



## **The Problem of Political Crimes in Iranian Law**

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## **Executive Summary**

This article examines the concept of political crimes in the legal framework of Iran. While the Iranian Constitution provides special procedural safeguards for those charged with such crimes, i.e. public hearing in the presence of a jury, secondary laws of Iran provide no definition for such crimes. This has provided a justification for the Iranian Judiciary to deny public hearing and trial in the presence of a jury to political opponents of the system. The Revolutionary Courts, which show little regard for fair trial principles, generously label such cases as “security” offenses and impose extremely harsh sentences against the accused persons in secret trials. Despite the efforts made to define political crimes in the IRI Parliament, no such definition has been provided to date. In 2013 a draft bill was proposed which defines political crimes very narrowly. The bill has been passed in the first reading and it is a possibility that it becomes a law in the near future. This is while what is regarded as a privilege for political offenders in the IRI, is regarded as regular procedural standards for such offenders in many other countries. On the overall however, the theory of recognizing some crimes as “political” and prescribing certain privileges for the accused persons of such crimes is disappearing from modern legal systems. Moreover, such standards are only effective in a democratic society, which complies with the rule of law and respects fundamental freedoms and basic rights. Therefore, it is very doubtful that such efforts will improve the situation of political activists and human rights defenders in the IRI.

## **Introduction**

It has been more than a century since the concept of “political crime” officially entered the Iranian legal system. The first time was in 1907 when the Amendment to the former Constitution of Iran, in text most likely lifted from the Belgian Constitution, [1] referred to “political crimes”. Since then, this concept has been retained in all subsequent Constitutions in Iran until the present day. The Constitution of the Islamic Republic of Iran (IRI), which was adopted soon after the 1979 Revolution, recognized political crimes and stressed the special privileges permitted to deal with cases of individuals accused of political crimes. According to article 168 of the Constitution “political and press offences shall be tried in courts of law publically and in the presence of a jury”.

The stipulation of recognition of political crimes and the requirement for public hearings in the presence of a jury are perhaps reflective of a desire of the drafters of Iran's Constitutions to safeguard political expression. In fact it was believed that stipulation of these rights in the most important legal instrument of the country could prevent suppression of political dissent and prevent the conviction or punishment of individuals in secret hearings and in the absence of fair trial standards. However, on the basis of a range of justifications, this aspiration has been frustrated for more than one hundred years.

This justification however sometimes comes from the very Constitution. Neither the former Constitution of Iran (1907) nor any of the Amendments to it provided any definition for political crimes. The Constitution of the IRI took a similar approach and without providing a definition referred this duty to the secondary legislation, which has not been enacted to date and has provided enough reason for the frustration of article 168. The absence of legislation on this point has even, quite ironically, emboldened IRI officials to remark on occasion that, as there is no legal definition of "political crime", therefore there are no political prisoners or convicts in the IRI.

This article will examine the concept of "political crime", detail the controversy around it, and explore the efforts made in the past, as well as recently, to define political crimes in Iran.

### **What is a political crime?**

The definition and description of political crimes has been widely discussed and numerous theories proposed; for instance it has been suggested that a political crime "is a crime that its sole subject is destructing, changing, or shaking one or more elements of the system" [2] or "is a conduct which is aimed to withdraw the political system or disturbing the public order or political security of the country or damaging political interests of the government". [3]

However, the fact is there is no agreement on this. International law too has no clear definition for this and no binding international instrument has been signed that provides a definition. In fact, the definition varies from country to country and it has not been recognized in some countries at all and considered unnecessary.

The only thing that can be said that everybody agrees upon is that political crimes are always committed against the state. It must also be mentioned that a political crime is not a crime in itself, but rather a description or label, which can be attached to already existing crimes in a country. This description or label can then bring some privileges, or special legal entitlements, to the offenders by virtue of the nature of the offense.

What is clear is that the definition of political crimes has oscillated with major global developments. There was no clear distinction between political and non-political crimes anywhere in the world until the early 19<sup>th</sup> century. First in Belgium, then with the 1848 Revolution in France and establishment of the Republic there, which can be described as a summit for the end of dictatorship and the beginning of sovereignty of people in Europe, conditions of political offenders improved and some privileges were recognized for them, including:

1. Special and different punishment than lay offenders;
2. Abolition of the death penalty for political offenders;
3. Ban on extradition of such offenders;
4. Trying political offenders in the presence of a jury. [4]

However, this trend changed after the First World War, when the death penalty was revived for crimes such as espionage and assassination of political figures and, accordingly, crimes against foreign security were regarded as outside the category of political crimes. These developments and varying approaches to the issue have resulted in different theories and factors introduced over time with regard to the definition of political crimes.

