

A study of the Concept of Political Crime in Iran's Criminal Law and International Law

Amin Aghanoorian*

Department of Humanities, University of Judicial Sciences, Tehran, Iran

*Corresponding Author Email: Aghanoriyan@gmail.com

ABSTRACT: Disagreements about political crime are many, both domestically and internationally. Most of these disputes should be caused by its related components' fluidity, including government, politics, etc. Political crime, on the one hand, in the general classification of crimes from the spiritual element of the crime and in terms of the mental position of the offender in that the spiritual element in which it is somewhat different from other ordinary crimes, is discussed in public penalties, and on the other hand since it speaks of different types and types of crimes, political crimes are also under more minor titles such as crimes against domestic and foreign security and fines against rights and freedom In the realm of specific criminal Law. The elements of political crime, such as ordinary crime, are based on legal, material, and spiritual elements, except that in some public crimes, the fourth element, which is intended to harm others, also manifests itself, while in political crimes, the intention of the perpetrators, generally serving the people, the homeland, the fight against oppression and corruption and tyranny, etc. However, it is motivated.

In this article, after defining the political crime from the viewpoint of experts, domestic jurists of the international community, we have examined the Law of political crime and the critiques it has imposed, and finally analyzed the punishments that are intended for political criminals and finally, we have achieved a comprehensive definition of this critical legal issue.

Keywords: Political Crime, Iranian Law, Law, Punishment.

INTRODUCTION

Based on one of the most well-known criminal law divisions, crimes are divided into two categories: public and political crimes. The idea of separating political crimes from public crimes from the beginning of social life and subsequently with the emergence of criminal rights existed, as well as continuing in the wake of political and social changes, in the early 19th century, a dramatic change in the type of thinking and also dealing with these criminals, this political and social transformation, caused a new attitude towards political offenders. The retrograde period began to be severely and rigorously applied to the past, and the regime faded towards political criminals. In the Constitution, the ordinary legislator is obliged to define political crime and how the jury is selected, the conditions and powers of the jury, so to implement the principle above, the necessity of investigating and addressing the issue of political crime its related necessities is determined. In contrast, in our laws, a group of crimes is envisaged with political nature, but due to the lack of definition of political crime and its terms and conditions. They are treated as common criminals (Suffix, 2003)

Although political crime has always existed by forming and confronting central power, it was first recognized by the French Penal Code in 1810, and little of this division was achieved by other countries' penal codes (Mohammadi Jourkouyeh, 2004).

Since then, the discussion of political crime and criminal law interaction with political offenders has been an essential category with different peculiarities at different times and has been through different periods (Majidi, 2007).

In the meantime, although the principle of the concept of "political crime" is the case with jurists and the majority of legal systems, there are vast disagreements about its recognition.

It is not possible to provide a comprehensive and preventing and comprehensive definition of political crime in political science and from the point of view of political science. However, it is not possible to say that a word and a crime in the name of political crime exist in terms of all governments and governments, and this is because lawyers and educated people in Law and political science in any country for this crime have definitions for themselves. It is stated that the basis of which is the national rights of their respective countries, and they explain it so that the survival of the sovereignty is guaranteed and protects the country's national interests. What is understandable from previous researches on this issue is that not only have the views and opinions presented in this direction not united the exact definition of political crime, but also the Rule of Law and legislation and the problems that govern it have added to the problem of recognition and knowledge of the political crime. Finally, it should be said that from the perspective of political science, political crime is a crime whose apostates, by resorting to behavior, criticize or object to the status quo of the ruler, and have a political motive and improve in exchange for this criminal behavior. It is in matters, not the acquisition of financial resources and power. So on, so this path will be punished severely if force, quarrels accompany it, and others, but if it is peacefully expressed like a critical statement, It is within the framework of the party and the media, in most countries, it is not considered a crime, but in some countries, it is also used to achieve political crime (Bashiriyah, 2003).

Definition of Political Crime

The definition of political crime from the doctor's point of view, when it comes to defining political crime from the point of view of the least, is the purpose of the definitions that Western jurists with oriental jurists have mentioned because political crime in Iranian Law has not been fully discussed and contrived.

