"A comparative study of political crime in Iran and France Law"

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ABSTRACT

Making a decision about how to deal with leniency with criminals or political offenders is hard test during establishing procedural and substantive criminal law by states. Examining historical developments in this field shows that governments throughout history treat differently in determining the amount and type of criminal response as well as trial procedures regarding political offenders. In addition, at some time they tend to use preventive methods to deal with political offenders. The way governments interact with the political crime and assigning privileges depends on recognition or non-recognition of the political crime. The recognition is typically specified through legislator expression in constitution or ordinary legislation. French legislators, as many countries do not use this method and referring to these regulations does not help much to identify the political crime and guilty, so the French Supreme Court could remove uncertainties through objective theory in the national law field.

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INTRODUCTION

Political crime is the term consisting of crime and politics words to present a meaning beyond that crime and policy. Each community defines functions like crime based on self-approach to the security and public discipline and defines punishment for them. There are specific definitions about crime Depending on the customary or religious our scofflaw in the countries. "Garofalo" - the founders of Criminology defined crime as an action which harms dignity and altruism feeling at any time and any place. In general, the concept of "crime" refers to limit offenses which have been defined by law or social contract and morals for individuals. The word politics create specific meaning in the combination of political crimes and is defined as attempt to participate in power, or attempt to influence the allocation of power, either among states or among groups in the state. Reactive policies can be done secretly or openly depending on the power. According to the definition of crime and politics, "political crime" is an operation in which a country is incompatible with the prevailing political order. The purpose of political or criminal offenses or committed is to undermine sovereignty of the community openly or secretly for the benefit of every one. Criminal offense is carrying out a thought which is benefit for everyone, so it is defined as “clean” crime from prospective of some elites and some of criminal laws in the world. Because crime is done by offense to meet general benefits, and is not personal. Generally, different definitions about political crime have been provided by social – political opinions and institutes. In general, law resource is called customary conventions; therefore, a political crime is defined as "any attack or aggression against the existence or sovereignty of the State, or against the President, or a member of the government, the government of that Member State or against the law or against the constitution or electoral politics, or against good relations with foreign countries.

In Iran's criminal laws, political crime is defined as aggression occurrence more than moderation level and self-interest is not occurred. Political crime has not been defined in the Iran constitution, but jury is mandated in the court to survey political crimes.

In Iran, as in many countries, criminal laws have not been defined clearly. However, the definitions seem to be more complete definition:

"Act or omission that is punishable in accordance with the laws, whenever is committed against the established political order and political management of the country's sovereignty and rights and interests of the..."
Islamic Republic's political, social, cultural and legal rights of citizens, provided it has not been committed in self-interest purpose.

Internal and external security threats to the country, threatening public interests in the political, cultural, social, political are crime conditions in Iran which may be extended or limited by customary or religious interpretations of these threats. Due to the laws of Sharia of Islamic law and religion, aggression of the limits which have been determined if not motivated by self-interest is considered a political crime. Political crime assists principle of "fairness" and jury arbitration bodies to deal with. Based on this fairness, the criminal political prisoners don't wear other prisoner's clothes, they are not in one prison and have more welfare and well-being compared to the rest of prisoners, also making decision about their crime is difference than others. Based on these discussions, we understand that a political crime is a crime in which the total public conscience is more sensitive to it than other crimes.

