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CRIME AND PENALTY

In Public Organizations

The employees of an organization may evade rules, regulations and standards. Some offenses as provided for in the disciplinary code of the organization would be corrected by reprimand, demotion, suspension and dismissal. ¹ Other types of offenses that will be dealt with here are covered by the public laws, such as embezzlement, bribery, robbery and misusing the property of the organization.

An individual, either alone or in concert with others, is legally free to engage in any kind of actions and transactions, under any type of conditions. There is no limit or restriction placed upon him except what is provided for in the law. ²

1- Iranian Civil Employment Law.

2- Iranian Criminal Code Article 2.

Legal restrictions are sometimes so severe that their infringement involves sanctions called 'penalty' or 'punishment', and the act or negligence leading to violation of the law is called a 'crime.'

Criminal behavior is violation of the criminal law. No matter what the degree of immorality of an act, it is not a crime unless it is prohibited by the criminal law. Criminal law is defined as a set of rules regarding human conduct which is enforced by punishment and administered by the state. The characteristic which distinguishes this set of rules from other rules is, therefore, penal sanction.

A. **Classification of Crime.**

1. Felony
2. Misdemeanor.
3. Petty offense.

To distinguish the degree of a criminal act, the penal code must be consulted as follows :

1. **Felony**

A felony is a ruthless, dangerous and seriously antisocial act which calls for a severe penalty. A crime which, in accordance with the criminal law, is punishable as follows is regarded as a felony.

- . Execution.
- . Life imprisonment with hard labor.
- . Temporary imprisonment with hard labor.
- . Solitary confinement.
- . Banishment.
- . Deprivation of social rights.

Temporary imprisonment with hard labor shall not be less

than three years, nor would it exceed 15 years. Solitary confinement is from two to ten years.

Deprivation of social rights involves the following consequences :

- .Deprivation of employment in government agencies, as well as the utilization of the state medals.
- .Deprivation of the right to elect or be elected, either to the legislature, municipality or city councils.
- .Deprivation of the right of being a juror, school principal, teacher, newspaper editor, expert of law, arbitrator and witness.¹

2. **Misdemeanor**

Misdemeanors are of two types :

- a. Serious Misdemeanors.
- b. Less serious misdemeanors.

a. **Serious Misdemeanors**

The penalty to a serious misdemeanor is as follows :

- (1) Correctional imprisonment over one month and less than three years.
- (2) Compulsory residence in an area or areas or the prohibition of residing in an area or areas.
- (3) Deprivation of some social rights.
- (4) Fine

b. **Less Serious Misdemeanors**

A less serious misdemeanor is punished as follows :

1- Iranian Criminal Code, Articles 8 To 15

- (1) Correctional imprisonment from 11 days to one month.
- (2) Fine from Rls. 201. to Rls. 500.

3. **Petty Offense**

The penalties to a petty offense are as follows :

- a. Imprisonment up to ten days.
- b. Fine up to Rls. 200.¹

B. **Crimes Committed in Organizations.**

Crimes committed in organizations are mostly of the following nature :

1. Forgery
2. Utilizing forged instruments
3. Issuing untrue certificates
4. Bribery
5. Embezzlement
6. Undue influence

1. **Forgery**

Forgery is a fraudulent making and alteration of a writing to prejudice the rights of others. Some of the basic methods for the detection of questioned documents are as follows : ²

a. **The Kind of Ink Used**

The different kinds of inks may have a very similar appearance.

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1. Iranian Criminal Code, Articles 9, 10 And 11
 2. Soderman, Harry and O' Connell, John. Modern Criminal Investigation. (New York: Funk and Wagnalls Company) 4th ed. 1952. pp. 445 - 462.

arance on paper, but they can easily be distinguished under a closer examination. It is because their composition differs. When two different inks are used on a document, investigations as to the reason would be a suitable start to discover the crime.

b. Determining the Age of the Ink

The process of oxidation in time turns the ink to deep black. In summer the ink will seem black after a few weeks and in winter after one to several months. then it requires from one to two years to attain its most intense blackness, and this would last for several years. After that period the ink begins to turn yellow and gradually becomes a dark yellowish-brown. This latter color will last indefinitely.

c. Erasures

Ink may be erased with a knife or rubber. When the erasure has been made with a knife or rubber, it is generally easy to detect the area involved, as it is translucent. This can be seen by holding the paper against the light.

d. Tracing

Tracing is a forgery in which the original writing, usually a signature, is traced on a forged document. Different methods are used, the simplest being that of copying the signature with the aid of carbon paper and filling in the tracing with ink. Such a procedure can be detected immediately, as parts of the carbon tracing will be seen under the ink. Another method is to put the paper containing the genuine signature against a windowpane, place the

document to be forged upon it and draw the signature. It is possible to detect the forgery.