**Subjective theory:** according to this theory, in order to determine whether a crime is political, attention must be paid to its subject and the consequences that resulted from the crime. Therefore, crimes that directly damage the foundation and structure of the state, or its officials and interests shall be regarded as political. So, if anyone murders a state official with a personal motive, but his or her act has political consequences, this must be regarded as a political crime. The main criticism about this theory is that it fails to consider the offender's motive.

**Objective theory:** contrary to the above theory, this theory only considers the offender's motive and according to that, the determining factor for a political crime is a political motive and the intention to oppose the state and its structure. If an offender has a political motive, even if the crime committed is a public crime, he or she must be given the privileges for political crimes. Accordingly, if he or she has no political motive, even if the subject of the crime is political, his or her conduct shall not be considered as a criminal crime. This theory broadens the concept of political crime and includes terrorist activities such as bombing in public places with a political motive and the intention to oppose the state.

**Combined Theory:** this theory is a combination of the two above mentioned theories, according to which both the subject of the crime and motive of the offender must be taken into account. The problem with this theory is that it is limited to crimes that satisfy both these requirements. It seems that this theory is more

popular in non-democratic countries as it limits the cases of political crimes in which privileges are afforded.

It is worth mentioning that in some states, if a crime is considered “political”, not only does it not bring privileges, but it also prompts a more severe reaction from the government. It is in fact undeniable that there has been a tendency amongst most of states to regard a lesser number of crimes as falling under the title of political crime; as a result of which they would not be obliged to be lenient to such offenders.

With this discussion of the definition of political crimes, a question that may follow is what the difference is between a political and a non-political offender such that the former is deserving of privileges. Different reasons and justifications have been suggested, including:

**High and non-personal goals:** political crimes are committed to defend liberty and the human integrity of people against tyranny of authoritarian regimes. This is the reason why political offenders are admired and supported by public opinion. [5] Lombroso, the famous Italian criminologist, believed that a political offender is not an ordinary criminal, because he has a beautiful and great spirit. Although his conduct is criminal, he or she is not a “real” criminal and his or her motive for the commission of the crime is a social and corrective matter. [6]

**Relativity of political crimes:** It is not appropriate to treat a crime, for which its criminality depends on the existence of the regime currently in power, as the same as an ordinary criminal. A political crime continues to be a crime while the political regime is in power, however, after the regime collapses, what used to be a crime changes its nature and becomes a heroic act. [7]

### **Political crimes and terrorism**

One of the most significant challenges in defining political crimes is how to categorize violent and terrorist crimes such as bombing, assassination, hijacking a plane, and armed robbery. In fact it is difficult to accept that such crimes are committed to defend the liberty and human integrity of people and to create a model society. Such crimes target the security and lives of ordinary people and aim to cause fear amongst the victims and society. Therefore, efforts are made to exclude such acts from political crimes and the privileges for political offenders. This is why political crimes are sometimes regarded as including only non-violent crimes.

According to this view, political offenders are individuals who hold high human values and in their battle against the government with the aim of correcting social conditions, never resort to violent acts and homicide and looting. In other words they are committed to the

national and foreign security of the country, but make non-violent efforts to weaken or overthrow the government. Therefore, in their battle against the government, political offenders resort primarily to principles of freedom of association and other fundamental freedoms. [8]

There is however, another view on this matter, which suggests that in narrowing political crimes down to legal acts which are people's fundamental freedoms and rights, is indeed frustration of the concept of political crimes; especially in knowing that it is more likely that the state may take revenge against violent acts that challenge its authority. According to this view, it is possible that political offenders resort to violent and non-peaceful acts such as armed rebellion against the government. However, it is still argued that if such acts result in destruction of public properties and damaging people's lives and properties, it must be excluded from political crimes and regarded as a terrorist act.

### **Privileges for political offenders**

As discussed above, legal systems may allow various privileges for political offenders, amongst which it seems that ban on extradition of the political offender to the country he or she has escaped from is agreed upon more widely. Among other privileges that have been stipulated in the former and current Constitution of Iran are public hearing and trial in presence of a jury in proceeding against those accused of political crimes, which will be discussed below in brief.

### **Public hearing**

The requirement of public hearing will be satisfied by allowing the press and public media and interested individuals to attend the hearings. In fact, this requirement is satisfied when there is no ban by the government on the attendance of people and the press during the hearing. Public hearing plays a controlling role to the court and certainly is more effective in discovery of the truth than secret hearings behind closed doors. [9]

Publicity of the hearing also plays a significant role in fairness of the trial. Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) provides that:

*"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."*

The text of Article 6(1) of the European Convention on Human Rights (ECHR) is largely similar and also refers to a “fair and public hearing” in combination which shows the importance of public hearing in relation to the human right to fair trial.