1. Political crime refers to a criminal act in which either the motive for the overthrow of the political and social system and the disruption of political management and damage to the governance of the country or any criminal act resulting from the overthrow of the political and social system and damage to the political and political authorities and the head of the country (Hashemi, 2013).

2. Political crime was a criminal act aimed at overturning the political and social system and disrupting the country's order and security (Sanei, 2016).

3. Political crime affable to political thought or an institution and political apparatus is considered a political crime (Langroudi, 2003).

4. Political crime is a crime that damages social organization.

5. All crimes aimed at harming the organization and activities of the country's political power are considered political crimes.

6. Crimes with political titles that have been committed against the country's political interests or political rights of one of the people, in addition to public crimes that are the inevitable prelude to political crimes and their material acts, constitute a significant political crime is a political crime.

7. Political crime is a crime against the state administration's organization or the criminality of its rights for individuals.

8. The theology of Law considers political crime as a crime a consequence of political thought or from an institution or political apparatus and is written in a specific sense in defining political crime in a certain sense that is against the domestic or foreign political system of the country, such as conspiracy to change the form of the state.

9. Professor List (political crime) is a punishable act against society or individuals' political rights.

10. Professor Rowe's definition: Political crime involves all violations committed not only against society, i.e., a board that we consider to be the owner of property and rights, or against one of its individuals, including officials, but also against a society that has been recognized as a nation and against the basis of the Law it has created for itself or against the political principles it has created.

11. The definition of Hamrick K: Crimes with political titles that have been committed against the country's political interests or the political rights of one of the Holly.

12. Definition presented in the 1935 Kpenhak Law Society: "Political offenses are crimes committed against the organization and administration of the country or the rights derived from the organization and administration of the country towards individuals."

13. Professor Constand's definition: From a foreign point of view, independence and the fullness of land in the relations of the country with other countries should be considered as one of the matters against which action is political, and internally, the form and regime of the country and the political power of the country and the

political rights of individuals are among the things that action against them is considered political. Among the definitions presented, the first definition is more complete than the others.

Definition of Political Crime in Islam

Begman should not be expected to explicitly name a political crime or something like that in Islamic criminal jurisprudence, whose origins and historical origins date back to about 1,400 years ago. Some Islamic jurists consider political crime equivalent to rebellion and have used the concept of rebellion in defining political crime, in the words of oppression, rape, disobedience, and the term "baghi political jurisprudence" is a Muslim who opposes the Islamic State and commits disobedience. In religious and religious terms, some rise up against the correctly created Islamic State, and it makes no difference whether the leader of the government is the Prophet or imam or their special deputy or deputy general, the supreme jurisprudent (Amid Zanjani, 1998). Therefore, it can be concluded that rebellion and political crime have many differences. However, it is not only a political crime, but it is a forbidden political act that perpetrates the punishment of the perpetrators of the hereafter, which is why it is typically mentioned in the discussions of jihad in jurisprudence. Jihad has nothing to do with crime, punishment, and penal regulations (Agriculture, 1998).

Islamic Legal System and The Use of Political Crime

The legislature's requirement for the legal definition of political crime was approved by experts in the Islamic Republic of Iran in conditions without discussion, and experts approved the Constitution, which, through religious rule in Iran, defines political crime, in addition to the reasons mentioned above in the context of the definition of molten in Western systems, in the legal system of the Islamic Republic of Iran is facing obstacles and difficulties. The inextricable problem of political crime in new customary governments, rooted in the vastness and complexity of political phenomena and the difficulty of defining politics (Alipour, 2010), becomes more prominent in the sphere of religious governments, as the definition of political crime in religious systems faces a double difficulty. This double difficulty is primarily related to the different origins and foundations of each of the two customary and religious systems, meaning that the concept of political crime and its justified causes of separation and distinction from ordinary crime has been born and expanded in the context of modern legal systems (customary). Therefore, it is not entirely possible to transfer it to legal systems based on sharia and specific professions and comply with these systems' accepted standards.

Specifically, this difficulty stems from the difficulty of distinguishing political qualities and anti-religious qualities of criminal verbs. Because public power considers itself to be the protector of religious values, and in some societies, the political system is essentially based on sacred pillars. Therefore, the boundary between political crimes and ideological crimes has added to the difficulty of defining and determining political Gerry's realm in religious governments (Ardebili, 2012).

