

JUDICIAL DESCRIPTION OF THE CRIMINAL PHENOMENON AND ITS ROLE IN THE JUDICIAL PROCESS

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Abstract

The criminal investigation process always requires the description of criminal laws and the judge in order to comply with the law of the case, both in form and substance, is obliged to determine the limits of the relevant laws and this process is valid even in the clearest rules. Now, in relation to the powers of the criminal judge regarding the description of a criminal phenomenon at the international level, two classical and modern views are clearly in opposition. And this theory is rooted in the progressive principle of separation of powers, which prevents the judiciary from interfering in the legislature, and its purpose is to prevent arbitrariness of judges, but in the recent century, the opposite is growing. That the criminal judge has an active, dynamic and guiding role in describing the criminal phenomenon, the judicial procedure in Iranian criminal law is the flagship of the recent movement, so that in dealing with emerging forms of criminal phenomena by providing new descriptions of old laws They have paved the way for the revision of laws.

Keywords: Criminal phenomenon, criminal judge, judicial description, judicial verdicts.

INTRODUCTION

Crime as a category that marks the public order of society has always been disputed by philosophers, jurists throughout history in terms of definition, definition, case, authority and finally the person who has the right to describe it, and even this controversy in the works. The literature of the greats has also penetrated, now in the present era, which is a symbol of the maturity of ideas related to the division of political work and separation of powers, and the essence of the thoughts of great philosophers such as Jean-Jacques Rousseau and Montesquieu and others. According to logical requirements, they have placed barriers between the duties of the forces, but the issue of competent authority is still considered to

describe the local criminal phenomenon of conflict, and this dispute has been elaborated while almost a consensus has been reached on competent authority for criminalization. The title of the only authority is recognized, but after the criminal regulation is enacted, the interpretation of the law is always raised with the occurrence of new events or new cases, and this They have created ambiguity, conciseness, shortcomings, silence and conflict in the laws is inevitable and b In no way can a law be created without the need for interpretation. (Omidi, 2015, 21)

Now, realizing the necessity of interpreting criminal laws in the context of legal debates, scholars have been divided into two groups. The form of recourse is also available for the

interpretation of the same text and even its development and has a legal life. The main argument of this group is based on the following axes: It can express its meaning and purpose, so it has priority over others. Second: Respect for the principle of separation of powers and prohibition of their interference within the limits of each other's duties and powers requires legal interpretation over other types of interpretation, especially in criminal law. And the imposition of punishment is a special aspect of the exercise of public power and restricts individual rights and freedoms. The hidden layer and conscience of this argument revolves around the philosophical ideas that support the need for separation of powers. The article refers to it more.

In the face of the emergence of an idea that understood the deep rifts of the traditional view and took steps to overcome the prevailing rigidity, criminal judges are the first to deal with instances of immorality and lawlessness. They are the ones who touch the gaps of the law with all their being and are forced to choose in the conflict between conscience and the law. They have been harmed, but the legislator, because he did not foresee the cases several decades ago, is unable to support the victim, and in a sense, the backwardness of the society and the huge burden of the gap between the author and the executor are inevitably filled with judicial interpretation Turns.

Judicial practice in Iran has taken the first steps towards change in this field, so that with some deliberation in some votes, it is understood that this movement has started in practice, but its theoretical foundations in legal writing are very weak. And most jurists, relying on the common term that "custom has no place in criminal law at all" (Golduzian, 2010, 56) continue to insist on the former views and today, considering the three actors in the field of creating criminal law, i.e. the creator (The legislator, the text, and finally the interpreter (judge) can be stated that "the interpreter is considered alongside the creator and the text as an independent and main source. It no longer plays a role in semantics, especially the interpreter at this stage is not the absolute and blind follower of the creator and even in some cases stands against the creator

and takes a different path with him, at this stage, the role of the interpreter is no longer active and It is not static, but it is active and dynamic. (Shojaei, 2014, 195).

The purpose of this article is to strengthen the recent perspective by providing examples of jurisprudence. To criminal justice.