The forger will often lift the pen away from the paper, pausing for a moment to gaze at his handwriting or to determine the manner in which he has to continue. This would develop strokes which would make detection and discovery of the crime possible.

To forge a signature composed of letters is harder than the one made of spiral, vertical and horizontal lines. Specialists of handwriting can easily measure the angles, other characteristics of letters and the particular style used by the writer, whereas the irregular lines are only known to the writer and extremely difficult to trace.

Forgery is a felony punishable by imprisonment with hard labor or solitary confinement depending upon the instrument, namely official or ordinary. ¹

2. Utilizing Forged Instruments.

One who has not forged the instrument in person but knowingly and purposely has used it would be subject to, two to ten years solitary confinement. ²

3. Issuing Untrue Certificate.

If a physician issues an untrue certificate to exempt someone from official service, he shall be subject to 6 months to two years imprisonment. The punishment would be inflicted on the assumption that the physician had acted out of compassion, friendliness, or because of kinship ties. Otherwise,

1- Criminal Code, Articles 102, 103, 104, and 106.

2- Criminal Code, Article 105.

and in case the certificate was issued against money or a gift, the imprisonment shall increase from one to three years plus a fine, and the property so given shall be forfeited.

4. **Bribery.**

In ancient times, "bribery" covered money or anything of value given to a judge for doing a favor or passing an illegal judgement. Now, the term embraces not only judges but legislators and executives, and for various purposes—licit and illicit.

A bribe giver is a criminal and shall be punished to imprisonment from two months to one year, plus a fine unless he proves that to maintain his legal rights he had no choice but to bribe. He is also relieved if he reports his act to the authorities concerned before the crime is detected. Should he fail to establish his report, he would meet one to three years imprisonment:

A bribe-taker develops distrust and suspicion in the sacred government/individual relationship and therefore is a felon and subject to solitary confinement from two to five years.

5. **Embezzlement.**

Embezzlement is the fraudulent appropriation of property or money entrusted to a clerk, trustee, public officer or other person acting in a fiduciary position.

The difference between embezzlement and larceny is that in embezzlement, the property comes originally into the possession of the defendant by a contract or a permission or otherwise without a trespass' whereas, in larceny the possession is unlawful. Therefore, a larcener is usually more dange-

rous to the society than an embezzler and his penalty more severe.

6. **Undue Influence.**

Undue influence includes any improper persuasion whereby the will of a person is overpowered and he is induced to do an act which he would not do if left free.

If a person pretends to be influential over a public official and is able to get something done and consequently receives money or other properties, he shall be liable to six months to two years imprisonment. ¹ If he further pretends that the money has to be given to the official concerned then the penalty shall be from one year to three years imprisonment.

A defendent who has, in fact, influenced a public official through family or friendly relations shall be sentenced to one month to one year imprisonment.

If a decision or an action proves to have been taken under undue influence, the official involved shall lose the right to employment with the government from two to five years. Would the action deprive the government agency or a person from his legal rights, then the loss of the right of employment shall be permanent.

The assumption behind undue influence is that the official involved has received no reward. Otherwise, he shall be a bribe-taker and subject to punishment accordingly.

C. **Accomplice and Assistant to a Crime**

A principal offender may, either alone or in concert with others, commit a crime. If he is in a group, its members may be his accomplices or assistants.

1- The Law of Undue Influence enacted in 1936.

1. **Accomplice.**

If each of the two or more persons involved in a criminal act, performs a fraction, the aggregate of which constitutes a crime, they all shall be accomplices. ¹ Two directors who are jointly delegated with the authority of signing negotiable instruments are accomplices if they knowingly and intentionally draw bad cheques.

Matters of an important nature, such as budgets, in many corporations are prepared and submitted by the financial and general managers and approved by the board of directors. The members of the board, the financial and the general managers shall all be accomplices, should they violate the provision of the penal code in their concerted functions.

Accomplices should not be confused with a group of criminals accused of several crimes. If an instrument is forged by one and utilized by another, there would be two principal criminals, each charged with an independent crime.

An accomplice would be subject to the minimum penalty set for the principal offender. As an example, drawing a bad cheque is punishable by 6 months to two years imprisonment. An accomplice to this crime is liable to the least penalty, i. e. 6 months.

2. **Assistant.**

An assistant helps, either by being present and aiding or abetting in a crime, or by having advised and encouraged the principal criminal.

Assistance in a criminal behavior includes the following three

1- Criminal Code Article 27.

types of action.

- a. Encouragement.
- b. Collusion.
- c. Provide Facilities. 1

a. **Encouragement.**

An employee who gives hope and confidence to others to embezzle or to misappropriate the funds of the corporation shall be punished as an "assistant" provided that his persuasion happens to be effective.

b. **Collusion.**

If a group of employees assigns one among themselves to steal a property of their organization, appoints another member to sell it and charges the third one to distribute the money so gained, and then they scatter- supposing further that the first one stole the property as it was set but got captured before reaching the second stage, then all other members of the group shall be prosecuted as "assistants," since the crime was committed as a result of their collusion.

c. **Provide Facilities.**

One who knowingly provides a key for a larcener, or facilitates his misbehavior is an "assistant."