Currently, several titles of prohibited verbs and tracks in jurisprudential sources have been criminalized in Iranian Criminal Law, and due to the religious nature of the Islamic Republic of Iran, many of these crimes are considered to be anti-regime, without being in any way related to the concept of political crime in its true sense.

Defining political crime from the perspective of international societies

In 1935, a conference was held in Copenhagen on political crimes and defined political misdemeanors as follows:

1. Misdemeanors committed against the political establishment of the country, or its agents, or against the rights under which the organization is established for individuals.
2. General misdemeanors shall be considered the administrative operations of the offenders above in paragraph 1.
3. Acts committed to facilitate political misdemeanors or to keep their perpetrators safe from legal punishment.

Although the definition defines the limits of political crime, we come across 500 concepts of political crime that are wider in scope. For example, in the definitions provided by Amnesty International and the UN Human Rights Committee, Amnesty International uses the term "political prisoner" in a broad sense, as it includes all cases in which there is a specific political element. This political element can include the expression of any racial, cultural, religious, or political affiliations. In some articles, false accusations of criminality may be brought against political activities. These charges may be public crimes, for example, while the main reason for punishing them for their political activities or for preventing others from opposing the government. In all of these cases, there is a political element. However, amnesty applies this broad concept to political trials and political prisoners (Zeraat, 1994).

Defining political crime in the constitutions of countries

The Law of countries such as The United Kingdom and Spain has not essentially addressed political crime and did not mention it in its legal system, but instead recognized certain conditions for political criminals to place those conditions on crimes. However, one of the authors believes that judicial procedures and legal interpretations should be searched to find the definition of political crime in the United Kingdom. (34)

The concept of political crime officially entered French Law in 1830 and was separated from ordinary crimes, but was not defined and later only mentioned its instances.

Some of the laws that fully define political crime are as follows:

1. Article 3 of the German Law 1929: On the extradition of criminals: "A political misdemeanor is any criminal act committed against the basis of the country, or its security, or against the head of state, or a member of the state, or against the Constituent Assembly, or the political rights of the elector or elector, or against good relations with foreigners.

2. Article 8 of the Italian Penal Code: "In terms of the implementation of criminal codes, a crime committed against the political expediency of a country, or against one of the political rights of citizens, is a political offense; Also, nonpolitical crimes, all or some of the motives for committing it are political.

3. The Libyan Penal Code: "Under the Penal Code, any crime against the political expediency of the volt or the political right of one person, as well as any ordinary crime that is the fundamental motive for committing it politically, is considered a political offense.

4. The Iraqi Penal Code: "A political crime is a crime committed politically motivatedly or against the individual or public political rights of individuals in society.

5. The Syrian Penal Code: "A. Political crimes are crimes committed by the subject with a political motive.

6. The Lebanese Penal Code: It defines political crime in the Syrian Penal Code.

Defining political crime in dictatorships

In addition to identifying political crime, those legal systems have defined this concept, and statistics of political criminal titles in their subjects are very few. Countries such as Italy, Germany, Libya, Iraq, Syria, and Lebanon are the few systems that define political crime clearly and directly and are included in their penal codes (Peyvandi, 2003).

Historical Records of Political Crime

Historical study in the texts and legal documents of the Early Constitutional Period shows that the debate on "what is a political crime" was first discussed during the National Assembly's representatives about the provisional jury law bill in October and November 1922 (Kohistaninejad, 2001).

The Evolution of the Concept of Political Crime during the Pahlavi EraIn September 1941, he opened the prison doors to the indigent prisoners of Reza Shah's government, and in addition to journalists and journalists who, according to the legal concepts prevalent in the era of Reza Shah's rule, should be the only instances consistent with political criminal titles in the public sphere, other individuals who had been imprisoned on charges of exercising against the interests of the government at the time were released (Sadr Hashemi, 1984).

In the meantime, the release of several other political prisoners during Reza Shah's reign was halted by the National Assembly, which marked a turning point in the transformation of Iran's legal system regarding the concept and scope of political crime, since, with the passage of the Amnesty Act of political and ordinary convicts in October 1941, several criminal titles contained in the Law constituted a political crime.

