

# New Trends in Iranian Criminal Law and Judicial Practice Concerning Crimes Contrary to Public Morality

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## Abstract

Every year in Iran, tens of thousands of men and women become victims of sexual assault, violent offenses, or cyber-based sexual crimes, with thousands of criminal cases related to sexual offenses being processed in courts. In their most severe forms, sexual crimes and sexual assault primarily affect women and children. Unfortunately, such sexual crimes are increasingly prevalent across most countries, with the number of victims growing daily, leading to numerous challenges and a heightened need for support from national criminal justice systems. Lawmakers are accelerating legislation and increasing legal investments to better support victims and control perpetrators of these crimes. However, these measures have become excessive, exceeding actual needs and real requirements. This legislative approach, in response to sexual crimes, is often inappropriate, and the mass production of criminal standards related to sexual offenses can result in weak, confusing, and ambiguous legal texts. Excessive legal investment frequently leads to "crime proliferation" and "an abundance of procedural exceptions." Such a trend not only fails to suppress sexual crimes but also fails to guarantee the protection of victims' interests through these proliferating and weak laws. The correct approach is for Iran's legislative strategy to be carefully examined through diverse studies, critically assessing existing practices, identifying strengths and weaknesses, and implementing comprehensive reforms within the relevant criminal justice system to provide more principled support for victims of sexual crimes.

**Keywords:** Public Morality, Crimes Contrary to Public Morality, Criminalization, Stringency in Proving Crimes, Sentencing

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## 1. Introduction

Crimes against public morality are addressed in Articles 221 to 261 and 637 to 640 of the Islamic Penal Code, as well as in Articles 14 and 15 of the Computer Crimes Law. The legislator first outlined the categories of sexual crimes in Book Two (Hudud) through Articles 221 to 261. Additionally, due to the importance of this issue, the same law, in Book Five, Chapter

Eighteen, Articles 637 to 640, also addresses crimes against public morality. Besides the Islamic Penal Code, the Computer Crimes Law also addresses this issue in Articles 14 and 15. The main issue to be examined in this article concerns the trends in Iranian judicial practice and criminal law regarding crimes against public morality.

In legal discourse, morality is usually discussed under the term "public morality." Public morality refers to sexual matters that, at certain times, when revealed cause public discomfort and tarnish morality, such as the dissemination of obscene images and acts contrary to public morality. (Jafari Langarūdi, 1999) This type of morality is a level of morality that a particular group of people (not the general public) is interested in preserving and is subject to time and place conditions. (Jafari Langarūdi, 1999)

Based on the definitions of morality provided in various human societies, it can be said that the scope of unauthorized sexual relations and acts contrary to morality and public ethics varies according to place, time, and different social contexts. For example, a behavior that is unauthorized and contrary to morality in one society may be considered legitimate and permissible in another society. (Article 231 of the Islamic Penal Code)

In legal terminology, acts contrary to public morality are defined as follows: sexual matters that, according to the customs and feelings of a society, are considered shameful and should not be engaged in for the purpose of arousal or initiation. If such acts are engaged in for the purpose of arousal or initiation, they constitute an offense against chastity or the initiation of such an offense, not acts contrary to public morality. Therefore, the commission of an offense against chastity and acts contrary to public morality is determined by the perpetrator's intent. (Jafari Langarūdi, 2015)

Crimes against public morality is a general term that includes several crimes, such as adultery, sodomy, and various types of internet sexual crimes, including pornography and online sexual trafficking. All these terms conceptually refer to crimes that violate public morality, but it is not easy to define their specific categories.

The legislator has not provided a precise definition of crimes against public morality in the penal laws, and has not established any specific legal criteria for this type of crime. Therefore, the general elements constituting crimes against public morality are not clearly defined in the penal laws. The legislator has merely listed the categories of crimes against public morality, which in fact constitutes a definition by example rather than a general, comprehensive, and definitive definition, as scholars accept only a general, comprehensive, and definitive definition.

