

## Penalties in the Statute of the International Criminal Court and the Penal Codes of Iran

Sorayya Rostami  
Payame Noor University, Alborz, Iran, Tehran

**Abstract:** What is known as crime against humanity in the statute of the international criminal court is considered as a crime in Iran's penal code. They have differences in title and contents despite similarities and equality of the action by itself and actions being committed and the collection of actions which are entitled as genocide in statute of the court has other different and special titles such as murderer, etc. in Islamic Penal Code (IPC) and they are special crimes and have their own penalties. Even assuming that there are conflicts between provisions of the articles of associations and laws of Iran, there is no legal and religious objections regarding the agreement of Islamic governments and non-Islamic countries. What the urgencies of the Islamic society demands is signing agreements and treaties with non-Muslim societies which is necessary and urgent. In the statute of the international criminal court, there is no penalty like execution or whipping. Because of the principle of being complementary of the court and the system of acceptability and principals of validity of the done deal and deterrence of punishment and doubled penalty and especially considering the Article 80th of the statute in which protects and supports the competence of national legislation, the possibility of performing a sentence or punishment conflicting with provisions of Islam and Islamic Republic of Iran is too far from reality and unlikely.

**Key words:** Penalty, court, statute, legislations, commitment, crime

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### INTRODUCTION

The history of humankind is loaded with bitter and incredible events for people to ponder over. In recent centuries, millions of people were victims of incidents that have shocked the conscience of humanity, while domestic courts neglect and leave the perpetrators of such crimes unpunished. This causes more pain and grief for the survivors and observers of such events. The common interest of humanity to evade this bitter past is to save and maintain peace and security, a peace and security under which an international cooperation for human progress and development will be achieved.

Undoubtedly, one of the important factors of creation of a peaceful environment is prosecuting and punishing the international criminals. To achieve this goal, the international community must be equipped with a powerful and effective regulated legal system. The international legal order needs a criminal enforcement, like national legal order of countries and thus to achieve its goals and principal policies which are a protection and safeguard of international legal order. It needs principal powerful international authorities and granting competence to the governments court in which the crime has been performed or the courts of the countries where the victims of the crime belong to as it was formerly is not

enough and in order to ensure establishment of justice in all cases, a proper and practical court with authorities upon the sovereignty of countries should be considered because circumstances and political interests of the countries, causes governments to be reluctant in prosecution of criminals.

International criminal court has general jurisdiction and the Islamic Republic of Iran is among the countries that prepared and edited the statute of the court with an active contribution and in some cases has added certain cases in coordination with other Islamic countries but has not accepted the international criminal court statute as certainly.

Some people do not believe in membership of Islamic Republic of Iran in this statute citing some conflicts or compliance of terms and provisions of the statute with the laws of this country and some others believe in this membership reasoning that there is no conflict between provisions of the statutes and the laws and verdicts of Islamic Republic of Iran or if there are some, there are solutions predicted for them.

Considering the importance of the issue in this article we have tried to compare the penalties in the provisions of the statutes and the penal code of Islamic Republic of Iran.

## **PENALTIES IN STATUTE OF THE COURT**

In section 7th of the statute of the court Article 77th we read:

- Regarding Article 110 of this statute, the court can define one of these penalties for the person who has been sentenced because of commitment of one of the crimes cited in Article 5 (Fawuzi, 2011)
  - Imprisonment for a certain period of time, not more than 30 years
  - Life imprisonment if the importance of the committed crime and also circumstances of the convicted person demands
- In addition to imprisonment, the court can also order as below:
  - According to the criteria laid down in the regulations of trial and evidence of the court that already are defined, the penalty will be received
  - Income, property and assets that have been obtained directly or indirectly from the offense and crime, should be recorded without any harm to the rights of the third party who has a bonafide

Therefore, the penalties prescribed in the statute of court are limited to imprisonment, life imprisonment, fines and confiscation of property. The following points are considerable in the penalties in the statute of the court:

In the statute of court, unlike the criminal laws current in the countries, crimes are defined in one part and they are separated from penalties and penalties have been collected in one article altogether and they are about all crimes and there is no penalty already defined for each crime. In other hand, the types of penalties have been defined in a general way and matching the committed crime and penalties are up to the judge.

It means that the precise determination of the penalties are the judge's authorities and his jurisdictions while in the national organizations, each crime has its own punishment or the minimum and the maximum of the penalties have been defined (Ibid). This might be misused, especially this fact that about Article 78 in paragraph 3 it says: in cases in which it has been proven that the guilty person has committed more than one crime, the court is supposed to determine separate penalties for each crime and a unique penalty for all of them which determines the total term of imprisonment.