Political crime has emerged in the country's political law literature since the constitutional monarchy was accepted in Iran and the constitutional amendment was adopted. Iran's first Constitution was adopted in 1979, and its amendment was ratified in 1907. Article 79 of the Constitution stated that in cases of political and press faults, the jury would be present in the courts; after the Islamic Revolution's victory in 1978, the previous laws were abolished altogether. With the passage of the Constitution and the separation of political crimes from public crimes, political crimes were not defined, nor did the limits and conditions be defined. Finally, it can be said that political crime has faced the challenge of defining rights in all historical periods, both before and after the revolution, which can be the product of various political situations.

Text of political crime law:

There was no comprehensive and complete law on political crime in Iran, either before or after the Islamic Revolution, but fortunately, the Political Crime Act was passed by the Islamic Consultative Assembly in 2016 as follows:

Article 1: Any of the offenses referred to in Article 2 of this Law, if it is determined by the motivation for reforming the affairs of the country against the management and political institutions or domestic or foreign

policies of the country, without the apostate intending to strike at the principle of the system, is considered a political offense.

Note 2: The following offenses constitute a political offense if they comply with the conditions outlined in "Article 1" of this Law.

(a) Insult or defame the heads of the three branches, the president of the Expediency Council, the vice presidents, ministers, representatives of the Islamic Consultative Assembly, representatives of the Assembly of Experts, and members of the Guardian Council by their responsibility;

(b) Insult to the president or political representative of a foreign country imported into the territory of the Islamic Republic of Iran, in compliance with the provisions of Section 517 of the Islamic Penal Code of ta'zir;

(c) Offenses contained in paragraphs (d) and (e) article 16 of the Law on the Activities of Parties, Populations, Political and Trade Associations and Islamic Associations or Recognized Religious Minorities approved in 1981/08/29;

(d) Offenses prescribed by the election laws of the experts of the Leadership, the Presidency, the Islamic Consultative Assembly, and the Islamic Councils of the city and village, except for the election observers;

e) Publishing the dhihib;

Note 3: Stewardship, participation, deputy, and initiation of the following offenses are not considered political offenses:

A) Crimes punishable by Hudud, Qisas, and Diyat;

b) attempting to assassinate domestic and foreign authorities;

c) Kidnapping and hostage-taking;

d) bombing and threatening it, hijacking and naval banditry;

(e) Theft and looting of property, creating fire and deliberate destruction;

c) Illegal transportation and maintenance, smuggling and dealing of weapons, narcotics, and psychoactive substances;

(c) Rasha and bribery, embezzlement, illegal seizure of state funds, money laundering, and concealment of property ate from the crime above;

(h) Spying and disclosure of secrets;

(c) To provoke people to disintegrate, fight, kill and fight;

d) disruption of data or systems of ryans and telecommunications used to provide essential public or governing services;

(d) All crimes against chastity and public morality, including crimes committed by ryan or telecommunication systems or data carriers or otherwise;

Article 4: The procedure for "political crimes" and the jury's rules follow the Criminal Procedure Code adopted on 24/03/2014.

Issue 5 is recognizing the political nature of the charge with the Prosecutor's Office or the court in which the case is presented. At any stage of the trial at the Prosecutor's Office and until the end of the trial's first session, the defendant may plead not guilty to the charge's non-social nature. The investigating body will comment on this issue during the appointment. The method of issuing and objecting to this act is subject to the Code of Procedure provisions.

The following 6 cases apply to defendants and convicts of "political crimes":

a) The separate place of detention during detention and imprisonment of ordinary criminals;

(b) Prohibition of wearing prison clothes during detention and imprisonment;

c) Prohibition of the implementation of the provisions governing the repetition of the crime;

d) Non-refundable political criminals;

(e) Prohibition of detention and imprisonment individually, except in cases where the judicial authority considers it necessary to complete an investigation; however, the duration shall not exceed fifteen days;

c) The right to visit and marry relatives of the first order during the period of imprisonment;

(c) The right to access written, published, radio and television during the period of imprisonment;

Political Crime Law Review

There are some flaws concerning the definition in this act regarding political crime. These defects can be checked in several specific aspects. The resolution does not provide an accurate definition of political crime, and the purpose that the Constitution has sought is not met with this plan.