Article 306 of the Islamic Penal Procedure Code stipulates that crimes against public morality shall be directly handled by the competent court. Explanation: The crimes against public morality referred to in this law include hudud sexual crimes as well as ta'zir sexual crimes, such as masturbation and sodomy. Therefore, certain specific crimes related to acts contrary to public morality fall under Article 306. Hence, this article does not encompass every act contrary to morality. Therefore, the enumeration of crimes against public morality in the current Penal Code and Computer Crimes Law is illustrative rather than exhaustive. In other words, if other categories of crimes contrary to public morality occur beyond those specified in the Penal Code and Computer Crimes Law, it is possible to handle them, issue rulings, and determine punishments for such crimes.

## **2. Crimes Against Public Morality in Real and Virtual Relationships**

Crimes against public morality often involve sexual behaviors where an illicit relationship occurs. With technological advancements, the arena of these crimes has expanded from real-world relationships to relationships in the virtual world. Sexual crimes are the number one search topic on the internet, constituting 25% of all web searches. (Skinner, 2005) Internet pornography is easily accessible. With just a few mouse clicks, it can be consumed easily and quickly at home. This can also be done via smartphones. Internet pornography is cost-effective and low-cost. A large number of images (photos and videos) are freely available. The presented menu is practically unlimited. One can find images and videos related to any interest or deviation. The fact that pornography is freely accessible allows individuals to consume large volumes of content and quickly transition from one video to another to find the most exciting scenes. Internet pornography can be consumed without being seen or recognized. This anonymity creates a sense of security and encourages the desire for extraordinary or antisocial behaviors. (Quayle & Taylor, 2003)

This type of sexual behavior, whether in real-world relationships or in the virtual world, is prohibited in Islam and carries punishment. Acts contrary to public morality refer to any sexual or unconventional relationship that is prohibited for all individuals except those who are legally permitted to engage in such relationships according to Sharia and law.

These crimes are generally considered important legal elements in most human societies, with severe punishments due to the irreversible damages they cause. For example, sexual crimes involving violence or against minors, or those committed through deception and trickery, necessitate the imposition of penalties on offenders to protect the private lives of individuals. (Goldoziān, 2005)

An act contrary to public morality refers to any sexual or unconventional relationship that is prohibited for all individuals except those who are legally permitted to engage in such relationships according to Sharia and law. The legislator has not provided a definition of "crimes against public morality" nor has it established specific legal criteria for these crimes. Therefore, the general elements constituting these crimes are not clearly defined. The determination of specific categories of these crimes rests with the judge. Given the principle of legality of crimes and punishments, and in the absence of specific provisions, the criminalization of certain acts contrary to public morality is questionable. The judge's discretion in determining the categories of crimes against public morality and applying personal preferences and perspectives may jeopardize the principle of legality of crimes and punishments.

Punishments for crimes against public morality are specified in the relevant provisions concerning "Hudud," "Ta'zir," and "Deterrent Punishments," as well as in the Computer Crimes Law. There is no provision for "Qisas" or "Diya" in relation to these crimes. Therefore, crimes against public morality can be categorized into three main types:

1. Crimes against public morality subject to Hudud;
2. Crimes against public morality subject to Ta'zir and Deterrent Punishments;
3. Crimes against public morality and public ethics in computer and communication systems.

### 3. Hudud Crimes Against Public Morality

The legislator, in Book Two of the Islamic Penal Code, titled "Hudud," has specified crimes against public morality subject to Hudud in three chapters:

- Chapter One: Hudud for Adultery (Articles 221 to 232),
- Chapter Two: Hudud for Sodomy, Masturbation, and Anal Intercourse (Articles 233 to 241),
- Chapter Three: Hudud for "Qawadi" (Articles 242 to 244).

The term "Hudud" in Arabic means prevention and deterrence. In legal terminology, it refers to the specific punishment prescribed by law. In the Quran, Hudud are prescribed for four crimes: theft, rebellion, adultery, and slander. Similarly, in Hadith, Hudud are prescribed for four crimes: consumption of intoxicants, sodomy, masturbation, and "Qawadi."

