criminalization, it expresses the records, regulations, backgrounds, the views of different experts, books, and articles published in this field. **Results:** The review of the theoretical background showed that criminalization is one of the subjects studied in the field of criminal law, which determines the criminal actions (actions and omissions) in the punishment. In the current era, due to the systematization of governance structures in various dimensions and the expansion of public and private organizations, violations and administrative corruption have become one of the basic challenges in the field of social sciences, sociology, psychology, criminology and especially criminal legislation in Iran, and conflicts have taken many. In Iran's administrative law, boards for dealing with occupational violations, including important supervisory mechanisms in executive administrative bodies, have been formed to realize the rule of law and justice and to create order in the administrative system to govern employees' behaviors working in the office environment. Some of the crimes committed by people working in administrative jobs are violations that must be reported to administrative violation boards, and these bodies are obliged to handle them, and this obligation is not only moral, but the Iranian legislature has set a guarantee of implementation for it. The extent of criminalization and the amount of government criminal intervention in various fields, including administrative jobs, are closely related to the type of political system of each country, the ruling ideology, and finally, the type of its criminal policy model that the main and general strategies are often reflected in the constitution. **Conclusion:** In general, criminalization is a process by which the legislator, taking into account the basic norms and values of the society and relying on his accepted theoretical foundations, prohibits the current act or omission; It also imposes a guarantee of criminal execution. In Iran's criminalization, examples have been set for occupational crimes that need to be changed.

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Introduction

Criminalization in government jobs in any country has a particular sensitivity and characteristic because the people working in government jobs represent the government to communicate with the public in line with that job. On the other hand, the people also consider the person working in the government position as the government's representative. Therefore, sensitivity in the field of criminalization in government jobs is also very important. Therefore, in addition to general criminalization in this group, which is carried out by the Islamic Council and the Constitution, criminalization under the title of violation is carried out in the executive branch. In addition to these cases, a special law on administrative violations has been drafted, which indicates that: In dealing with administrative violations in each of the institutions covered by this law, boards will be formed under the title of "Employee Administrative Violations Board." These boards include the original and appeal boards (Guderzi, 2015).

According to the above statement, the sensitivity of administrative violations is so important that handling them is entrusted to special boards, both in the initial and appeal stages; this shows the specificity of these crimes.

Job concept

A job is a set of related, continuous and specific duties and responsibilities that are recognized as a single job by the administrative and employment affairs organization of the country (from Article 7 of the National Employment Law approved in 1966). Job means continuous tasks related to a fixed organizational position or a job or position performed full-time (Note 2 of the law prohibiting holding more than one job approved in 1994). Based on this, it is a set of related and specific duties that are recognized by the bank as a single job and considered for an organizational position (Clause B, Article 1 of the Employment Regulations of the Banking System of the Islamic Republic of Iran, approved by the Council of Ministers in 2000). In human resource management, we must define different jobs in the organization. We should also see what features each job has and how it can be improved; When we talk about hiring, we must define the desired job and position in a precise and specific way so that we can choose the right person for that position.

Setting the job description and formulating the job qualification conditions is not only necessary in the recruitment and hiring process but also for performance evaluation and determination of salaries and benefits and the definition of the reward and payment system (Nobukht, 2011).

Jobs can be divided into three groups, which are:

- An employee's job consists of a set of specific duties and powers foreseen in the organizational tables for employees (Paragraph 2, Article 19 of the Law of the Islamic Republic of Iran Army approved in 1987).

- Joint job, which consists of a set of specific duties and powers that are determined in the tables of the organization with this title and are not exclusive to military personnel or employees and can be assigned to both (Paragraph 3, Article 19 of the Law of the Islamic Republic of Iran Army approved in 1987).
- Military job consists of a set of specific duties and powers foreseen in the organization tables for military personnel (Paragraph 1, Article 19 of the Law of the Islamic Republic of Iran Army approved in 1987).

Criminalization in Iran

The number of acts that disrupt public order by businesses is diverse, and the number of tools used to support public order varies in quantity and quality and includes a wide range of non-legal and non-criminal and criminal legal solutions.

In order to maintain social order, the government is allowed to criminalize and prohibit the commission of deviant behaviors and describe them as criminal (Ardabili, 2001).

On the other hand, it should be noted that in our country, the constitution is at the top of the pyramid and other laws must follow this law. Therefore, it is not possible to formulate and regulate criminal laws without adhering to the rules and principles of the constitution. This is because the constitution is the highest legal document of a country and a guide for the regulation of other laws, as well as defining the political principles, structure, hierarchy, status, and limits of the political power of a country's government and determining and guaranteeing the rights of the country's citizens. The duty of the government to guarantee the individual rights and freedoms and the political and social rights of the people creates the basis for the creation of legal and judicial security. It strengthens the trust between the nation and the government, which manifests itself in order and social security (Ahmadpour and Azizi, 2012).