Nevertheless, the press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security or to safeguard the private lives of individuals. This is in the discretion of the courts to decide. Here, the two factors of public order and national security seem to be of political nature—compared to other reasons they are more likely to be abused by the state to hold secret hearings. What is crucial here is that public order and national security has been subjected to the qualification of “in a democratic society” (Art 14(1) ICCPR). The stipulation of this qualification reflects the concern of the drafters of the text that non-democratic societies could use maintaining the public order and national security as justification to hold secret hearings behind closed doors to suppress dissidents and as a pretext to exclude the press and keep news about the hearing and the truth from the people. [10]

### **Presence of a jury**

A jury is a symbol of public view, demand, and desire. While in some legal systems a jury constitutes the foundation of criminal hearings, in others it is regarded as a touchstone for legality in relation to crimes that require public judgment. The aim of using a jury in relation to political crimes is that representatives of different sections of society can have their say on whether or not an act is a punishable crime. Furthermore, through the intervention of a jury in order to decide whether or not an act is a crime, the argument that in political crimes, the complainant and the judge are both the same person will be modified.

Currently, the presence of a jury is only allowed in adjudicating press offenses in Iranian courts. Pursuant to article 36 of the Press Act, the members of this jury shall be appointed bi-annually in a meeting of state officials including the Minister of Culture, the Head of the Judicial Administration, the Representative of the Council of Friday Imams, etc. Therefore, this jury for press hearings is fundamentally different from the jury in many other countries where juries consist of ordinary citizens selected neutrally. As a result, the jury in the existing Iranian system cannot execute the function juries are supposed to.

### **Political Crimes in the IRI Constitution**

Article 168 of the Constitution of the IRI provides that: “[t]he manner of the selection of the jury, requirements, its powers, and the definition of political offense, will be determined by

law in accordance with the Islamic criteria.” In fact, the Constitution—while failing to provide a definition and restricting itself to general matters—has diverted the details towards secondary statutes to define political crimes and determine its instances. However, this is yet to take place and this article of the Constitution has remained frustrated in relation to political crimes.

Whether the producers of the Constitution knowingly created this escape route or whether it was their intention to create actual privileges for political offenders is not clear. Similar to many other articles, the adoption of this article in the Assembly of Experts of the Constitution (1979) was very quick and brief.

Basically, it seems that the authors of the Constitution were aware of the time pressure involved, in establishing the legitimacy of the newly constituted government, and preferred not to deliberate too long on the contents of this article. In fact, it was decided that the Constitution of the Revolution should be prepared as soon as possible and therefore there was no place for in-depth legal and political discussions in this regard. Apparently, nor was it seen as necessary to provide a more certain mechanism for this legal obligation.

However, nor do the Records of the Discussions of the Experts of the Assembly of the Constitution [11] show any intention to offer an impossible promise either. They intended to stress, not in secondary laws, but rather within the parameters of the Constitution, that political crimes carry different features than other crimes. In the words of the Assembly’s Vice President, Ayatollah Beheshti, they wanted to provide certain privileges for those accused of such crimes in order to prevent “corruptions and difficulties and dictatorships”. It must be admitted that the fact that the details of this matter were left to be dealt with by secondary legislation is sensible and the Constitution is not supposed to be an all-details instrument.

Having said that, it must be emphasized that, if there was a real intention to separate political crimes and prevent the suppression of political dissidents through legal and judicial mechanisms, it would be wise, and the lessons learned from the past would require that, at least a brief definition of political crimes be provided. As is clear from the records of the discussions of the Experts of the Constitution, they were completely aware of the sensitivity of this matter and wanted to provide sufficient guarantees. So when they decided to leave the details and definition to the future, they should have at least made clear what the protocol should be if secondary legislation was not enacted to provide the necessary guidance.

This did not escape the attention of some of the Experts. During the discussions about this article, Ayatollah Khazali suggested that it was not acceptable that political crimes were not defined. He stated that: “at the beginning of this article it refers to ‘trial of political crimes’.



This is while there is no clear definition provided for political crimes. This is a reference to an 'unknown', unless we determine a responsible body".

In addition, referring to a similar article in the laws before the 1979 Revolution, Ayatollah Rabbani Shirazi further emphasized the necessity of providing a definition for political crimes. He stated that: "there was a similar provision prior to [the Revolution] which created no result and the reason for that was that no definition for political crimes was provided. It will not be right if we determine this as it was before". He, in fact, was referring to article 79 of the former Constitution of Iran (1907) which had stipulated the requirement of presence of "a jury" in cases of "political and press wrongdoings"; however it was not enforced due to the lack of definition for political wrongdoings.