A- The concept of description (lexically, philosophically, legally)

1-1 The realm of interpretation by the lexicographers

Interpretation, which is an Arabic word on the weight of action, "literally means discovery, expression and explanation in the Arabic word. The root of this word is *f-r-s* on the weight of Fair. *Fras*, as it is mentioned in authentic cultures, means revealing and unveiling the hidden" (Omidi, *ibid.* 197). The hidden nature of it should be revealed so that the hidden angles of the problem are revealed to the audience. Slow or knowledge that examines the religious words in terms of implying the rules "(Zahabi, 1976, vol. 1, p. 19)

There is disagreement among lexicographers and commentators about the relationship between interpretation and its structure in terms of territory, and since there are more discussions in the interpretation of religious texts that the rules governing its interpretation are more sensitive than other texts, This category is avoided in order to avoid prolongation of the word, and it is enough to suffice with the fact that the interpretation has the aspect of word description and is based on lexical utterance and customary understanding, but the interpretation, principles and intentions of the speaker are desired.

Interpretation is more literally based on the appearance of the word and its root, but the philosophical and legal interpretation that is discussed below seeks a meaning beyond just the continuous word, so that in some philosophical-legal interpretations the time, place The ruler of the text completely forms the foundations of that school of thought and the consistency of the theory goes back to a comprehensive view of the surrounding issues

that led to the presentation of the text, so there is a fundamental difference between the concept of interpretation literally, legally and philosophically.

1-2 Philosophers' view of the interpretation of texts (philosophical hermeneutics)

The word hermeneutics means "interpretation", which is considered a word with Greek roots. They have translated. (Yarmohammadi, 2012, 1393).

The first use of the word is attributed to a book by Danahir in 1654, and its first record in the Oxford English Dictionary is in 1737, and it is believed to have been in use since the seventeenth century (Ramberg.Bjorn and Kristin Giesdal.2005.p2).

Regarding the definition of philosophical hermeneutics, there are many different definitions, but it can be briefly stated that hermeneutics refers to a method that studies the relationship between the three categories of text, creator and interpreter, although the above definition It may seem simple, but the great philosophers of the universe, such as Schleiermacher, Gadmer, Heidegger, and others, have each tried to analyze and evaluate hermeneutics by focusing on one of the above three categories. However, no definite opinion has been presented in this regard so far, and we will refer to some opinions in this regard.

Schleiermacher Regarding the exact origin of the science of hermeneutics, scholars have not yet announced the exact date, but many believe that the beginning of modern hermeneutics dates back to the time of the great philosopher Schleiermacher and most books on hermeneutics have started the discussion from this period (Nikfar, 2002, 2).

Schleiermacher's view on the interpretation of texts is of a romantic or fantasy type, in such a way that he stood against the truth-seeking movement of his time and tried to present a new style by creating a new style. The author of the text considered that this method of interpretation also has supporters in the world of criminal law who believe that in order to implement criminal laws, achieving the

legislator's mental intention should be a priority (Bahri, 2005, 1990). In fact, it does not exist independently of itself, and "Schleiermacher seeks to understand the text through psychological interpretation by reconstructing the author's mental experience. This raises the issue of intuition, which is a kind of empathy or identification with the author or putting oneself in the place of the author." (Shojaei, ibid. 28).

Dilthey emerged in the world of philosophy after Schleiermacher, and with his own Heli thought advanced the science of hermeneutics one step further, so that some believe that Dilthey is different from Schleiermacher in many respects, but what is the product of the ideas of this great philosopher. Distinguishes him from Schleiermacher, his historical view is to understand the issues in such a way that Delta considers the problem of understanding as human historical feedback and along with the text and its creator also considers the historical situation in the pillars of interpretation, while Schleiermacher only The author and the language of its transmission interfered in the interpretation. It is necessary to explain that there are traces of this legal interpretation in legal ideas and some jurists believe that the time and place of a law play an important role in its interpretation. (Mohseni, 1375, 100).

Heidegger

With the emergence of Heidegger in the world of philosophy, previous issues such as the psychological issues of the creator and the historical aspects of the text suddenly changed and hermeneutics moved to another aspect of epistemology, and this aspect is the same as "understanding" in Heidegger's human thought. In his literature, Dasani has been interpreted to be free-thinking, and everything he inferred from the text is true and has nothing to do with understanding external reality. And then understands itself as a self-interpreting being" (Shojaei, ibid. 36). Judges' arbitrariness and ultimately the violation of individual rights, but in the author's view, considering frameworks such as fair trial, the general principles of criminal law, the prevalence of this type of interpretation in criminal law is not an obstacle,

and the general purpose of this article is to explain such. It is an approach that the judge has a dynamic role in describing the criminal phenomenon, it should be noted that in the various interpretations of private and international law, this type of interpretation is quite common and famous in terms of not being inconsistent with the freedoms of individuals.