The term "Hudud" is applied to certain types of religious punishments because they prevent people from committing unlawful acts contrary to Sharia. In religious terms, it refers to a specific punishment imposed on offenders for certain sins. Hudud means punishment, but specifically a punishment determined by Sharia. According to the Islamic Penal Code, Hudud is a punishment where the type, amount, and quality are specified by Sharia. Article 219 of the Islamic Penal Code states: "The court cannot alter, reduce, or change the type, amount, or quality of Sharia Hudud, nor can it abolish them. These punishments can only be reduced, changed, or abolished through repentance and pardon as specified in this law. Therefore, Hudud punishments are fixed and unchangeable."

In the Islamic Penal Code, five types of crimes against public morality are mentioned under "Hudud," namely: adultery (Article 221), sodomy (Article 233), masturbation (Article 235), anal intercourse (Article 238), "Qawadi" (Article 242), and slander (Article 245).

### 4. Ta'zir Crimes Against Public Morality

Ta'zir means a punishment whose amount is not specified by Sharia and is contrary to Hudud. In jurisprudence, it refers to a punishment for which the Holy Sharia has not specified a specific amount. (Najafi, 2007)

"Ta'zir" in religious terminology refers to a punishment for which the Sharia has not specified a specific amount in most cases.

According to Article 14 of the Islamic Penal Code, Ta'zir is one of the four types of punishments specified in the Islamic Penal Code. Ta'zir is a punishment that does not fall under the categories of Hudud, Qisas, or Diya, and is imposed by law in cases of committing religious prohibitions or violating government regulations. The type, amount, quality of execution, and related regulations concerning reduction, suspension, abolition, and other Ta'zir-related matters are determined by law.

Book Five of the Islamic Penal Code, titled "Ta'zir," has specified special provisions regarding crimes against public morality. Chapter Eighteen of this section is dedicated to crimes against morality and public ethics. If a man and woman who are not married engage in illicit relations or acts contrary to public morality other than adultery, such as masturbation or sodomy, they shall be sentenced to lashes up to ninety-nine. If the act is committed through force or coercion, only the coercer shall be subject to Ta'zir. (Article 637 of the Islamic Penal Code)

## **5. Deterrent Punishments for Crimes Against Public Morality in Cyberspace**

Article 17 of the Islamic Penal Code defines deterrent punishment as a form of punishment such as imprisonment, monetary fines, suspension of business license, revocation of permits, and deprivation of social rights and residence in specific locations or areas, imposed by the government to maintain order and public interest in response to violations of government regulations and systems.

Article 14 of the Computer Crimes Law stipulates that anyone who, through computer systems, communication systems, or data carriers, publishes, distributes, or trades obscene content, or produces, stores, or maintains such content for commercial purposes or corruption, shall be sentenced to imprisonment from one hundred and one days to two years, or a monetary fine from five million (5,000,000) to forty million (40,000,000) rials, or both.

Article 15 of the same law further states that anyone who, through computer systems, communication systems, or data carriers, engages in the following acts shall be punished as follows:

a) If they incite, entice, threaten, or bribe individuals to access obscene content, deceive them, facilitate access to such content, or teach them how to access it, they shall be sentenced to imprisonment from one hundred and one days to one year, or a monetary fine from five million (5,000,000) to twenty million (20,000,000) rials, or both.

Engaging in such acts regarding obscene content shall result in a monetary fine from two million (2,000,000) to five million (5,000,000) rials.

b) If they incite, entice, threaten, or invite individuals to commit crimes against public morality, use narcotics or psychotropic substances, commit suicide, engage in sexual deviations, or commit violent acts, or deceive them, facilitate the commission or use of such acts, or teach them how to do so, they shall be sentenced to imprisonment from one hundred and one days to one year, or a monetary fine from five million (5,000,000) to twenty million (20,000,000) rials, or both.

## **6. Emerging Issues with Sexual Crimes (Pornography) in Cyberspace**

For some, online sexual activity and pornography consumption can serve as a means to escape daily problems and avoid discomfort. (Young, 2008) Pornography consumers escape from worries and retreat into a fantasy world with fewer demands. During viewing sessions, their attention is solely focused on the selected sexual images. The discomfort experienced in daily life is replaced by an alternative activity where the consumer regains a sense of control over the moment. This coping mechanism can lead to impulsive or automatic consumption of pornography without considering the consequences or long-term effects.