"A politically motivated crime" followed by "political motives, i.e., motives aimed at reforming the affairs of the country," the resolution said. In this phrase, the question arises whether the principle of reforming the country's affairs is considered a crime. This is incompatible with the definition of political crime. Article 2 of this plan also mentions crimes such as insults,

It is a political crime to make mistakes, libel, and spread politically motivated lies. The argument is that insulting, objecting, defaming, and publishing his lies are incompatible with the motives for reforming the affairs

defined in the definition of political crime. If it comes to reforming the country's affairs, it will not be done by insulting, defaming, and publishing lies, which is itself a destructive discussion. The fierce debate cannot be motivated by reforming the country's affairs.

The definition of political crime in this act is not comprehensive. In this plan, political crime is defined as "political crime whenever a behavior motivated by criticism of the functioning of the regime or acquisition, or the preservation of power, without the perpetrator intending to strike at the fundamental principles and frameworks of the political system, is a political crime," it does not mean that behavior motivated by criticism of the regime's performance is considered a political crime. This definition is incorrect. It is not right to consider any behavior that is a critique of a crime. More explicitly, the legislature's efforts are to ensure politicians' and officials' safety against critics and not allow them to be subjected to criticism. In this way, critics' rights have been ignored, and much of the criticism and political activities have been criminalized. This is essentially why political crime is not defined in today's world because wherever this happened, and political crime was defined, non-responding governments exploited it for their benefit. There is no crime as a political crime in countries with a significant political development level and sustainable democracy. Other forms of this plan are the lack of specific criteria for the judge to determine the charge's political nature. Whether merely confessing a defendant will determine a political motive or that the judge in the case should be motivated by the defendant's speech and behavior. However, other than being politically motivated, no specific boundary has been set between ordinary crimes and political crimes. If a politically motivated person, for example, attempts to insult one of the heads of the forces, he or she will be punished as a person who has committed this crime as usual. However, recognizing that political motives can be used from the facilities mentioned in this act, such as not wearing prison clothes during imprisonment and ... Take advantage and this is not compatible with justice.

Also, despite all these facilities, article 5's provisions that the accused can at any stage object to the political nature of the crime indicate that it is considered a crime by the legislature, not a privilege, which is considered a limitation and pressure. However, the politicization of the crime is a privilege on which defendants can enjoy a public trial in the presence of a jury, which has been neglected in the spirit of the Law (Rashidi, 2016).

2019 Jan 09, 10:00

Today, it is believed that political criminals should be more lenient and more arbitrary than other criminals' punishments. The existence of ideological and political reasons necessitates this. In other words, the existence of freedom-loving ideas in political criminals will prevent them from being harshly treated. Also, criminology and criminal teachings can be talked about. In fact, due to the honorable motives and good thoughts of political criminals, as well as the existence of a reformist spirit and their different character and thinking about ordinary criminals, and finally the failure to achieve the goals of punishments and reforming these individuals if they are punished alongside other criminals, this type of treatment is justified (Sane'i, 2003).

Types of punishment for political crime

Section 1: Execution

In most countries, executions have long been eliminated from the set of penalties imposed on political criminals. Although executions are not carried out primarily in some countries for any crime, the first practical steps were taken to eliminate these punishments by leading to political criminals' questions. Of course, in many related and committed crimes that have no purely political nature, severe punishments such as executions may still be used, but pure political crimes have been excluded from this issue. Perhaps the reason for this is the protection of the Law and the legislator from the political offender. As mentioned above, political crime is different from other crimes, and its distinction is more than the privileges that the Law has made for the political offender. Therefore, it is not permissible for a criminal to have such protection before the Law. Convicted of the most severe punishment, i.e., destruction and indication (execution), and a political criminal's execution is incompatible with any logic or conscience (Zeinali, 1995).

Corporal punishment

Such punishments include punishments related to the body of the perpetrator. Unlike the death penalty, which is related to his life, in other words, in Corporal punishments contrary to the death penalty, the quality of the crime is not subject to taking his life but includes physical harassment. Of course, it may be difficult that generally, death penalties are also placed in corporal punishments. However, since we initially stated the death penalty's imposition in a separate discussion, and given that we opposed such a system in the criminal system of political crime, such a problem would not be wrong.

Corporal punishments are often composed of amputations, floggings, and other cases where severe damage to individuals' bodies. However, considering the issues of the day and the qualities of political crime, today, the

punishment for political crimes cannot be considered amputation. In particular, if mentioned earlier, such criminals have certain privileges, but this punishment may be revealed in the form of flogging.