As a general rule, the punishment of an assistant to the principal criminal is the same as an accomplice unless the circumstances call for the extenuation of the penalty.

1- Criminal Code Article 28

D. Statute of Limitation.

A statute of limitation sets a period after which an accused shall not be prosecuted. The philosophy behind the statute of limitation is as follows:

1. Witnesses forget about what they had observed. Clues and traces would disappear. Access to records would become extremely difficult.
2. The society would not be interested in the crimes committed years ago, therefore, revealing what has already been forgotten might develop new waves of tension and grief.
3. The culprit may have adapted himself to the social life and holds a responsible position. His prosecution and sentence would be a loss of his services to the society.
4. The offender, having spent a long time in fear and the disturbance of mind has suffered enough to deserve pardon.
5. Without the statute of limitation the courts would not be able to investigate their current cases, therefore intensifying tension and unrest in the community. They will always be involved in the affairs which had occasioned to past generations.

Period of Limitation

The period of limitation varies depending upon the type of crime:

1. Statute of Limitation for Felony.

The statute of limitation for a felony is ten years. ¹ The

1- Criminal Code Article 51 .

application of the statute of limitation requires ascertaining the starting date.

As an example, if a person had forged an instrument ten years before being prosecuted, the state would be estopped from proceeding against him criminally. Had the instrument been used the defendant would not be relieved unless it is proved that ten years have elapsed since the occurrence of this second offense. If a felony has been discovered, detected or prosecuted but has received no final judgement for ten years starting from the date of the last step taken by a competent authority, then again the statute of limitation would prevail.

If a felonious case is processed and a final judgement is passed but the convict has escaped for fifteen years, then the penalty would be covered by the statute of limitation.

2. Statute of Limitation for Misdemeanor.

A misdemeanor shall be subject to the statute of limitation after the expiry of three years. The limitation would also prevail, where an accused had been prosecuted but no action whatsoever has been taken on it for three years.

If the whole or parts of the records, documents or books which are kept in the records offices, within the premises of a government agency or deposited with the persons responsible for keeping and safeguarding them are stolen, destroyed or damaged, the records officer and clerk whose negligence has caused the crimes shall be imprisoned from six months to three years. ¹

Crimes of this nature are misdemeanor and subject to the statute of limitation after three years. In order to relieve

1- Criminal Code, Article 114.

the employee concerned from punishment, the following two facts are to be ascertained and established: first, the date on which the crime was committed' and second, the expiration of three years therefrom.

The statute of limitation for the penalty to a misdemeanor rendering a final judgement ineffective is five years.

3. Statute of Limitation for Petty Offense

A petty offense shall be subject to the statute of limitation if it is kept secret for one year. A petty offense which is discovered after one year has passed from the last step in the process of its investigation, shall again be barred by the said statute.

If the final judgement has been passed but the offender has escaped the penalty for two years, then the judgement shall be inoperative.

Problem.

Should a subordinate obey an order of his superior which to his opinion is against the laws and regulations, or is a crime? As a general rule, a subordinate is not allowed or supposed to control the commands of his superior. Otherwise, the principle of authority and the structure of hierarchy would be impaired. Nevertheless, there are some conditions in both public and business organizations to be met.

In a government agency. A subordinate facing an unlawful order must submit his views to his superior. If the superior insisted and overruled the subordinate in writing and the order was in fact a crime, the subordinate would be relieved, provided that the three following conditions were present.

(a) It must be of the sovereign function of government. Therefore, matters of proprietary nature would not relieve the employee from punishment.

(b) The order must be issued by a competent individual in the hierarchy.

(c) The subordinate must be bound, by law to fulfil the command. As an example, if an office attendant, implementing his superior's order, would force a stubborn person out of the office building, the attendant shall not be exempted from punishment because he was not bound by law to do so, nor was the matter a sovereign function of the government.

Conversely, if a police chief commands a police officer, in writing, to arrest an innocent person, the officer is bound to fulfil the order even if he knew that the order was a violation of the criminal law.

In a Business Organization. An employee in a business organization is restricted by two sets of rules. First, the internal rules of the organization as approved and put into effect by the authorities of the organization. Second, public laws, namely criminal, civil, labor, and business laws as affect the operation of the organization.

A subordinate is bound to implement his superior's written order even if they happen to be against the internal rules of the organization or contrary to permissive laws. It is the hierarchy which requires obedience by the subordinate.

However, imperative laws as against permissive regulations are not within the limit of hierarchy and the subordinate cannot escape the consequences.