-Gadamer

Gadamer is considered to be a continuation of Heidegger's movement in philosophy because before Heidegger, hermeneutics was methodological, some philosophers considered language to be important independently in understanding, and some prioritized the creative aspects of the creator. They interpreted, but with the emergence of Heidegger, "understanding" became the focus of discussion and a kind of objective to mental approach changed. Gadamer continued his method after Heidegger and declared understanding as the epistemological basis. Historical understanding at the same time of interpretation was emphasized in such a way that he believed that historical understanding of the past or future has no effect on interpretation and is only a correct understanding of the text at the same time as the creation of the text and he, unlike his predecessor philosophers, it abandons mental and linguistic aspects and considers only historical presuppositions because the interpreter is the historical being himself.

-Ricoeur

The emergence of Ricoeur in hermeneutics, on the one hand, evokes the continuation of the same method of Heidegger and Gadamer, and on the other hand, promising the emergence of a new trend in hermeneutics. He was not oblivious to language, believing in the hypothesis that language itself is an independent structure and not merely a means of transmission. Despite language, one can know the world, while Heidegger and Gadamer believed that language had no effect on comprehension. They were seen as merely a template for the transmission of ideas.

According to Ricoeur, understanding cannot be achieved without understanding metaphors, symbols, and signs in language. Finally, Ricoeur considers interpretation to be a three-step process: explanation, understanding, and Assign

Explanation is related to the linguistic and textual aspects of comprehension, understanding is the understanding of meaning and text independent of the author and the specific context of time and place, and assigning the interpreter to engage with the text.

The science of hermeneutics is still developing and in the present era, the category of interpretation is still the subject of controversy among scholars in this field, and each of them looks at this category from a certain angle. However, since this issue is not directly related to the discussion, it is refused to continue.

1-3 Types and scope of interpretation in jurisprudence

Interpretation in jurisprudence is of great importance because law has two theoretical and practical aspects and according to the late professor Dr. Katozian in the weighty book *Introduction to jurisprudence*, the field of law is both science and art, a university professor who in the classroom, it teaches the student to consider the aspect of being a science, and the trial that invokes the law in the position of realizing the law strengthens the aspect of the science of this science, but this duality should not lead to the illusion that the work of a law professor and a judge are completely separate and have no effect on each other. Between the theories of criminal law professors and the opinions of criminal judges in the application of the criminal phenomenon to the laws, the degree of homogeneity and heterogeneity of these two interpretations, one of which is not binding and the other which is the judicial interpretation is binding and necessary. Every citizen, and in the meantime, the inherent position of the law as a source of production Criminal law and its requirements should also be explored.

In general, the interpretation in jurisprudence has different branches from two perspectives, but the most important division is into two types.

One: Interpretation of the law based on hierarchy

In this type of interpretation, according to the type of law under interpretation, which is mainly divided into the constitution and ordinary law, considering that the constitution is considered the highest legal document of any country and its divisions determine the share of power, it is very important. (Judge Shariat Panahi, 2004,80) Considering that the interpretation of this law is also considered as its text, so the importance of this interpretation is very valuable from a legal point of view and the interpretation of the Iranian Constitution based on Article 98 of the Constitution is the responsibility of the Guardian Council. , Is in the opposite point of interpretation of ordinary laws, which according to Article 73 of the same law is the responsibility of the Islamic Consultative Assembly and is lower in terms of executive power, in this division is not considered a position for judges, although the following principle The latter mentioned the possibility of interpretation by judges and did not prohibit it from being combined with legislative interpretation, but because judicial interpretation is presented in an executive position and the interpretation of the Guardian Council and Parliament is the rule, the scope of interpretation is different.

Two-interpretation based on the author

In another popular division, based on which natural or legal person interprets according to their job or position, a category is presented, which was briefly mentioned in the previous topics and is completed as follows:

1- Interpretation of the law-making authority in the position of removing the ambiguity of its previous regulation, which, considering that the authorizing authority, which is usually the parliament of each country, has the authority to create and remove ambiguity in the first way, but in the category of criminal law Dealing with the freedoms of individuals and the

prohibition of turning to the application of criminal law restricts the powers of the legislature, the details of which are not included in one article.

This type of interpretation is considered one of the most acceptable interpretations by jurists, because it is the safest way to get the opinion of the legislator, but in this category, doubts have been created in such a way that with the change of representatives of previous periods, the opinion of new representatives may be different. With the change of generation, thoughts change, but the previous laws rule over different generations for many years. And in this article, we try to cover this gap and not fill it by presenting a new solution that the same powers of the criminal judge in providing an up-to-date interpretation that is in line with the current needs of society.