Iran's legislative criminal policy based solely on abstract concepts of crime and punishment has faced the criminal inflation crisis with extreme criminalization since the beginning of the revolution. Also, encroaching on individual rights and freedoms has created the ground for society's dissatisfaction and mistrust of criminal policy makers (Majidi, 2003).

Restrictions governing criminalization by the Islamic Council

In Article 71 of the Constitution of the Islamic Republic of Iran, the Islamic Republic of Iran has mandated the Islamic Council to legislate "within limits stipulated in the Constitution". According to the above-mentioned principle, the authority of the Islamic Council to enact criminal regulations is not unlimited, but is subject to the limits stipulated in the constitution.

Also, according to the constitution's fourth principle, "all civil, criminal, financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic standards." This principle governs the application or generality of all the principles of the constitution and other laws and regulations, and it is the responsibility

of the jurists of the Guardian Council to determine this; Therefore, one of the limitations of the Islamic Council in imposing criminal regulations in the realm of individual rights and freedoms is Sharia restrictions; In other words, the Majlis of the Islamic Council should criminalize private and individual behaviors within the limits of Islamic principles and standards.

Based on this, the constitutional legislator has stipulated in Article 72 of the Constitution that the Islamic Council cannot enact laws that contradict the principles and rules of the country's official religion or the constitution. Therefore, according to the aforementioned principle and Article 71 of the Constitution, the Guardian Council, in reviewing criminal laws, should pay attention to the fact that the Islamic Council has criminalized within the limits of the principles stipulated in the Constitution and Sharia law. If he determines that the action of the Islamic Council in criminalization is not within limits stipulated in the constitution, he should refrain from approving it (Mahmoudi Janki, 2003).

Criminalization of jobs in Iran

Since we first discussed the job concept, and then the concept of criminalization. Thus, according to the title of this article, there is a need to define criminalization in business. Crime in business means that someone has a responsibility in an office due to a contract or a government order through which one committed a criminal job or did not perform one's duty one that should have done. Sometimes this duty is due to the job itself; sometimes, it is due to one's organizational position. Here we discuss the difference between organizational position and job.

The difference between the job and organizational position

A job is a set of tasks and activities that a person performs in a certain period of time. In addition to duties and activities, the powers and responsibilities of the job must also be defined (Abdolahi Panah, 2012).

While the post is the intended position for a job, in other words, the justifiable summation of specified tasks for a human person is called a post, so a post is a set of related tasks and responsibilities that require the performance of a person's services (Iraqi, 2009).

An organizational post is a specific set of duties and responsibilities that arise continuously in an organization, ministry, government institution, etc. According to legal standards and are considered for reference to a person in service. The position can be with or without a supervisor (Iraqi, 1977).

Examples of administrative violations by government employees in the relevant laws of Iran which are defined as crime

The extent of criminalization and the amount of criminal intervention of the government in different areas is closely related to the type of political system of each country, the ruling ideology, and finally, the type of its criminal policy model, which is often the main and general strategies reflected in the constitution.

Actions that damage the administrative dignity of government employees or cause violations of laws, regulations, or the rights of natural or legal persons are considered among the administrative violations of government employees. These violations were enumerated in Article 8 of the Law on Handling Administrative Violations, approved on 1993 by the Islamic Council in 38 clauses, which are followed by the disciplinary punishments specified in Article 9 of this law, which was stated in Article 11 (Zohari, 2012).

Some of the mentioned violations, in addition to the fact that they result in disciplinary punishment, will also be criminal and punishable under the penal laws; however, neither in the mentioned law nor in the executive regulations of the Administrative Offenses Law approved by the Board in 1994 Ministers, there is no mention of their examples, and it was enough to mention its title, therefore, to find each case, one must delve into the relevant laws to extract them.

Some of the most important examples of administrative violations, which are also considered crimes, are as follows:

- 1- Objection of slander and defamation, defamation of the subject of Articles 697 to 699 of the Islamic Penal Code of Punishment
- 2- Extortion is the subject of Article 669 of the aforementioned Penal Code
- 3- Embezzlement is the subject of Article 5 of the Law on Intensifying the Punishment of Perpetrators of Bribery, Embezzlement and Fraud approved on 1988 by the Expediency Council
- 4- Discrimination or purposeful acts or non-administrative relations in the implementation of laws and regulations against persons subject to Article 605 of the Islamic Penal Code
- 5- Toleration in preserving government property, documents, and funds, the issue of damage to government property, the subject of the last part of Article 598 of the above law
- 6- Disclosure of administrative secrets and confidential documents subject to Article 2 of the law on publication and disclosure of confidential documents and government secrets approved in 1974
- 7- Unauthorized communication and contact with foreign nationals subject to Article 508 of the Islamic Penal Code
- 8- Disobedience to the execution of the orders of higher authorities within the limits of administrative duties subject to Article 576 of the aforementioned law
- 9- Negligence of the heads and managers in not reporting the violations of the employees under the subject matter of Article 606 of the above law
- 10- Submitting a certificate or report of the violation of the facts in the administrative affairs of Article 540 of the Islamic Penal Code
- 11- Taking funds other than what is determined in the laws and regulations or taking any kind of money that is considered as bribery; The subject of Article 3 of the law on

intensifying punishment for bribery, embezzlement and fraud and Article 600 of the Islamic Penal Code