Although these remarks had the effect of adding a phrase to the article that assigned secondary legislation with the task of defining political crimes; it did not ultimately solve the problem. Rather, it can be said that the issue remained in the same status of "referring to an unknown". It can even be argued that it was this qualification that opened the door for the frustration of this article and left it in the hands of the Legislature for an unknown future.

The lengthiest statement about this article was made by the main opponent of this article, Mr. Khamenei (currently the Supreme Leader of the IRI), who focused on opposing the foundation of the jury which he believed was useless and had no basis in Islamic Shari'a. He believed that if it was to have a jury it should consist of, not laypeople from society, but Islamic Jurists. In his words, a jury "are weak creatures who give their statement and go, and the judge has the discretion to accept it or not".

This claim was opposed by Ayatollah Makarem Shirazi, when he described the jury as a "progressive" foundation and stated: "[a]fter all, political affairs are important matters where there is a risk of slip. The judge that he [Mr. Khamenei] mentions, not all of them are heavenly angels, even in an Islamic system. If there is a group of people, called a jury, that observe and assist there ... this is in the interest of the people and society".

Eventually, the jury was retained and no change was made in this regard. The aforementioned article was passed with an absolute majority and only two votes against it. However, the future showed that sufficient guarantees for the application of this article had not been prescribed and the Legislature was unable to define political crimes.

### **Political Crimes in the secondary legislation of the IRI**

As discussed above, political crimes are not defined in secondary Iranian laws. Nevertheless, it is possible to find provisions, *inter alia*, in the Islamic Penal Code (IPC) that

may have elements of a political nature. Articles 498 to 517 of the IPC, under the titles of “Crimes against the national and foreign security of the state”, “Insulting the sacred values”, and “Criminal attempt on national authorities”, criminalize a range of conduct and consider them not as political, but public crimes. In addition to the abovementioned articles that are *ta'zir* crimes, article 279 of the new IPC, which deals with the *hadd* crime of *moharebeh*, provides that: “[*m*]oharebeh is defined as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity”. [12] The same article excludes personal acts which are not against the public. Under article 282 of the IPC, *moharebeh* is punishable by one of the following: Execution, crucifixion, amputation of limbs, or banishment. [13]

Also, article 286 of the same law provides that crimes against internal or foreign security of the state, spreading lies, disruption of the economic system of the state, arson and destruction of properties, and establishment of places of corruption and prostitution, on a scale that “causes severe disruption in the public order of the state and insecurity, or causes harsh damage to the bodily entity of people or public or private properties, or causes distribution of corruption and prostitution on a large scale” shall be considered as *efsad-e-fel-arz* [corruption on earth] and the offender shall be sentenced to death.

However, what is new to the IPC is the introduction of the crime of “*baqy*” which is defined as armed rebellion against the IRI and is punishable by execution as a *hadd* punishment. Article 287 of the IPC provides that: “[a]ny group that wages armed rebellion against the state of the Islamic Republic of Iran, shall be regarded as *Baaqi* [i.e. a person who commits *baqy*], and if they use [their] weapon, its members shall be sentenced to the death penalty.”

Prior to the adoption of the new IPC (2013), some of Iranian lawyers and jurists took the view that in Islamic criminal law, “*baqy*” is the same as political crime and *Baaqi* [i.e. a person who commits *baqy*] is the political offender. Now that this concept has entered into the IPC this group might feel validated in that view. However, considering the legal definition of *baqy* and the clear differences between the concepts of *baqy* and political crime, it is evident that these two concepts are not synonyms, and, at most, *baqy* is just one form of political crime. [14]

It is also evident that many instances of *moharebeh*, or those that shall be treated “as *moharebeh*”, or instances of *efsad-e fel-arz* as prescribed in the IPC fit into the framework of political crimes. This however is not agreed upon by all commentators and some claim that political crimes have nothing to do with *moharebeh* and *efsad-e fel-arz*. They argue that the subject of *moharebeh* is security and freedom of people and the motive and intent of a *mohareb* is to create fear and assault people’s lives and properties. This is while the subject of political crimes is the security of a state where the offender intends to shake the state’s structure.