However, the overall length must not be less than the maximum sentence for each crime and >30 years or life imprisonment in accordance with part of paragraph 1 of Article 77, for the explanation we should say that

according to mentioned paragraph, the total term of imprisonment for multiple crimes should not exceed 30 years or should be equal to life imprisonment maximum (Najafi and Khazayi, 2012).

In fact, there might be the possibility that the judge verdicts a criminal to a 30 years imprisonment or life imprisonment and applies the maximum of penalty and orders the same penalty for a multiple crime likewise.

Since, the judge should consider the importance and intensity of crime according to Article 78 paragraph 1 sometimes the intensity and importance of a crime demands the maximum of penalty. So if the same person has committed other criminals too these other crimes will remain without punishment.

In the statute of the court, whip and execution have not been considered and the reason is that nowadays lawyers and non-Muslims have no belief in whip and execution and even they consider whip as torture. Now we should see how to compromise between these regulations and Islamic penal laws (Ibid).

### **Implementation of the statute of the court and the penal code of the Islamic Republic of Iran:**

As mentioned above in the statute of court there is no penalty like whip or execution while in penal codes of Iran, the determined penalty for many of crimes mentioned in the statute is whip or execution. For example, the penalty for deliberate murderer is execution and in many cases it is whipping (Deyhim, 2013).

Considering the contents of the statute of the court, countries are supposed to help and contribute with the court and this contribution may be in the form of delivering a citizen of a nation to the court or operating an issued sentence. Now if the issued sentence is not according to the laws of Islamic Republic of Iran, how should be describe implementation of this sentence legally and juridically?

Is this a violation toward Islamic and national regulations? Does delivering a citizen of Iran who is a Muslim, to an international institution have any justifications?

If the penalty of whip is issued during initial verifications in Iran as a sentence, what comes up then? If the judge is a woman in the court who issues the sentence, how the issued sentence will be accepted and complemented? All of these are confusions and problems which have been reported from some lawyers and Jurisconsults as conflicts between Islamic and Iranian laws and contents of statute and led some of lawyers and juris consults to vote against iran to be a member of the court. Therefore, we need to answer all the questions and confusions separately. Before talking about them it is

essential to mention this fact that there are solutions in the statute of the court to decrease the possibility of mentioned states. So, at first we study these solutions and then will answer those questions (Kasmaee, 2011). Solutions listed in the statute.

**Complementarity of the court jurisdiction:** Article 77 of the statute says: regarding Article 1 and paragraph 4, the court will decide about impossibility of verifying these issues:

- That issue is under prosecution and investigation with the government with legal authorities except if the government is reluctant to or is disable to prosecution
- The guilty person has already been punished because of complaints against him/her and the sentence was not legal according to Article 20 paragraph 3
- The issue is not as important as can justify another complementary action from the court

Therefore, the international criminal court's jurisdiction is complementary to national courts not replacing them; this means that the statute of the court has granted preliminary jurisdiction for the offenses listed in the statute of the national courts, so considering the crimes in national courts are prior to considering in court.

Therefore, if the crime(s) have taken place within the territory of our country or our citizens, our national courts will verify it preliminarily and issue verdicts according to penal codes of Iran and the court will interfere only if according to Article 17 paragraph 2 the government is not qualified enough or is reluctant to verify it or how that government verifies and trials is not fair and impartial which itself should be proved with the court according to the international right principals (Ibid).

**The acceptability system:** According to Article 18 of the statute whenever some issue has been referred to the court, at first its acceptability will be verified in the preliminary branches. First, if that issue is under examinations in the national courts, the court will declare the issue unacceptable and the examining government, can inform the court and other governments that they are examining that issue, according to Article 18 paragraph 2.

Also in the Article 19 of the statute, we read: the court should make sure that they have enough jurisdiction about the issue that has been referred to them. The court can directly decide about acceptability of the issue according to Article 17 (Ibid).

**Validity of the done deal:** According to Article 20 paragraph 3 of the statute, a person who is known as the criminal because of a crime in a competent court and has been condemned will not be sentenced again in the court because of same crime. The reason of this in addition to forbidden double punishment is the validity of done deal. In other hand when some body has been condemned and punished because of a crime, neither the sentence issuing court nor other courts have no right to punish him/her again, because the issue has been verified and it is done and one person cannot be punished for a crime twice.

**Staying safe/national legislations:** As stated by Article 80th of the statute which has been written with Iranian group, no one of the mentioned above cases in the statute will influence the implementation of the penalties which the national legislations have determined (Ibid).