2- Interpretation of the professor in the field of law education as we have mentioned in the previous discussions, the legal doctrine removes the ambiguities of the laws by providing interpretive opinions and is considered as a beacon for the judicial procedure. The role of the professors of the time it becomes more prominent that judicial bills will be criticized before they come into force, and that their strengths and weaknesses will be before they become involved in the chambers the ruler of the judiciary is visible and the legislature is taking action to remove its ambiguity. The month was amended, no doubt the criticism of lawyers before the implementation of the law in this legislative decision has not been ineffective.

3- Interpretation of the judge as a judge, this type of interpretation has two salient points compared to the other two interpretations. Criminal law is presented while the interpretation of the legislature and doctrine in most cases is done in a completely theoretical environment and free from the concerns of the judiciary and justice, which typically makes the judge familiar with new challenges and using his reasoning power in response. It is argued that these requirements strengthen the acceptance of the active judge in the judicial description of a criminal phenomenon.

According to the litigants, the rights of the accused are more important, but the law should provide the necessary measures to ensure a fair trial, including the right to object to the interpretation of the judge that caused the violation of rights, which unfortunately the Code of Criminal Procedure except in Rare cases in this regard In these cases, the judge is absolutely open to the possibility of overseeing the interpretation by legal means, although the hierarchical nature of the investigation process and the existence of oversight bodies within the judiciary can be seen as a sample of these tools, but the silence of the law There is room for reflection in this regard.

It should be noted that there is a description of the necessary implementation in the interpretation of the legislature, but its distinguishing feature with judicial interpretations in particular and the fact that judicial interpretation is general in the sense that interpretation laws are general for all members of society but the interpretation of the judge for companions. The case is considered valid and binding in a special and partial way, while if the same case is presented in the adjacent branch, the result will be changed in terms of differences in interpretation, for example, Article 2 of the Law on Intensification of Punishment for Bribery, Embezzlement and Fraud Approved in 1988, it stipulates that "anyone in any way exposes or abuses the privileges that are delegated to certain persons to have special conditions, such as export and import licenses and what mystics call the agreement in principle." Or commits fraud in the distribution of goods that are prescribed in accordance with the rules, or in general obtains money or money, the acquisition of which has had no legal legitimacy is considered a crime..... »In relation to interpretation this article, in spite of the legislator's silence in presenting the interpretive theory, is presented by the doctrine of two different opinions. This article is considered appropriate to cover legal gaps in crimes against property and ownership, and if the elements of the crime do not comply with common financial crimes with this article, the accused can be punished (Mir Mohammad

Sadeghi, 2013, 120) is promoted in the opposite point of this belief. The beginning of Article 2 of the above-mentioned law governs it and only the property that is available to the accused through special means for export and import, etc. is included in the article and the final clause of the article should be narrowly interpreted (Aghaei Nia and Rostami, 2020, 140). Now, in judicial procedure, both views of the doctrine are common and the interpretation of the judge absolutely determines the fate of the litigants, which highlights the role of the criminal judge and, on a case-by-case basis and in terms of severity, the amount of damages to the victim. And the principles governing the description of the act committed play a role in choosing the interpretation, but there is no need for pathology, and the legislator's negligence in presenting the interpretation and leaving it to the judge should not be overlooked.

1-4 the place of interpretation in criminal law

Interpretation in jurisprudence is considered as the primary tool of this science, but if we think deeply about the issue, it becomes clear that the end is the responsibility of judges who try to interpret, and other individuals and citizens indirectly need to interpret in connection with legal texts. And adapt, in the meantime, the position of criminal law is more prominent from two angles than other disciplines of jurisprudence.

On the one hand, criminal law is evaluated internationally as a record of a government's performance, and from the perspective of legal sociology, it is the measure of the success or failure of a governing ideology of criminal science because many of its basic principles, such as prohibition of torture, prohibition of detention. Arbitrary, the right of access to a lawyer, etc. Today, in terms of close and irreplaceable relationship with human rights issues, is one of the international documents of world organizations such as the United Nations (Haji Dehabadi, 2019,100), therefore, incorrect interpretation of criminal law This is the reason why criminal law is included in the common divisions of public law, on the other hand, the type of mechanism governing the spirit of criminal law that guarantees heavy executions

against the integrity of human freedoms and directly in The most valuable human gifts restrict the deprivation of human life, which is considered to be the highest level of conflict between criminal law and the foundation of human life. Demands, it is necessary to explain k In other legal trends, the rights of citizens are more or less in conflict with the government, for example, in issues related to taxes, public service, expropriation of persons by the government due to civil disputes, etc., but the severity of this issue in criminal law It is much higher than other tendencies (Mohseni, 2017, 326).