According to this view, “two requirements must be met in order to establish a political crime: a) justice-demanding intent and good will in the offender; b) lack of legitimacy of the government even due to misunderstandings in the offender’s mind. Such individuals never commit violent acts and murder and looting and they are committed to national security. However, *moharebeh* is not a political crime as its offender intends to create fear and deprive people’s security and freedom. Thus, *moharebeh* is a public crime and cannot be regarded as a political crime”. [15]

In addition to the above, offenses that meet the requirements and definitions mentioned previously are not considered as political crimes by the Revolutionary Courts. Not only do the Revolutionary Courts fail to hold public hearings in the presence of a jury for the accused of such crimes, but also, despite the legal obligation which requires that crimes punishable by the death penalty and amputation of limbs shall be tried in the Provincial Court consisting of five judges, they try all such crimes by only one judge presiding over the hearings.

### **Efforts made to define political crimes**

When reformist Seyed Mohammad Khatami was elected as the IRI President in 1997, he promised to revive the abandoned articles of the IRI Constitution, which included article 168 and the definition of political crimes. This, however, was only possible through the cooperation of two other branches of power.

Following the pursuits made by the government at the time, the Bill of Political Crimes was prepared in the Judiciary and sent to the cabinet through the Justice Ministry. After some amendments were made, particularly with regard to the instances of political crimes and the composition of the jury, the cabinet submitted this Bill to the Parliament, in which reformists had the majority. This Bill was passed by the Parliament on May 29, 2001.

In being aware of the difficulties in providing a complete and precise definition of a political crime, the drafters of the Bill had tried to overcome these problems by providing a list of instances of political crimes. The list included: 1) formation of, or membership in, a group or association with the intent to disrupt security; 2) collusion and conspiracy in order to commit crimes against internal or external security; 3) deprivation of people’s liberty with the intent to disrupt national security; 4) propaganda against the IRI state in favor of opposition groups and organizations; 5) election-related crimes and the crimes prescribed in the Political Parties act [16]; 6) insults to the heads of branches of power and the heads of foreign states; 7) encouraging people to commit acts against the dignity and interests of the IRI.

The list also included a number of crimes which should be considered as political crimes only if a political motive was established: 1) disclosure and publication of classified political documents and information; and 2) defamation and distribution of lies with the intent to disturb public opinion.

Finally, violent crimes such as murder, kidnapping, hijacking a plane, and bombing, even if committed with a political motive, were excluded from the definition of political crimes.

As expected, this Bill was rejected by the Guardian Council. The Guardian Council declared 18 counts of violations of Islamic Shari'a and the Constitution and returned the Bill to the Parliament. The primary reason behind the Guardian Council's disapproval of the Bill appears to be connected to some of the crimes on the list that included Islamic *hudud*, i.e. a special category of crimes under Islamic law with fixed and severe punishments such as flogging, death penalty, or stoning to death. In fact it was claimed that the rules prescribed in Islamic sources for dealing with these crimes would be disregarded and this Bill would virtually shut down Islamic *Hudud*. In particular, what secured their disapproval of the Bill were issues such as intervention of the jury in *hudud* crimes such as *moharebeh* and *efsad-e fel-arz*, which may constitute some cases of political crimes.

The Parliament rejected the statement of violations by the Guardian Council and insisted on approval of their Bill. The Bill was then sent to the Expediency Council for arbitration between the parties. However, the Expediency Council took no initiative in making a decision on the matter and the Bill was left there, abandoned for years to come. [17] The following cycle of Parliament, still with reformists in the majority, pursued the passage of the Bill. Some Members of Parliament who were disappointed by the procedural stalling of the Bill even asked the Judiciary to prepare a new Bill on political crimes. Nevertheless, no progress was made and things did not go further than occasional statements of hope by judicial authorities and promises that the issue would be solved in the near future.

In the interim in 2008, the Supreme Judicial Council—presided over by Ayatollah Shahroudi, the then Head of the Judiciary—tried to enter a definition of political crimes into law in its preparation of the Bill of new Islamic Penal Code. However, what they passed as article 4 of the Bill was eventually removed from the final text.

The pursuits of some members of Parliament and the promises of the Judiciary and contradictory statements of judicial authorities continued until very recently when it became clear that the Judiciary would not propose a new Bill on political crimes. In addition to the inherent tendency to resist against the provision of privileges for political offenders, the main reason for the failure of the Judiciary can be explained as disagreement and confusion of judicial authorities who have been unable to come to agreement on a single definition of political crimes. Eventually, in 2013 a separate Bill was proposed by a

number of members of Parliament, which brought this matter on the Parliament's agenda again.

### **The current situation and the new Bill of Political Crimes**

In 2013, nineteen Members of Parliament proposed a new draft bill, titled "Political Crime", which was to be dealt with by the Judicial and Legal Commission of Parliament. Subsequently, a working group was formed inside the Commission and quite recently, on June 11, 2014, it was announced that they had passed the bill which included six articles and will soon be discussed in the general assembly for the final reading.