Despite of this article no discredit will be right about national legislations and law organizations and all countries will judge according to their own laws while verifying it primarily. For instance, if one or multiple of crimes mentioned in the statute take place in Iran and the criminal is arrested in Iran, Iranian courts can condemn the person to whip or execution according to Iranian laws and there will be no problem followed by this decision (Ibid).

**Execution and whip penalties:** In this case, three cases are to discuss, first, a Muslim citizen is being judged in the court and in other hand and we are the criminal. The other case is that we are the plaintiff and we ask for judgment and punishment of a criminal and offender. In the first case, absence of whip or execution is in our favor, because a Muslim or an Iranian has not been executed or whipped with a foreign and stranger (idiomatically) organization.

But in the second case, the criminal or offender has not been judged and condemned in a satisfying way according to Islamic legislations. The third case is that we are neither plaintiff nor criminal and we do something such as implementation of a sentence or a help in order to implementation of the sentence assigned only due to contribution and cooperation.

In all three cases in our believes, the judgment and the punishment will not be according to Islamic rules and Islamic republic of Iran laws. In the case in which we have no benefits, it seems to be okay but in the other case we should see whether accept or rejecting the issued sentence means ignoring Islamic legislations or not? In this case some points are noticeable (ZiaeeBigdeli): signing a contract between Islamic governments and non-Islamic governments has been a typical happen from very early Islam so far when the Islamic government signs

something with the strangers, goes ahead based on that agreement, how Holy Prophet signed an agreement with atheists of Mecca to go to Haj for one year and the atheists the other year. So, we cannot say that Haj has been ignored totally. Nowadays, Islamic Republic of Iran has the exchange agreement of criminals with many countries which some may be even conflicting to the religious legislations.

Obviously in signing contracts with non-Muslims, implementation of Islamic provisions about Hudud and Qisas and sanctions is not expected to be followed by them point by point.

Additionally, though the Islamic country is supposed to put efforts to unify a unique nation and universal Islamic government but its obligation about implementation of provisions is restricted to the land it owns. Muslim and non-Muslim countries have agreed that in the court there will be no execution penalty but Muslim countries implement this punishment in their own lands. Even some non-Muslim countries such as America have this punishment (in some states), so should they also persist on put it as a punishment in the court (Mosaffa, 2011)?

Therefore, the Islamic government should consider profit and loss of an agreement with non-Muslims comprehensively and then if there were interests for Islamic government, agree.

Considering important and more important in special situations there is no objection to ignoring an Islamic provision as Imam Khomeini allowed put sanctions on Haj in special cases.

About whip we should say that in western countries not only they do not have such punishment but also they consider it as a torture. So, about whipping, the problem is twice bigger since implementation of whip in Iran may be seen as torture in their eyes. The commission of defining torture in the torture convention says that torture is deliberately imposing pain physically or mentally.

In this case that is to say that basically, punishment is accompanied by pain and suffers and the pain and suffers from implementation of law is not objectionable.

Therefore, we should say that torture is a pain that is imposed to the person without any legal authority and if somebody after understanding the charge is condemned to whip based on trial principals this is not torture but the same whip before proving the crime and to take confession is torturing. Additionally, we accepted law on prevention of torture in other international documents such as civil and political covenants. In the constitution of the Islamic Republic of Iran, torturing is forbidden but we should differentiate between torture and punishment (Moeeni, 2009).

As mentioned before, according to Article 80th of the statute, the content of statute makes no objection against legislations determined in countries and according to the principal that the court is complementary and the priority of inquiries in national courts, the crime will be investigated primarily in the courts in the country and based on provisions of the court.

**Female judges:** One of the objections is this fact that the judge or judges, who issue the sentence are female, in this case accepting her judge is not right according to Islamic and jurisprudence. In this case that is to say that firstly, recently there are female judges in the family courts working, because of the necessity of employing them in some crimes such as family crimes and sexual crimes, even this necessity is being felt internationally.

Additionally in the individual atmosphere of international laws in our country the verdicts issued from foreign courts are being implemented regardless the sex of the judge. Also as mentioned before, accepting such cases in the form of agreements or contracts with non-Muslim countries does not mean ignoring the Islamic provisions, the important is that the sentence being issued according to trial principals fairly and the sex of the judge does not matter.