Emotional avoidance and relief from discomfort negatively reinforce pornography consumption, while sexual pleasure derived from masturbation positively reinforces it. For some, the relief, well-being, excitement, and pleasure obtained lead to increased internet use at the expense of time spent on activities and social interactions.

### 6.1. *Pornography Addiction*

Regular consumption of pornography can lead to addiction symptoms and decreased arousal, prompting the consumer to seek newer content to experience the same level of intensity. The pleasure associated with discovering new and exciting content reinforces the behavior (similar to pathological gambling, where occasional wins occur). This intermittent reinforcement is effective for learning new behaviors. Once learned through this mechanism, extinguishing such behaviors becomes difficult. According to Cooper et al. (2002), 17% of internet pornography consumers meet the criteria for "sexual compulsion." (Cooper & et al., 2002)

### 6.2. *Transition from Addiction to Deviant Pornography*

For some, the phenomenon of pornography addiction can lead to seeking "harder," more unusual, bizarre, deviant, or illegal content to achieve the same or stronger level of arousal. Thus, the consumer may progress from scenes of domination to scenes of restriction, then to scenes of sexual assault with injuries, and so on. Others may move toward child pornography, which depicts younger children and increasingly explicit and violent elements. This phenomenon is present in 13% of pornography addicts. (Wells et al., 2007) It is important to note that child pornography consumers form a heterogeneous group. For some, consumption is associated with a long-term sexual interest in children and helps maintain and strengthen this interest. Some consumers limit themselves to certain images, while others contact individuals under the legal age via the internet to engage in sexual conversations or participate in online sexual activities. Some propose meetings for sexual purposes. Ultimately, some resort to sexual assault through contact.

## 7. **Legal Implications of Crimes Against Public Morality in Iranian Criminal Law (Review of the Principle of Non-Disclosure)**

Crimes against public morality, as examined by jurists in jurisprudence and their legal implications, have been discussed in detail in Iran's legal system, including the Islamic Penal Code, the Penal Procedure Code, and the Computer Crimes Law. Based on public beliefs, cultural norms, and religiously grounded legal prohibitions regarding crimes against public morality, the principle of concealing the crime and preventing its disclosure by the offender, the public, and the judge is followed. This policy is based on the emphasis by Sharia on preventing the spread of obscenity. The Islamic criminal policy regarding crimes against public morality is strict in proving the crime, and this policy includes crimes committed in secret. The public nature of these crimes and the status of the victim's honor are the reasons for implementing this policy.

In common practice, committing such sins is considered shameful and should not be disclosed publicly. Article 102 of the Islamic Penal Procedure Code prohibits any investigation or inquiry into crimes against public morality and does not permit questioning any individual regarding such matters.

The legislator, in drafting the 1392 Penal Procedure Code, established the principle of non-investigation and designated the court as the sole authority for handling these crimes due to the prevention of spreading obscenity, although in judicial practice, such investigations sometimes occur in the prosecutor's office.

Article 241 of the 1392 Islamic Penal Code stipulates: "In the absence of legal evidence proving the occurrence of crimes against public morality and if the accused denies any investigation or interrogation to uncover hidden or concealed matters, such investigation and interrogation are prohibited." Cases involving violence, coercion, harassment, abduction, or negligence, or cases deemed to constitute violence under this law, are exempt from this provision.

Engaging in acts contrary to public morality harms social norms, family systems, and public order, and is considered a crime. From a public perspective, the public prosecutor may intervene as the representative of society in such cases. Crimes against public morality, besides harming public order, often harm the rights of individuals and cause damage, making these crimes have both public and private aspects. In this regard, only the private complainant may initiate a complaint.