Without providing any definition of political crimes, article 1 of this Bill stated "If individuals or registered political groups commit any of the following crimes with a political motive against the state's structure, organs, or authorities in connection with their functions, or against legal and political rights of the citizens, it shall be regarded as a political crime": 1) insulting, defaming, and distributing lies against the heads of three branches of power, Ministers, Members of Parliament and Guardian Council, 2) insulting foreign heads of states or diplomats inside Iranian territory, 3) crimes mentioned in the Political Parties Act, 4) election-related crimes.

The note to the aforementioned article further explained that by political motive it meant "a motive to correct the affairs of the country without any intention to damage the basis of the Islamic Republic of Iran". Therefore, all the instances mentioned above were considered as political crimes only if they met the requirements of article 1, i.e. if they are committed with the motive to correct the affairs of the country without any intention to damage the foundations of the IRI.

Article 3 of the Bill listed the instances, which shall not be regarded as political crimes in any event (i.e. even if a political motive is established). They can be summarized as: 1) crimes punishable by hudud, qisas, and diyat; 2) bombing, hijacking a plane, and piracy; 3) theft and looting of properties; 4) carrying and keeping guns and drugs; 5) bribery, embezzlement, and money laundering; 6) espionage and disclosure of classified information; 7) encouraging people towards separatism and conflict and war.

Failing to stipulate the requirement of public hearing, article 4 of the Bill referred "the procedures for trying political crimes and presence of the jury" to the Criminal Procedure Code. According to article 6, a number of privileges were listed for the accused and convicted persons of political crimes which include separation from regular (non-political) criminals, prohibition of wearing prison uniforms, prohibition of solitary confinement

unless in special circumstances, right to visit and communicate in writing with the family members, and access to books and newspapers and radio and TV.

Generally speaking, this approach towards the problem of political crimes and its definition can be described as the most restrictive and backward view that has been stated in various proposals and legal bills. According to this view, only those who have been deemed by the trial judge to not have acted against the foundations of the IRI and instead had the “intent to correct [the affairs]” can be regarded as political offenders. Yet, no criteria have been provided in the Bill as to what constitutes the “intent to correct [the affairs]”. Furthermore, “the foundations of the IRI” is a broad and potentially vague notion that has not been defined in the Bill. It is likely that an “Islamic state under the rules of Shari’a” and “the theory of *velayat-e faqih* (rule of an Islamic jurist)” are the core elements of this concept, however, the notion can be expanded to include other issues as well.

In addition, if acts of an offender fit into the criteria of Islamic *hudud* such as *moharebeh*, *efsad-e fel-arz*, and *baqy*, they do not fit into this definition and will be tried behind closed doors in Revolutionary Courts with only one judge presiding over the court. This is while, as discussed earlier, there is little disagreement between lawyers and Islamic jurists that *baqy* is a political offense, and the consensus has been so strong that some commentators have claimed that these two offenses (*baqy* and political crime) are synonymous.

Moreover, other instances that have been excluded from the definition of political crimes are too broad and, in some cases, irrelevant, and it is interesting that the number of such crimes is double the number of instances of political crimes listed in article one. In fact, it would be fair to say that the main purpose of this Bill, instead of defining political crimes and its instances, has been listing the offenses the IRI is unwilling to recognize as political crimes.

This approach toward political crimes is nothing but a departure from the original idea of the recognition of some crimes as political. The number of individuals that can benefit from this Bill are extremely limited and no positive change can be expected to be effected in favor of political activists and the opposition of the IRI who are, or will be, accused of crimes against national security and other security related crimes. Also, the privileges that should be invoked traditionally in the adjudication of political crime, which are mentioned in article 6, are in part, basic rights of prisoners, and, in general, the reference to such issues in the Bill serves a more decorative function rather than effecting real change in the situation of those prosecuted for such crimes.

In any case, it seems that the definition of political crimes will remain on the agenda of the Parliament for some time to come and that the Judiciary’s views have been taken into consideration. However, if and when this Bill will be finalized and adopted by the Parliament is still not known and it is also not possible to predict the reaction of the

Guardian Council. However, the possibility that this Bill, albeit with changes in some articles, will be finalized and become law is real.

## **Conclusion**

It is undeniable that the definition of political crimes is a controversial and complex issue, and that this complexity is one of the reasons that it has not been defined in Iranian laws. However, it can be argued that the most important reason behind the refusal of the IRI to define political crimes is the certainty that it would restrict and cause “difficulty” for judicial bodies, and particularly the Revolutionary Courts.