Scholars of criminal law have proposed various interpretive methods during the life of modern criminal law, which are mainly based on the time of Caesar Bakaria and the acceptance of the principle of legality of crimes and punishments (Najafi Aberandabadi, 2011, 67) and to They have worked so that today the advantages and disadvantages of each of these methods are obvious, but in order to analyze the position of the criminal judge in describing the criminal phenomenon, the methods of interpretation in criminal science are briefly reviewed:

A. Narrow interpretation

In the early interpretations of the law, some jurists strongly believed in the principle that the words of the penal code should be applied exactly by the judge, so that "Montesquieu strongly advocated this style of interpretation, believing that judges are the speakers of the law. They should not say anything other than the provisions of the law, and the judiciary is nothing but the expression of a legal sentence "(Mohseni, *ibid.* 332)

Proponents of this type of interpretation, as stated earlier, refer to the principle of separation of powers and believe that "a judge cannot consider himself the legislator's successor and act as his successor" (*Ibid.*, 332)

Critics of this type of interpretation have rightly pointed out its shortcomings in one angle and put the role of the legislator and the judge on the scales, and the acceptance of this type of interpretation has caused the judge to be

passive and stated in its critique that "acceptance is necessary. This principle is the extraordinary demotion of the judge and the exaltation of the legislature. In such a way, the judge becomes an automatic divider of the law and his duty is reduced to a minimum. " (*Ibid.*, P. 332). Opponents of the interpretation of criminal law The main question of this article is the contrast between passive litigation without regard to social developments around the subject and the active role of the judge in adhering to the old law and creating a link between them as adding new saplings to The old body of law remains something that has a lot of legal appeal, but its special legal subtleties also require any new phenomenon.

Comparing the interpretation of civil and criminal law with the issue of narrow interpretation of criminal law, a contemporary jurist has stated that "everyone believes that despite the need for interpretation in criminal law, it should be treated with more caution. Paid and avoided slipping and deviating from the appearances of texts or the direct meanings of rules "(Khodabakhshi, 2014, 123) and despite pointing to the commonality of narrow interpretation in civil and criminal law in dealing with exceptions to a rule, they have concluded That "the logic governing the limited and narrow interpretation is the same in civil and criminal law, and in this respect no difference can be felt, but in the set of criminal law, regardless of its individual rules, compared to the set of civil law in the opposite case. There is a principle and therefore a more interpretive limitation surrounds it "(*ibid.* 125). The content of car tires, which some people do not include in this rule according to Article 677, and argue that in Here, the condition of the property has not changed to be an example of destruction, loss or disabling.

B- Deductive interpretation of criminal laws

The increasing advancement of technology and the change in the means of committing crime have caused the legislator to always be one step ahead of the criminals in the field of aristocracy and to take advantage of the evasions of getting rid of the trial in their favor. The general public and the timely confrontation of criminals have

proposed and promoted analogous interpretation by the judge in such a way that in the law and whenever there is a similarity between them, apply the same punishment to the perpetrator. "(Mohseni, Ibid. 334)

This method of interpretation is also common in Islamic law and among the types of analogy, despite the differences of opinion of the jurists, but the analogy that is the cause of the two specific rulings, which is called the analogy of Mustanbat al-Allah, is recognized in Imami jurisprudence (Mohammadi, 2009, 210) A noteworthy point about the thinkers who support this kind of interpretation is the type of governments and criminal policy systems that govern it, so that it is necessary to generalize the three types of criminal policy: absolute, comprehensive, comprehensive and universal or liberal existence. In absolute pervasive systems, the principle of legality of crime and punishment, and consequently the interpretation of criminal law, is interpreted entirely in line with the goals of the governing body, and there is no free interpretation for the legislature or the unraveling of local issues arising from the Arabs. Analogues promote this kind of interpretation in order to protect the supreme interests of systems where monotony is fully prevalent. Fortunately, in the present age, systems based on this interpretation are very few or declining in the authoritarian system. Accepting the principle of legality of crimes and punishments and interpretation in order to maintain public order is apparently agreed upon, but as long as the high goals of the governing body are not compromised, the fundamental difference between this system and the absolute comprehensive system in maintaining appearances and respect for the principles of law Punishment to the extent that it is not evident from the first examination of unilateralism, and ultimately liberal or inclusive systems, in which the interpretation of criminal law is solely for the purpose of maintaining public order and the requirements of the time, and the governing body has the least intervention in responding to crime.