In the Article 169 of the law on the implementation of the civil code, approved in 1986, entitled (to do-provisions and documents of foreign countries) we read: verdicts issued from foreign countries can be implemented in Iran if they are eligible to these factors below except if there is some other law in the provision:

- The sentence has been issued from a country in which according to its laws or contracts and agreements, verdicts issued from Iran are implementable in those countries or they reciprocate in case of implementations
- Contents of the sentence are not conflicting with public order or good ethics
- Implementation of the sentence is not conflicting international agreements which Iranian government has agreed on or is not conflicting with special rules
- The sentence in the issued country is certain and indispensable and has not become invalid because of valid reasons
- There is no sentence issued from Iranian courts conflicting with that sentence issued from foreign court
- Investigating the issue of the dispute, is not restricted to Iranian courts according to Iranian provisions
- The verdict is not about immovable property located in Iran and the rights related to it

- The order of implementation of the verdict has been issued from the competent authorities of the issuing country (Tavartie, 2010)

In the Article 171, we read: if in the agreements and contracts between Iranian government and verdict issuing countries there are regulations and conditions defined to implement the verdict, same conditions and sorts will be implemented. Therefore, we see there is no pointing to the sex of the judge and the necessity of being male.

**Delivering a Muslim to non-Muslim:** Another objection that has been posed is that delivering a Muslim to non-Muslim mentioned in Article 59 paragraph 7 is a cruelty from the Islamic government and is opposite of the religion. In this case this should be mentioned that first the courts inside the country will inquire the crimes of a Muslim and inquiry of the court is the second level. Second this is not right to call this cruelty because the cruelty is being surrender unilaterally against infidels, whilst the case here is a two way case, means both the infidels deliver the criminals to us and we deliver the criminals to them and this is an agreement (Akherest, 2008).

This already mentioned that agreements and contract between Islamic governments and infidels will not mean ignoring Islamic provisions, today we exchange criminals with many countries that based on it we deliver criminals to them, whether he is Muslim or non-Muslim, whether the action he did is crime in our believe and according to our laws or not.

## CONCLUSION

About comparing the crimes in the statute of the court with penal codes of Islamic Republic of Iran, it should be represented that whatever is crime in the statute is considered as a crime in Iran penal code and they have differences in title and constituents despite similarities and equality of the action by itself and actions being committed and the collection of actions which are entitled as genocide in statute of the court has other different and special titles such as murderer, etc. in Islamic Penal Code (IPC) and they are special crimes and have their own penalties.

For commitment of genocide in addition to a general intention, a specific intention is necessary which is trying to demolish an ethnic or religion partially or totally. The main difference is because of two matters:

- The environment that the crime is being committed in means if a crime is being happened in an international environment, the title is different from same crimes in the national environment

- The criminal, means that in the international environment, the countries are the major role players and the criminals are representing sovereignty of nations

In the statute of the court in the section of penalties there is no whip or execution and based on this fact, some believe that the content of the statute are conflicting with the Islamic and Iranian provisions but as expressed comprehensively because of existence of the complimentary role of the court, acceptability system, principals of validity of done deal and forbidden double punishment and especially regarding Article 80th of the statute in which considers jurisdiction of national legislations, the possibility of implementing a verdict or sentence conflicting with Islamic and Iranian provisions is too far from reality and unlikely.

Even assuming that there are conflicts between provisions of the articles of associations and laws of Iran, there is no legal and religious objections regarding the agreement of Islamic governments and non-Islamic countries and what the urgencies of the Islamic society demands is signing agreements and treaties with non-Muslim societies but it is necessary and urgent to implement verdicts issued from foreign and non-Muslim courts in the individual courts. Additionally, according to reciprocal action if we do not operate the verdicts of those courts they will not implement our issued verdicts. Therefore, the relations between the Islamic and non-Islamic countries are based on agreement and the laws are based on the interests of Islamic government. Thus, delivering a Muslim to non-Muslim country in the form of exchange of criminals is legal and without any right objection.

According to the law of implementation of foreigner to do-documents, being Muslim of the judge or matching the verdict with our laws or Islamic provisions are not from conditions of implementation of the verdict. Also, the principal of respect to the earned rights is the base of the implementation of the documents.

Another problem is about the definition of torture in the statute which seems to be in conflict with our laws. Torture in the statute is described as each type of pain and suffer that are imposed to the person physically or mentally and deliberately and without any legal law and therefore some believe that whip is a torture and can be an excuse for powerful and non-Muslim countries against our country. But we must say that whip penalty in our country is being issued an implemented as a punishment and legally after legal verdict. Thus, pain and suffer is because of the law and there is no penalty without pain and suffer. Therefore, this pain and suffer is legal and is the penalty and it cannot be entitled as torture.

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