The Revolutionary Courts, which claim exclusive jurisdiction over the adjudication of security crimes and generously label many regular cases as crimes of “security”, will never accept the jury and public hearing for political crimes. These courts show little regard for fair trial principles and rights of accused persons (for example by refusing to submit a copy of their decisions to the convicted persons or their lawyers, or by refusing to admit a defense lawyer into the hearing), therefore it is no surprise that they see the publicity of these trials as problematic in light of these unlawful practices. Given the secretive nature of Revolutionary Courts, it is unrealistic to imagine the presence of a jury as it contradicts the very essence of their set-up.

In addition, as explained above, terrorist and violent crimes have also added to the problem of defining political crimes. The general view has been approving of the stance that believes the perpetrators of terrorist and violent crimes must not benefit from the privileges for political offenders. However, if the political motive of the offenders is established, it does not seem that a public hearing in the presence of a jury would be an extraordinary privilege for these people.

In fact, considering the existence of the death penalty in the legal system of the IRI, including for crimes against security, these privileges are the least that could be afforded to those accused of political crimes. Moreover, what is said to be privileges for political offenders are, in essence, controlling tools aimed to prevent the state from suppression of political dissidents and critics from which the whole society ultimately benefits.

It also must be remembered that any individual, regardless of the type of charges against them, shall be considered innocent and their acquittal is possible until tried in a competent court and proven guilty by a final judgment. On the other hand, false accusations and framing political dissidents by the state have always been a real possibility. For example, it is possible that the state accuses groups and individuals that oppose it to be responsible for various terrorist incidents and to suppress them under the cover of this allegation. [18]

If internationally accepted standards including the ICCPR, to which Iran is a state party, were complied with, it would be clear that many of those who are charged with crimes against security and sentenced to imprisonment or the death penalty, have not committed any crime at all, but merely exercised their fundamental freedoms and political and civil rights. Although political crimes are not defined in Iran, public opinion regards these individuals as political prisoners and in many cases do not consider them as deserving of any punishment.

Additionally, it can be argued with certainty that international standards of fair trial have not been complied with in these cases and that the fundamental rights of the accused have been violated. If internationally-recognized fair trial standards were complied with in their cases, many of them would not have convicted or punished.

Therefore, considering the abandonment of article 168 of the IRI Constitution, it can also be asserted that all the convictions delivered by Iranian courts against those accused of political crimes during the last 35 years or so, due to lack of a jury and non-publicity of the trials, are deemed to be unlawful and shall be regarded as not only a violation of international obligations of the IRI but also a violation of the Constitution of the IRI itself. Obviously, it is no legitimate excuse after 35 years to justify this on the grounds that a definition of political crimes is lacking, and by no means does this reason legitimize these trials and convictions.

Basically, a hundred years of delay, and, particularly, 35 years of failure of the IRI's law-making system to adopt a definition for political crimes, can only be construed as political reluctance and refusal to allow the dissidents and critics of the IRI to benefit from any sort of privilege. The delay has been so long that the theory of recognizing some crimes as "political" and prescribing certain privileges for the accused persons of such crimes is disappearing from modern legal systems. Instead, fair trial standards, independence and impartiality of the Judiciary, abolition of the death penalty, and enshrinement of rights such as freedom of expression, freedom of assemblies, freedom of political parties and various guarantees for the protection of the rights of the accused, including the principle of public hearing for all trials and presence of the jury in serious cases, have reduced the significance of this distinction to a great extent.

It must also be noted that, although tools such as public hearing can play a significant role in discovery of the truth and fairness of the trial, however, it must not be forgotten that this can only guarantee the abovementioned goals within a larger collection of conditions and circumstances. The most significant among these conditions, is the democratic state, which include various other principles including accountability of the authorities, freedom of expression and freedom of the press. Otherwise, publicity of a trial, instead of playing a controlling role on the state and judicial bodies, can be turned into a tool for damaging the



dignity and reputation of the dissidents through holding pre-decided theatrical public hearings. [19]

This is also equally true about the presence of a jury in trying political crimes. As it was discussed earlier, the jury must be consisted of different sections of the society and in modern legal systems across the world various mechanisms are introduced to guarantee the impartiality of the jury and presence of different sections of the society. If, however, the selection of the jury is non-democratic and the state can appoint its desired individuals as the members of the jury—which is exactly what has happen in respect of the jury in Press Courts in Iran—then such a jury is only a tool for repression of political dissidents and critics of the state.

What completes this collection and can be seen as the most important requirement for fair trial is the independence of the judiciary and separation of the judiciary from other branches of power. A dependent judiciary that receives its orders, especially in trials of political dissidents, from security and high-ranking state officials, will itself become the source of injustice and violation of fair trial standards, and will turn the publicity of trials and presence of juries into a toll for suppression.