Interpretation through analogy is not very popular today, and among the schools of criminal law, it is only a school of inquiry,

considering that the culprit is the patient and the judge, like the doctor, must be free to prescribe medicine in order to treat the patient. And they replaced analogy, which with the decline of this school, the theory of deductive interpretation was also forgotten.

C- Extensive or logical interpretation

After experiencing the method of interpretation, which historically precedes the logical or comprehensive interpretation of criminal law, thinkers realize that the purpose of law is to meet the needs of their time, and the purpose of criminal law is to maintain public order in the first place and in The next step is to restore public order in the event of a disturbance. Now, by adopting a narrow interpretation of the dynamic train of criminal law at the same station, the first legislature stops moving and is abandoned in the face of the accelerating speed of society. Axis, the judge instead of the legislature determines and punishes the permissible act of the prohibited act, which destroys the achievement of far-sighted thinkers who believe in the separation of powers and puts the general public against the arbitrariness of judges and parliament in the legislative process. It is removed, therefore, in order to remove this impasse according to the principle that the rule of law is the greatest guide and source of criminal law and the judge should not exceed the framework of the law without a real necessity, but social realities require that the judge Understand the real purpose and put it into practice, perhaps in the eyes of water This kind of justification is in conflict with other principles of criminal law, such as the need for interpretation in favor of the accused, but this illusion must be washed away because doubt in the reasons leads to interpretation in favor of the accused and not the interpretation of the law and the category of interpretation Will happen.

To explain such an interpretation, jurists such as the late Dr. Bahri and Aliabadi cite the French Railway Protection and Control Act, which states that "it is forbidden to get off the station when the train has stopped completely" and incidentally in a case The person who completely stopped the train got off the train

and was pursued, but the French judiciary acquitted Ryber by presenting an interpretation that was not intended by the legislator, but the said person took steps in line with the legislator's goals, and was approved by the French Supreme Court. (Aliabadi, 1998, 212).

This old ruling of the French Supreme Court has been cited as one of the most prominent examples of rational interpretation of criminal law in criminal law books, but fortunately in Iranian jurisprudence, judges have recently distanced themselves from traditional interpretations and feared the spirit of justice and lofty goals. Criminal law has helped to develop a logical interpretation, which is followed by a few examples of current issues and interpretations.

In recent years, Iran and many other countries are struggling with the emerging phenomenon of the prevalence of gambling in cyberspace. Article 705 criminalizes with these general terms that "gambling by any means is prohibited and the perpetrators are sentenced to one to six months in prison" Now, a quarter of a century after the enactment of this law and in the current society in In order to interpret the general expressions of this article, if the narrow interpretation method is used, the phrase "any device" in the text of the article should be poured into the body of the body of its time, and only the common gambling devices of the seventies, including sheets and dice, etc. in the mass spectrum. While the requirements of the present time with the development of computer devices require that the examples of these devices expand, but the essence of this interpretation does not accept such a leap, on the other hand, if interpreted through analogy is not helpful because the expressions of the material are clear. And analogy is only in cases of ambiguity and doubt, in other words, the application and the generality of the article does not include room for interpretation and only the application of Mall is plagued with crime, in which the role of the judge as the sole competent authority to strike a balance between the necessities of time and the preservation of the lofty goals of criminal law is determined, and the provision of a rational interpretation resolves the problem, in one instance.

Objecting the crime of gambling by betting on the world gold price in cyberspace, the matter was referred to the prosecutor of the fourth branch of the same prosecutor's office for investigation, and finally, after conducting a preliminary investigation, the final decision was taken to The lawsuit number 140048390001212319 is issued against the accused and in justifying the criminalization of the act, it has been argued that "gambling is relevant and the means and context are irrelevant" and in order to complete this argument and provide a logical interpretation in the context of time, "However, regarding the behavior of the mentioned channels, considering that the perpetrating behavior is clearly creating a platform for transactions in the form of betting on the price of global gold ounces without any permission from the competent authorities, it is a new form of gambling and the casino is limited to Physical and objective space according to "The prevalence of virtual gambling today in ways such as betting on the price of currency and gold, the results of sports competitions and the like, is in conflict with the criminal philosophy of this crime."