The research literature:
Political crime:
Some of the rules which have defined political crime completely are as follows:
1/1- Article 3 of the 1929 German law: about extradition: "political crime is any criminal action against the country, security, the head of state, a member state, a constituent assembly, political rights, self-selection or choice, or having good relations with foreigners "[3].
1/2 - Article 8 of the Italian Penal law "for the enforcement of criminal laws, criminal law is defined as a crime against political expediency, one of the political rights of citizens; Also, non-political crimes committed by all or some of the political motivations is defined as political crime "[7].
1/3 - Libyan Penal Code, " criminal crime is defined as action against political expediency or political right, as well as any ordinary crime which is committed in political way is a political crime "[1].
1/4 - Iraqi Penal Code, “criminal crime is defined as crime by politically motivation committed against the political rights of individuals or the general population [12].
1/5 – Syrian Penal Code: "1 –Political crimes are crimes committed by its agent that is politically motivated. 2-The political crimes also a crime against the political rights of individuals and the public; while the subject has not committed it for individual and position purposes [7].
1/6 – Lebanese Penal Code: Has been defined political crime exactly like Syrian [13].
Jurists also have defined political crimes and noted the most important political crime:

Law Terminology defines political crime as "crimes arising from political idea or of an institution or political system", also defined special for political crimes "as a crime against domestic and external political system; Such as conspiracy to change the form of government" [6].
2/2 -political crime is liable to capital punishment and is committed to attack political organization of the country and the government and political rights of individuals [9].
3/2 - "political crime generally refers to criminal acts aimed at overthrowing the political system - and disrupting public order and security of the country" [11].

Definition of crime from the perspective of the international community:
International Conference on the Unification of Criminal Law 1935 in Copenhagen: "political crime is defined as Crimes against the organization and task of organizations, as well as crimes which are committed against governance and rights of individuals [11]. One of authors in Copenhagen conference expressed criminal law as a crime against the state and against the establishment and governance of the people [12].

Definition of political crime in the proposed draft of political crime bill in Iran:
Political crimes are defined as acts of legitimate political groups and conflicts without violence to cope with internal and external policies of the Islamic Republic of Iran "

Political crime laws in Iran:
The two main political crime laws in Iran before the Islamic Revolution and the Islamic Revolution will be investigated.

A) Before the Revolution of Islamic Republic of Iran:
Following the liberation movement and the struggles of the people against the autocratic rule of the Qajar dynasty, 79th Amendment of the Constitution is explained in 1325AD:
Jury will present in the court Incase of political and publication "and this is distinction between political crimes and public crime.

The application of this principle in the administration of Justice (adopted in 1289) principle of criminal trials(approved in1290)and the Penal Code(Act of 1304)have determined legal counsel, appealed the verdict, as well as having the authority during the arrest and conviction of the prison has been predicted. In the latter two
cases, since the first repeat offense, "Article 26: sentences are not repeated for persons convicted of political crimes." Amnesty: "Article 54: Political crimes and misdemeanors which are done in political revolutions and absolutely may in deed area general amnesty, but in any case the law should allow it." Concession: "Article 55: The King can be considered political crimes by the Ministry of Justice and approved by the President of the prime minister. Rehabilitated: "Article 59: If a person is sentenced to imprisonment for political crimes committed within one year from the date of completion Punishment of are prescribed persons for committing the same offense may be sentenced to a criminal conviction within five years from the date of completion of the Punishment of again not have a criminal conviction, the rehabilitation achieved and give them the criminal will disappear. To distinguish between criminals and murderers political and human rights situation has made concessions on political crimes.

In the law courts of Ministers adopted in 1928 to prosecute them in the implementation of the 69Amendment to the Constitution, the Court distinguished (Supreme Court) and in Article 122 of the Criminal Procedure Law of army determined imprisonment against war regulation or savage situation shows that extradition is due to political, so internal war is not included in extradition, unless crime Article 8 of minister punishment of 1307 expressed: "in all political faults, jury is present. Law refers to oblige offender to work 1314 to political crime. First article said: individual who are punished to prison due to ordinary crime, at least one third of their prison time is implemented and maybe employed in agricultural and industrial institute for remainder duration Article 8 of extradition on 1339 counted extradition excluding in article 2: when a crime is political and situation shows that extradition is due to political, so internal war is not included in extradition, unless crime ware against war regulation or savage [10]. Article 310 of the Criminal Procedure Law of army determined imprisonment

B) After the Revolution:

After the revolution, the basic legislative duty of the Islamic Revolution deprived the ordinary legislative bodies, and the definition of political offenses was based on Islamic principles (principle 168). Modern concepts traditionally associated with both, in addition to binding to the jury in the article 168 of constitution.