Articles 8 and 9 of the Islamic Penal Procedure Code define conviction as resulting from the commission of a crime and consider the crime as having a divine aspect, possessing two aspects: public and private. In the public aspect, it refers to violations of divine limits or rights of society and disruption of public order, while in the private aspect, it refers to violations of the rights of specific individuals. The commission of a crime also leads to the establishment of two lawsuits: a public lawsuit

to protect divine limits or societal rights and public order, and a private lawsuit to claim damages or seek punishments that are legally recognized as private rights.

Crimes against public morality subject to Hudud are God's rights, and the offender is prosecuted to protect divine limits and is punished. However, in crimes against public morality subject to Ta'zir and deterrent punishments, due to violations of societal rights and disruption of public order, the offender is prosecuted and punished. In crimes against public morality, despite having dual aspects, the public aspect prevails over the private aspect, making them non-waivable. Even if the victim forgives or consents to the act, the public prosecutor, as the representative of the public, pursues the case.

In Islam, there is no emphasis on uncovering and proving individual and private crimes, and God's will is that such matters should not be easily proven to preserve the dignity of individuals, even if they are sinners, within society. (Khomenei, 2013)

The 1392 Penal Procedure Code, in Article 102, excepts four specific cases from the prohibition of investigation and inquiry into crimes against public morality. These cases are:

1. When the crime occurs in public view;
2. When there is a private complainant;
3. When the crime involves violence;
4. When the crime is organized.

## **8. Proof of Crimes Against Public Morality**

The principle of innocence is fundamental, meaning that any person under investigation is considered innocent until proven guilty. At this level, the importance and necessity of proof become evident, as it is a key element for convicting or acquitting a person. In the process of uncovering the truth, evidence plays a fundamental role. Criminal trials must provide a logical method for distinguishing between the guilty and the innocent. The importance of evidence is particularly evident in criminal proceedings, where the case is handled based on evidence to uncover the truth.

Every person accused of a criminal offense has the right to be presumed innocent until proven guilty in a public court where all necessary guarantees for defense are provided. (Universal Declaration of Human Rights, Article 11) The Constitution of the Islamic Republic of Iran recognizes the principle of innocence: "The principle of innocence is recognized, and no one is considered a criminal (offender) under the law unless their crime is proven in a competent court." (Article 37 of the Constitution of the Islamic Republic of Iran) The Islamic Penal Procedure Code also affirms this principle: "The principle of innocence is recognized. Any action restricting freedom, infringing on personal privacy, or entering private spaces is not permissible except by law, with due regard to regulations and under judicial supervision, and in no case should such actions harm the dignity and honor of individuals." (Article 4 of the Islamic Penal Procedure Code)

Based on this principle, which is endorsed by the Universal Declaration of Human Rights, the Constitution of the Islamic Republic of Iran, and the 1392 Islamic Penal Procedure Code, any person under criminal investigation is presumed innocent until their crime is proven by a competent court. According to this logic, under criminal laws, if a person's crime is not proven, they cannot be considered guilty or punished.

Proof can be defined as a means to confirm the truth of what is claimed. Proof of a fact is something that logically leads to the conclusion that it exists or is true.

Evidence is a key element in the proceedings. Evidence is what reveals the truth. A criminal trial can be defined as a process where the judge intervenes to resolve disputes between a criminal and one or more victims through the application of law and evidence.

For the proof of any matter, both in criminal and civil cases, the claimant must provide evidence and substantiate their claim. The proof of a crime in criminal cases depends on the presentation of clear evidence to establish the crime; otherwise, the principle of non-existence of the crime applies. The Islamic Penal Code has not provided a definition of evidence for proving crimes, nor has it established a separate section on evidence for criminal claims. In this code, methods of proof are mentioned under the heading of evidence for criminal claims in the sections on Hudud crimes, Qisas, and Diya: Evidence for proving a crime consists of confession, testimony of four just men, oaths, and the judge's knowledge. (Article 160 of the Islamic Penal Code)

## 9. Discovery of the Crime

The discovery of a crime refers to actions taken after becoming aware of its occurrence to preserve evidence, apprehend the offender, prevent escape, and gather information related to the committed crime. (Article 172, Paragraph B of the Islamic Penal Code)

Crime discovery is the notification of the investigating authority about the occurrence of the crime, and how the prosecutor becomes aware of the nature of the crime is related to the methods and means of crime discovery. ([Ārefiān & Khārowī Murlū, 2017](#))

Crime discovery, prosecution of the accused, preliminary investigations, method of handling, issuing verdicts, enforcement of judgments, and respect for the rights of the accused and victim are all carried out according to the regulations of the Islamic Penal Procedure Code. The Islamic Penal Procedure Code, in Article 306, specifies the conditions and method of handling crimes against public morality: "Crimes against public morality shall be directly handled by the competent court."