Paragraph 3: The punishments for the year of its freedom or limiting

Most of the penalties for political crimes are based on the ta'zirs of the Islamic Penal Code and the Political Crime Act, the year of freedom or limiting that the Iranian legislator uses in such crimes. The difference between them is that in the first type, the perpetrator generally loses his freedom, but in the second type, this freedom is limited. In other words, the year of freedom is restrictive of freedom. Restricting freedom, such as exile, is not confined to a small environment but is rejected from its home society and is denied freedom by being forced to leave the place of residence and forced to stay in another place (another city and diar).

Pardoning political offenders

Like other criminals, political offenders can use the privileges of pardoning criminals. Of course, this debate should have been opened in the area of the rights of political offenders. However, in any case, the political offender can use it under certain circumstances, so it is mentioned in this context that, with the proposal of the head of the judiciary, the supreme leader, according to article 10 paragraph 11 of the Constitution, can pardon the criminals. Now what we mean is whether the political offender can also be included in these pardons or not? Another reason for our claim will be that even if we do not consider the privileges prescribed for a political crime, at least political crime, like other crimes, is against the Law, and for any crime, however political, the amnesty system is foreseen.

CONCLUSION

Political crime is a subject that has undergone various and sometimes variable interpretations in scientific centers and legal assemblies of the world, and with all expert discussions, articles and comments, have not been able to impose a comprehensive definition and obstacle to it. However, what can be mentioned from the set of definitions as comprehensive among them is the motives and objectives of the crime, which is not based on the personal and exclusive interests of the apostates, but the purpose of the apostate's point of view is to provide the public interest, promote the social status, change or reform the structure of the ruling political system. Therefore, if it is recognized that the actions of the perpetrators are motivated by the satisfaction of personal and individual or group interests, it will be considered as a public offense, and that is why the handling of political crime is particularly expected by the Constitution and has foreseen a specific method for it. The rule of this particular attitude can be questioned and addressed, and criticized for the assault of political offenders. Therefore, if the ruling judiciary enters the judgment on its own, the observance of the right and justice, according to Article 168 of the Constitution, shall be carried out publicly and in the presence of a jury representing public opinion.

Conflict of interest

The authors declare no conflict of interest.

REFERENCES

- Alipour, Hassan, and Nowruz Kargari. (2010), Anti-National Security Crimes, Khorsandi.
- Amid Zanjani, Abbas Ali. (1998), Political Jurisprudence, Vol. 2, 3rd Edition, Tehran: Amir Kabir Publications.
- Ardebili, Mohammad Ali. (2012), The Concept of Political Crime, Speech at the Center for Strategic Studies of the Presidency, June.
- Bashirieh, Hossein. (2003), Political Knowledge Education (Fundamentals of Theoretical and Founding Policy Science), Tehran, Contemporary Publication.
- Hashemi, Seyed Mohammad. (2013), Completion of political and press crimes, No. 10, p. 137
- Langroudi, Mohammad Ja'far. (2003), Terminos, Law p. 192
- Majidi, Seyed Mahmoud. (2007), Crimes Against Security, Tehran: Mizan Publications.
- Mohammadi Jourkouyeh, Ali. (2004), Comparative Study of Political Crime, Qom: IRIB Islamic Research Center.
- Peyvandi, Gholamreza. (2003), Political Crime, Institute of Islamic Culture and Thought Research Institute.
- Rashidi, Ahmad. (2016), Political Crime and Its Challenges in Iran, Political Studies Quarterly, Vol. 8, No. 32.
- Saneei, Parviz. (2003), Public Criminal Law, Tehran, No.
- Saneei, Parviz. (2016), Public Criminal Law, vol. 1, p. 386
- Suffixi, Gholamreza. (2003), Political Crime, Tehran, Research Institute, Islamic Culture and Thought Publications Organization, p. 24. 3
- Zeinali, Mohammad Reza. (1995), Political Crime and its Comparative Study with Islamic Penal Law, M.Sc. Thesis, Shahid Beheshti University, p. 88.

Zeraat, Abbas. (1998), Political Crime, 1st Edition, Tehran: Phoenix Publications.