12- Submission of documents to persons who do not have the right to receive them or refusal to submit documents to persons who have the right to receive them, the subject of Article 604 of the Islamic Penal Code

13- Not observing the Islamic hijab is the subject of Article 638 of the Islamic Penal Code

14- Non-observance of Islamic affairs and rituals, the subject of the mentioned article

15- Hiding, keeping, transporting, distributing, and buying and selling narcotic drugs is the subject of the Anti-Narcotics Law approved in 1988 by the Expediency Council with subsequent amendments and additions.

16- Use or addiction to narcotic drugs, clause 5, article 1, and articles 15 and 19 of the above law

17- Any unauthorized use of business or job positions and government facilities and property subject to Article 598 of the Islamic Penal Code.

18- Forging or distorting and tampering with official or government documents and papers subject to articles 532 and 534 of the said law

19- Tampering with exams, papers, documents, and notebooks, disclosing exam questions or changing them is the subject of the single article of the law on punishment for disclosing exam questions approved on June 17, 1960

20- Abuse of office and administrative position is the subject of Articles 576 and 581 of the Islamic Penal Code

21- Seizing, concealing, inspecting, or opening envelopes and postal items or destroying them and eavesdropping without legal permission, the subject of Article 582 of the abovementioned law (Abaziri Fumshi, 2014).

Proposed principles and criteria for criminalization in business

Criminal law philosophers have paid attention to what is known as the principles governing criminalization. Jonathan Schonsheek proposed the first criterion. Considering "purity of principles", "purity of defaults" and "purity of work of Kurds", he seeks to present and analyze the principles governing criminalization. In the book about criminalization, Schonsheek considers the process of criminalization to be defensible in three stages, collectively called "filtering". Based on this, actions can be justified for criminalization that have passed through these three stages in a regular and consecutive manner (Jonathan, 1994). He writes about this: "When we are trying to criminalize a behavior, that behavior must pass through three separate filters successively and successfully. If it fails to pass these filters, it cannot be considered a crime, and if it passes all three filters, the behavior is considered a crime. My theory is that successful refinement is both necessary and sufficient for justified criminalization (Najafi Ebrandabadi, 2018). The second criterion is the criterion of balance of reasons. In this assumption, the amount of measurement in

criminalization can be described by assuming the existence of a scale that is on one side of criminalization and on the other side of decriminalization. If the severity of criminalization is greater according to the defined principles, criminalization of that behavior will be justified, and otherwise, criminalization is not justified. The third criterion refers to what reaction the criminalization of behavior will have on the part of the citizens. This criterion is known as "acceptability". The fourth criterion is the prevention of harm or damage, one of the most important views of the philosophy of criminal law in the thought of John Stuart Mill.

Penalties prescribed for violators

In this section, the administrative punishments are listed in order from mild to severe, and the amount and severity of these punishments depend on the crime committed by the offending employee, which are:

- A- Written warning without being included in the employment file.
 - B- A written reprimand to be included in the employment file.
 - C- Deduction of salaries and overtime for jobs or similar titles up to one-third, from one month to one year.
 - D- Temporary separation from one month to one year.
 - E- Changing the geographical location of service for one to five years.
 - F- Demotion or disqualification from appointment to sensitive and managerial positions in government agencies and agencies subject to this law.
 - G- Demotion of one or two groups or delay in awarding one or two groups for one or two years.
 - H- Redemption of service in case of having less than 20 years of government service experience in the case of female employees and less than 25 years of government service experience in the case of male employees by paying 30 to 45 days of basic salary for each year of service at the discretion of the voting board.
 - I- Retirement in case of having more than twenty years of government service experience for female employees and more than 25 years of government service experience for male employees based on years of government service with a reduction of one or two groups.
 - J - Dismissal from the relevant institution.
 - K- Permanent separation from government services and institutions subject to this law.
- For employees who have been or will be sentenced to dismissal or permanent dismissal from government services by the verdict of the judicial authorities or by the decision of the boards for handling administrative violations or former reconstruction and cleaning boards; For the livelihood of their family, a monthly provision is established whose amount does not exceed the minimum salary of government employees (In case of having more than 15 years of service and 50 years of age, at the discretion of the appeals boards to deal with the relevant administrative violations) (Jafari, 2013).

This provision is paid from the credit of the relevant ministry or institution, and if necessary, it is terminated at the discretion of the board (Rangbari, 2009).

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Conflict of Interest

According to the authors, this article has no financial sponsor or conflict of interest.

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