The use of words in the text of the final decision is all evaluated in order to provide a logical interpretation and to avoid narrow interpretation, which promises to open the way for logical interpretation with the powerful hands of criminal judges and a movement that used to have traces of theory. It was devoted to it, but this theory had no place in the Iranian legal system, and as stated earlier, jurists cited less examples of Iranian jurisprudence in their books, but there are now several examples available that criticize and Examining it can create a strong judicial procedure by theorizing it locally.

Another example that has recently led to a new interpretation of the old rules is the prevalence of the phenomenon of currency cryptocurrency mining, which with its widespread prevalence has led to Electricity and power outages in different parts of the country have been damaged, which has led lawyers and judges to try to ensure a strong and noteworthy implementation for the transgressors by

examining the criminal law. Judges now generally refer to four different laws from the 1950s, mid-1970s, and late twentieth century (2018), while none of the laws of the corner also refer to the destructive phenomenon of using electricity to extract currency cryptocurrencies. And with the logic of narrow interpretation of the law, the perpetrators should be acquitted, while the severity of the act is very destructive and pervasive, if the analogy is accepted, the principle of legality of crimes and punishments is ignored and many corrupt consequences. Following and finally the new legislation due to the prohibition of retroactivity to criminal laws (Article 169 of the Constitution of the Islamic Republic and Article 10 of the Islamic Penal Code 2014) and the perpetrators should be released unintentionally, the solution is again in the hands of judges. Give new life and comprehensive energy security. This is currently being done sporadically in all parts of Iran, so that some judges, citing the Law on Punishment of Disruptors in Industries approved on 02/02/1975, specifically Article 3, which stipulates that "Everyone intentionally Intends to disrupt or sabotage that causes the closure and failure of all or part of the units and facilities mentioned in Article 1 without leading to the destruction of all or part of them is condemned to »The objection that critics. It is considered that the examples of Article 1 of the above-mentioned law do not explicitly mention the name of electricity facilities, and those who believe in the answer believe that in the heart of "power generation centers", which also includes electricity, electricity facilities are included and on the other hand. Mentioning the phrase "such as factories" indicates that the examples are allegorical and, according to the present time, also includes the unauthorized use of electricity and damage to its facilities. A new law that has been legal for nearly half a century and involving a judge to enforce the offense. The law creates a beautiful manifestation of the dynamics of criminal law and the role of judicial description of the criminal phenomenon that balances the goals of criminal justice, such as maintaining public order on the one hand and the defense rights of the parties,

especially the accused, on both sides of the scale. It is the responsibility of the judges.

In another judicial description, the act of committing an example of Article 687 of the Islamic Penal Code adopted in 1996, which is related to the destruction of public facilities, which stipulates that "everyone in public facilities and facilities such as water and sewage, electricity, oil, gas ... "To commit destruction or cause fire or to shut down or any other kind of sabotage." The distribution network considers the act to be subject to the article. In the critique of this interpretation, it is difficult to establish the causal relationship between the perpetrator act and the disorder caused on the one hand and the existence of various other causes such as water shortage, negligence in power plant construction, etc. Critics argue that sabotage cases should be applied objectively, physically, and directly to the facility, not as a result of overuse of electricity. In the words of the article, but the severity of the punishment of this article causes most judges to turn away. In order to reconcile the act with the crime, and in a more balanced interpretation, the act was committed by simply destroying Article 677 of the latter law, which stipulates that Disable »is more applicable and according to the amendments to the law to reduce imprisonment, which includes destruction of up to 10 million tomans, including fines will be increased according to the severity of the act and the amount of electricity consumed, and this criminal method is more consistent with justice. Finally, in another judicial interpretation, judges inferred from Article 1 of the Law on Punishing Unauthorized Users of Water, Electricity, Gas and Sewerage Branches, which stipulates that Information technology to use the mentioned services or to have an unauthorized use by having a branch is condemned to.... Miners are generally defined beyond the power of domestic use and need for non-domestic use. It has a special license, so the act is committed in accordance with this article, it seems, and in terms of paragraph (c) of Article 1 of the Executive Regulations of the same law, approved on 2/5/1400, has defined the unauthorized as follows: "To have a branch or

subscription, to use the mentioned services in violation of the relevant regulations." This interpretation is more compatible with the principles in terms of legal logic, and from the point of view of the date of approval, in order to obtain the legislator's opinion, it is more possible that the action is considered and the punishment of the crime (fine) is more deterrent due to financial motivation. Although the judicial procedure has not been coherent in this regard so far, but the prevailing procedure for unauthorized use of the mining system is to refer to this article and for the mining system itself, they consider it not a crime.