Explanation: The crimes against public morality referred to in this law include hudud sexual crimes as well as ta'zir sexual crimes such as masturbation and sodomy.

The 1392 Islamic Penal Procedure Code, considering the principle of concealing the crime in Islamic Sharia, has prescribed a special or direct method of handling sexual crimes. In this method of criminal procedure, the case is directly presented to the criminal court without the involvement of the prosecutor's office or the preparation of a complaint. The purpose of expediting proceedings in legal systems is to accelerate the criminal process for minor crimes or crimes involving children and adolescents. Accelerating proceedings for serious crimes, such as those involving long-term imprisonment, seems impossible due to their importance and legal complexity, as these crimes require thorough and two-stage investigation. Specialized handling of cases in legal systems of some countries, without the presence of a jury and mostly for simple crimes such as traffic violations or crimes involving children and adolescents, which are protective and based on higher interests, is common. ([Fereyd Zarghamī & Mahra, 2014](#))

The 1392 Islamic Penal Procedure Code, in Articles 102 and 106, has taken steps to implement the principle of concealing the crime by establishing a prohibition on prosecution and investigation into crimes against public morality, as well as direct handling. The legislator, by establishing direct handling of these crimes in court, aims to prevent the degradation of the act, the dissemination of news related to these crimes, the spread of obscenity, and the protection of public interest and the preservation of good morals. Therefore, strict measures have been adopted to prevent the proof of these crimes and the disclosure of their details.

The ambiguity and lack of specificity in the categories of crimes against public morality in Article 306 of the Islamic Penal Procedure Code, along with the specialization of handling sexual crimes, has led to disputes over judicial authority. This legal article lists crimes against public morality as hudud sexual crimes and ta'zir sexual crimes such as masturbation and sodomy, but does not specify other sexual crimes such as "Qawadi," trafficking women for obscenity, establishing centers of corruption and obscenity, and maintaining illicit relationships through messaging and electronic communications. The sexual crimes listed in this article all involve physical sexual contact. Therefore, other crimes related to illicit relationships or sexual crimes should be considered within the jurisdiction of the prosecutor's office according to general rules.

Thus, the sexual crimes defined in Article 306 of the Islamic Penal Procedure Code encompass a narrower concept of crimes against public morality, where physical contact and sexual relations between two individuals in forms of adultery, sodomy, and masturbation are considered. The theory that limits sexual crimes to physical contact excludes a large number of sexual crimes and similar acts from the scope of specialized handling.

However, it should be noted that, given the obligation of judicial systems to secure people's rights and compensate victims for damages, the disclosure of the crime and the identification of the offender should be a concern for the legislator. Most of these crimes are committed secretly, and the offender, by exploiting this situation, inflicts physical and psychological harm on the victim, making the investigation and proof of the crime mandatory. In some judicial systems, the victim's intervention in the prosecution process to secure their rights is recognized, and not only is concealing the crime not prohibited, but the offender is required to appear in court and be accountable. Therefore, in cases where a private complainant exists, the policy of concealing the crime does not adequately secure the victim's rights.

Preserving evidence and preventing its destruction in specific cases requires rapid, precise, and technical investigations. The involvement of the investigator in investigating serious crimes such as sexual assault greatly facilitates evidence collection and accelerates investigations. Since the criminal court, which is responsible for investigating these crimes, is usually located in the provincial capital, the golden period for handling the case is lost when the case file and the accused or complainant are sent to this authority. If this period coincides with holidays, investigations may face even more serious difficulties.