Removing a single article of the bill approved on 08/01/58 Revolutionary Council's political convictions, "says the conviction of all those as" acting against national security and insulting the monarch and opposed a
constitutional monarchy "and other political charges as of 11/16/1357 the final decision been convicted, be
deemed overruled and abandoned acting and all previous works, the suspended sentence will be enforced“

Special courts established in Article 6 of the bill dealing with counter-revolutionary crimes are: "Whoever,
either independently, or with foreign support against the Islamic Republic of Iran, armed uprising, will be
sentenced to death".

Islamic punishment is most important law related to critical crime after Islamic revolution, but none of them
has been approved these crimes. Most important of these law are Islamic Punishment Act of 21.07.1361; Penal
Code (sanctions) Act, 5/18/1362; and the Penal Code and the Act of 05.08.1370 1375. In these rules, instances of "political crimes" are presented, but its name and approve have been ignored " It was not only in Clause 3, Article 37 Islamic criminal law, when discussion of "the employment of prisoners" to "political criminals" are mentioned.

Iran's constitution (Article 168), the restructuring of labor ministries and government institutions and state-
approved on 07.05.1360, 22.05.1358 Revolutionary Council passed a bill including service history, political
convicts, prosecutors Regulations public and revolutionary courts Act and its Implementing Regulations
4/15/1373 and legal documents related to political crimes.

Punishment of political offenders:

Punishment of political offenders in the Iran law:

Some researchers predict punishment for political offenders follows [5].
1. Body punishments, including executions, floggings, amputations and ….Today, in most countries this type of
policy does not apply penalties on offenders, including death penalty and flogging criminals have banned in
some countries.
2. The penalties restricting freedom or stripping freedom, such as imprisonment, exile, forced to stay in a certain
place or under the watchful presence.
3-right deprivation punishment like deprivation of civil rights, money or political, employment in certain time or
task or depriving other rights. To days, in some countries like France above punishments are not main
punishment, but in countries like Syrian, Lebanese and Iraq are included in main punishment of political
offenders.
4 - Financial sanctions that will be enforced less about political criminals. It should be noted that the Islamic
Human Rights Commission's draft proposal for political crimes, Punishment of political offenders in general has
identified. Mentioned in Article 21 of the draft that "political criminals’ terms of the minimum Punishment
include of prescribed by law and for the same offense."

Punishment for political offenses in French law:

In French law the punishment for political offenses considered as follows:

Death Penalty: A History of Criminal Law Reform in the 1832M. Two separate tables from criminal
penalties for criminal offenses and public policy were considered, but the current French law degrading
punishment, banishment and the denial of civil rights, permanent and temporary removal remains the only crime
punishable by imprisonment. November 4 1848 constitution removed death penalty in political offender and in
June 8 of 1850, banishment was replaced. However, the bill July 29, 1939 for crimes against internal and
external security penal death was predicted, however, still has a political character. Therefore, death penalty
returned to France in political France again, but difference between punishment of political and general offender
was that general offender have been fired, but political offender have been decapitated. Some death sentences by
the Court of France, amounting to 34 counts of among 1963 to 1974 have been attributed to political offenses.
This situation continued until the 1981 law, the death penalty canceled in general (both political and public).
Permanent criminal political detention: this punishment is replaced by expulsion and based on article 17 of
previous law is done by transferring to sea and was permanent and at the moment is done in the inner, expulsion
punishment is predicted for crime against individual benefit like treason and espionage.

Temporary political criminal detention, the punishment for crimes was similar public policy and has three
degrees of 15, 20 and 30 years.

Criminal Political crime has complementary punishment and cash punishment in addition to imprisonment,
privation of social right which is in 414 article of France law as complementary punishment at the moment were
main punishment in political crime.