It is also worth mentioning again that, what has been regarded as a privilege and advantage for political offenders in the IRI Constitution, in many other countries is regarded as regular procedural standards and by no means are special privileges. For example, in many countries including those with common law systems, such distinction between political and ordinary crimes has not been recognized in this way and the principle of public hearing and presence of a jury (in more serious cases) are among obvious principles of proceedings.

Finally, the problem of political crimes in Iran clearly shows that mere recognition and stipulation of a right in the Constitution of a state, does not necessarily mean that it is followed in practice. While, stipulation of a principle in the laws of a state, especially in the Constitution, may be regarded as a great victory and a guarantee that it will be holding up, the experience of the stipulation of political crimes in the Iranian Constitutions can be regarded as an example to prove this fantasy wrong. Until there is a real intention among the state leaders to do so, it will not be difficult to find an excuse and justify the failure to implicate a legal rule, no matter how certain and obvious it is and even though it is stipulated in the greatest legal instrument of the country.

Notes:

[1] It should be noted that some of the drafters had been educated in Francophone countries in Europe, including France and Switzerland, and therefore looked to the text of their respective constitutions as a model.

[2] Garreaud, Rene, *Theoretical and Practical Researches in Criminal Law*, translated by Seyed Ziauddin Neghabat, 225.

[3] Habibzadeh, Mohammad Jafar, *Moharebeh in the Criminal Law of Iran*, Tarbiat Mdarres University Publication, 2000, 187.

[4] Peyvandi, Gholamreza, "Political Crime", *Pajuheshgah-e farhang va Andishe Eslami*, 2009, 56.

[5] Mousavi Bojnourdi, Seyed Mohammad, "Criminal Crime in Islamic Criminal law", *Ayeen*, No 26-27, Jan-Feb 2009, 122.

[6] NourBaha, Reza, *Foundation of Public Criminal Law*, Iranian Bar Association, 1994, 250.

[7] Mohammadi Jourkuyeh, Ali, "Theoretical Foundations for Lenient Treatment of Political Offenders", *Ravagh-e Andishe*, No 4, Nov-Dec 2001, 88.

[8] Habibzadeh (3), 193.

[9] Ghari Seyed Fatemi, Seyed Mohammad, *Human Rights in the Contemporary World*, Shahr-e Danesh, 2009, Vol 2, 239.

[10] Ibid 241.

[11] Detailed Records of the Assembly for the Constitution of the Islamic Republic of Iran, IRI Parliament, 1985.

[12] Article 279 of the IPC provides "Moharebeh is defined as drawing a weapon on the life, property or chastity of people or to cause terror as it creates the atmosphere of insecurity. When a person draws a weapon on one or several specific persons because of personal enmities and his act is not against the public, and also a person who draws a weapon on people, but, due to inability does not cause insecurity, shall not be considered as a *mohareb* [i.e. a person who commits *moharebeh*]." For the comprehensive translation of Books One and Two of the new Islamic Penal Code of the IRI see:

<<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>>, accessed July 14, 2014.

[13] Article 282 of the IPC provides: "The *hadd* punishment for *moharebeh* is one of the following four punishments:

- (a) The death penalty (hanging)
- (b) Crucifixion
- (c) Amputation of right hand and left foot
- (d) Banishment."

[14] Mousavi Bojnourdi (5), 122.

[15] Ibid, 123.

[16] For an English translation see: <<http://www.princeton.edu/irandataportal/laws/political-parties-law/>>, accessed July 22, 2014.

[17] The Expediency Discernment Council was established in 1988 upon the orders of Ayatollah Khomeini to overcome the cases of disagreements between the Islamic Consultative Assembly (Majlis) and the Guardian Council. Article 112 of the IRI Constitution provides: "The Expediency Discernment

Council shall be convened at the order of the Leader to determine such expedience in cases where the Guardian Council finds what is passed by the Majlis in contradiction with the principles of Sharia or the Constitution, and the Majlis in view of the expedience of the [IRI] system fails to satisfy the Guardian Council...”.

[18] The infamous case of “Hiva Taab” is probably only one example of such instances, which only a tip of it was revealed recently. Hiva Taab was an intelligence commander of the IRI Revolutionary Guard Corps in Kurdistan province of Iran, who, now it is revealed that, had killed quite a few number of ordinary civilians including many *kulbars* (local border smugglers) and putting military uniforms on their corpses, asserted that they were members of a terrorist group and claimed the rewards. For example see: <<http://www.iranhumanrights.org/2013/10/zanyar-oghman-moradi/>>, accessed July 24, 2014.

[19] Ghari Seyed Fatemi (9), 239.