Furthermore, handling cases without a complaint and entrusting investigations to court investigators who are responsible for investigations is not fair and is incompatible with the principle of judicial impartiality, as this practice can lead to the issuance of severe punishments such as execution and stoning. Additionally, in some cases, the criminal court must appoint an attorney to the local court where the crime occurred, which creates a delay, and the court without jurisdiction must conduct investigations according to the opinion of the criminal court. This practice leads to victims' reluctance to report crimes due to lack of confidence in the efficiency of law enforcement agencies and judicial authorities.

Moreover, separating the prosecution phase from the preliminary investigation and trial phases is one of the fundamental principles of mixed judicial systems, according to which preliminary investigations for all crimes are the responsibility of an independent authority known as the investigating judge. The prosecutor or public prosecutor must refrain from any involvement in investigations and can only request the court to handle the crime after the investigation is completed by the investigator and a complaint is issued. Despite Iran's adoption of a mixed judicial system, the legislator has never strictly adhered to the separation of the prosecution authority from the investigative authority. From the beginning of drafting the Islamic Penal Procedure Code, the failure to respect this principle has been evident, and in the 1392 Islamic Penal Procedure Code, the legislator has expanded the cases where this principle is disregarded.

Handling serious crimes with severe punishments without preliminary investigations by an independent investigating judge is not fair or just, as it inevitably deviates from the principle of impartiality, which is one of the strategic principles of Article 3 of the Islamic Penal Procedure Code. Undoubtedly, the necessity of impartiality and avoiding bias in investigations and trials requires the independence of the investigating judge from the prosecuting and trial judges. The court's involvement in preliminary investigations of sexual crimes and the assignment of different roles to the investigating judge significantly reduces the impartiality of the individual who must simultaneously perform the duties of prosecution, investigation, and trial. The preliminary investigation process of sexual crimes, considering the high importance and sensitivity of these crimes, must be conducted as quickly as possible. If not done with sufficient precision and care, it will make it difficult to obtain evidence in the future, especially since the legislator has established a judicial evidence system for these crimes.

The legislator, in Articles 241 of the Islamic Penal Code and 102 of the Islamic Penal Procedure Code, has exempted the following cases from the principle of concealing the crime: 1. The possibility of committing the crime through violence; 2. The possibility of coercion into a crime against public morality; 3. The possibility of harassment in a crime against public morality; 4. The possibility of negligence in a crime against public morality; and 5. The existence of a private complainant in a crime against public morality. The legislator has accepted the possibility of investigation and inquiry into these crimes. The reason for the legislator's deviation from the principle of concealing the crime is to secure the rights of the public and compensate the victim. In the five cases mentioned above, concealing the crime and failing to investigate would result in the victim's rights being lost, making the concealment of the crime unjust.

Any prosecution and investigation into adultery and sodomy and other crimes against public morality is prohibited, and questioning any individual regarding this matter is not permissible, except in cases where the crime occurs in public view or there is a private complainant, in which case prosecution and investigation are limited to the scope of the complaint or the visible circumstances as determined by the court. (Article 102 of the Islamic Penal Procedure Code) In the absence of legal evidence proving the occurrence of crimes against public morality and if the accused denies any investigation or interrogation to uncover hidden or concealed matters, such investigation and interrogation are prohibited. Cases involving violence, coercion, harassment, abduction, or negligence, or cases deemed to constitute violence under this law, are exempt from this provision. (Article 241 of the Islamic Penal Code)

## 10. Criminal Policy Governing Crimes Against Public Morality

Crimes against public morality have existed since the beginning of human civilization. These crimes have appeared in different eras, and their commission has prompted societal reactions, often in the form of punishment, which has varied in severity and weakness according to the specific conditions of each period. Iran's criminal policy has chosen a punitive model to deal with this group of crimes. In this model, among three models: 1. Punitive, 2. Reform and Treatment, and 3. Restorative, the punitive model with a deterrent approach has prevailed. This approach has existed both in pre- and post-revolutionary regulations, but with the victory of the Islamic Revolution and the establishment of religious regulations, this dominance has increased.