Conclusions:

Unlike a crime such as homicide which is not included of an external reality (composed of material
behavior that is specific outcome is the result of knowledge and intent to commit) and like terms, such as
abetting, crime start, the political crime of subjective reality, language and there is not an unity definition about
it, if legislator has not obliged to define it, we should define a legal definition. Other countries are not obliged to
define political crime, but have tried it. There are difference and correlated definitions. Each country defines political crime based on the teachings derived from the constitution and the basic concepts.

**Obligation of definition of political crime detailed in the following arrangements:**

1. The various divisions of political crimes broadly by researchers, regulators and international documents were presented. However, the division of tasks prescribed in the constitution helps us to divide the political crimes to inner and outer systems.
2. Islam defined political crimes based on the both definition. Political heresy, conspiracy against the Islamic system in Zarar mosque and espionage in form of outer system are analyzed in form of inner systematic political crimes.
3. Prophet Mohammad and Imam Ali struggled in the face outer political crimes intensively and tolerate inner political crime when don’t disturbance society security and discipline.
4. Islamic rules not only don’t support social security offender, but also struggle them intensively.
5. Crimes like retribution and blood money are not included in political crimes due to different survey method and absence of jury.
6. Since, aggregation is not crime and is done in the war field and is not included in political crime definition.
7. The proceedings of espionage constitution is a symbol of outer political crimes, it is outside the circle of political crime and had been approved by experts in 168 article of the constitution.
8. Article VIII of the constitution is basic of the establishment of an Islamic state in its political activity and Political offender is someone who makes wrong to achieve and reform the constitution goals.
9. In Islamic Republic of Iran, nobody could hurt the main components of the system and the constitution and such offenders should not be supported.
10. As a result, political crime in the Islamic Republic, is a punishable or preventive crime in which some one with out intending to hit them in principles and norms of the Islamic Republic (official religion of the political system of absolute clerical rule build, the Islamism Republic) has fueled criticism of the government or gainor maint a in political power to commit one of the of finessed fined under the law and the evidence clearly.

**Recommendation:**

1-Providing complete and comprehensive definition about political crime is required in the Iran law and legal elements of political crime should be enforced by establishing a specific law.
2-Article 168 of the constitution for political offenses under the jurisdiction of the courts presided over by Justice General is appointed which original grant of jurisdiction to the courts to handle some of the offenses that are considered the best political offense has been inconsistent and originally supposed to run properly, some of which had political offenses under the General Courts of Justice investigation and appoint competent courts of the this is feasible.

Although the jurisprudence of France in terms of objective criteria to support the diagnosis of common crimes and political crimes but, with the approval of legislatureFrance2-411to4-411. 9-411and1-411to8-412 punishment dedicated of if teen political criminal and damages the fundamental interests of the nation to bring. It seems that the country's laws relating to political of tenses should also pay attention to objective criteria and the fundamental interests of the nation.

Considering article 168 of the constitution to deal with the presence of a jury verdict is a political offense, while the jury is required to fully define the tasks, the selection and admission requirements and procedures for issuing detailed opinions quite clear to the jury.

In the Iran law, constitution of 1286 and 1358 has been distinguish political crime and general crime and so far any normal law has not been approved to specify punishment of political crime and predicted Occasionally an enemy of God crimes punishments in the penal code, these laws merely create doubts in the minds of criminals have the right to political Islam have strict procedures,

It also explains some of the Penal Code shall be punished at common law by creating a pseudo-political crimes are similar to that the amended.

At any age, political crime is kind of offence and judge could punish offender based on situation and committed crime. Therefore, legislator should establish mandatory and predictive punishment and deliver to judge to prevent punishment related to Enemy of God and corruption on earth for offenders who were committed political crime.

Finally, hope to establish complete and comprehensive law based on country situation in the future.

**REFERENCES**