The above two examples, which can be found in many cases, are examples of judges' efforts to provide new interpretations of the relevant laws to maintain public order and indirectly promote a new approach to the role of judges in describing the criminal phenomenon. We will discuss it more in the next and end of the article.

C. The position of the criminal judge in describing criminal law

The role of the judge in dealing with criminal phenomena has gone through many ups and downs throughout history, so that the judge was a very active and absolute role before the new criminal law and the advent of Caesar Beccaria, and often the duty of the judge was the responsibility of the king or The person was appointed to him and this role was not free from political bias, but with the emergence of new movements and the acceptance of the principle of legality of crimes and punishments, the role of the judge was severely reduced, so that the position of judge was limited to law enforcement. This was also the tyranny of judges in suppressing the freedom of individuals in society, which led to the control of this power by determining cases of crime and informing the people about their rights and duties under the supervision of the Judiciary Parliament to play the role of interpreter of laws, but later problems In societies and circumstances of the time, the judge's position was redefined beyond the actor and an active and dynamic role was considered. In general, three factors changed the role of the judge in

the criminal investigation process, which is briefly mentioned.

1- Difficulty of passing the law

Legislation is considered a complex and specialized process in such a way that with the emergence of a new phenomenon, it should be urgently thought about and a solution should be provided, the process of drafting bills and plans, which in our country for more unknown reasons is more than Had cannot provide an appropriate and timely response to the issue, for example, the phenomenon of the emergence of miners in Iran and its consequences cannot in any way delay the action of representatives or the judiciary to determine the task, but must be within the existing laws. An appropriate solution should be drawn up, and this is possible only by giving the judge a role and providing an interpretation, because the final ring of emerging problems that cause controversy is the judiciary and the judge.

2- The moral-conscientious role of the judge

Criminal proceedings, unlike civil litigation, which is responsible for resolving the private disputes of individuals in society (Khaleghi, 2014, 12), also has a more important purpose and should also be responsible for protecting the collective rights of individuals in society so that the criminal judge is trained Ethics also know that in the face of socially reprehensible and sometimes new social phenomena that the legislature later It is aware that it has to react, and this duty also exists before the legislature itself, so that if a law is enacted that is contrary to human rights principles or the constitution, the judge must reduce its distortions with the means of interpretation and show the right path with the hammer of justice. (Shojaei, *ibid.* 196) Therefore, the important role of the criminal judge is possible only with the means of interpretation against new criminal laws and phenomena, and the historical course well institutionalizes this function and the procedure proceeds more rapidly.

3- Update the meaning of the rules

Over time, the collective course of human beings undergoes changes from two

perspectives, in terms of changes in the literature and the meanings of the words used in the laws, such as in the law on sabotage in industries approved in 1974 and the meaning of "power generation" in Over time, we have found that after 4 decades, with the emergence of new issues, the meaning of force has changed and can be reproduced, and on the other hand, the forward movement of society causes new phenomena that did not exist at the time of the law or The phenomenon of gambling on the world price of gold in the betting sites mentioned in the jurisprudence is an example of this, the art of the judge and his tools should be the law that is like a paste under his hands. Move to the end of criminal law, and this is important only for the judge, because in the present century, countless new issues arise daily, many of which the legislator never even knows about in order to determine the task, but because it causes abuse. The rights of individuals can inevitably sit on the judge's table and he must be in the dispute between the law and the rights of the people Wu chooses the needs of the day.

The above are just the most important reasons for accepting the role of a judge in describing a criminal phenomenon, and this leads to a sub-discussion under the heading of the consequences of a judge's interpretation of the judicial process, which is beyond the scope of this article and requires another article.

Conclusion:

The role of the criminal judge is much more evolving today than in the past, so that it has changed from a passive role to a guiding role, and judges in developed countries such as the United States and Europe hold academic seats and try to transform the education system and It has a legislative nature and it seems that the position of the legislator before the judge during the past decades has moved from the state of superiority of the parliament to the judge to the state of equality and sometimes the superiority of judges. Turns out, the needs that the judge is in daily conflict with and the legislator seeks in his spare time and the

solution to meet these needs is transferred from the judge to the legislature and a legal solution is found for it, the natural course of societies indicates the continuation of this cycle Demands that the judge, knowing the rules of interpretation and the tools needed, lower his hammer on the law and direct it to the current source of human needs, something that in Iran, the judicial procedure of its initial steps is scattered. And the trembling is lifted in this direction and there is hope to develop its theoretical and practical foundations in the future.

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