After the victory of the Islamic Revolution, with the influence of populism on criminal policies, some behaviors contrary to public morality have been criminalized with lighter punishments, and penalties have been imposed for them.

At first glance, Iran's criminal policy in dealing with crimes against public morality appears to be punitive with a deterrent approach. However, with the introduction of rules such as "Tawbah in Hudud," the prediction of compensation to the victim in specific cases, and the foundations and capacities of the reform and treatment and restorative models, these models are also visible in the policy.

The legislative and judicial criminal policies in the field of crimes against public morality have presented different models, and judicial practice has not adhered to these policies but has deviated from them. Moreover, populism in criminal policy, the media's focus on the crime, and the specific characteristics of the victim or offender have significantly influenced the judicial criminal policy towards the punitive model. Despite the strict criminal policies, the statistics of these crimes indicate minimal success of the criminal policy governing crimes against public morality.

In existing doctrines, the concept of criminal policy has evolved beyond merely responding to crime and is not limited to a purely punitive response from the criminal justice system. Other legal systems, such as civil, tax, and others, also respond to crime or deviance in proportion to the situation. In this context, the response to criminal phenomena has moved beyond formal and governmental forms and involves civil society in various ways. The effectiveness or ineffectiveness of criminal policy in dealing with crime and reducing its rate is influential, and the proper use of criminal policy and the utilization of the capacities of other legal institutions are essential.

The victory of the Islamic Revolution and the establishment of Article 4 of the Constitution of the Islamic Republic of Iran have obligated the Islamic Consultative Assembly to align the country's laws with religious regulations. Crimes against public morality have been subject to Hudud, and punishments prescribed by Sharia have been considered for them.

Iran's criminal policy, from the first regulations concerning crimes against public morality, known as the Hudud, Qisas, and Diya Law of 1361, to the Islamic Penal Code of 1392, has not undergone significant changes in how it deals with crimes against public morality subject to Hudud. Only in crimes against public morality subject to Ta'zir and crimes against public morality and public ethics in cyberspace, as specified in the Computer Crimes Law, have changes occurred. The promulgation and implementation of the Islamic Penal Code of 1392 indicate changes in the legislator's thinking in the field of crimes subject to Hudud.

Judges, despite being obligated to follow regulations and implement laws in the process of law enforcement, face the realities of the actual situation and the shortcomings of legislative criminal policy. To address these deficiencies, they implement their own interpretations and understandings. On the other hand, the legal authority of the judge allows him to use all available tools and facilities to not only comply with legal obligations but also to consider temporal and spatial circumstances, the nature of the crime, and the characteristics of the offender and victim, thereby balancing between punitive and reformative policies.

In the first decade after the victory of the Islamic Revolution, judicial practice followed the legislative policies, adopting a strict and punitive approach. However, in recent years, under the influence of social circumstances and prevailing conditions, judicial practice has gradually moved away from strict punitive policies and, despite the dominance of punitive and deterrent approaches in laws and regulations regarding crimes against public morality, especially crimes subject to Hudud, judicial practice has shown little inclination to implement this approach in most cases. Instead, it has sought to avoid proving crimes against public morality, especially those subject to Hudud, by utilizing legal loopholes, and has aimed to balance between punitive and reformative approaches by considering the victim's rights and compensating for the harm caused, while individualizing punishments.

Courts across the country, in proving crimes against public morality and determining punishments, have applied strict policies based on the circumstances and conditions at the time of the crime, the personality of the complainant and offender, the social effects of the crime, and the specific circumstances and scope of the committed crime. In some cases, where the scope of the crime was limited or specific circumstances of the victim and offender required it, they have shown leniency and tolerance in proving the crime and imposing punishment.

The criminalization of many suspicious behaviors as acts contrary to public morality, the inclusion of numerous cases under the title of "Mufsid fil ardh," the expansion of the title of "Zina" to violent acts, the imposition of the death penalty for such acts, and the recognition of the Revolutionary Court as competent to handle these crimes indicate the legislator's strict approach toward offenders of such crimes. (Tāhiri, 2013)

However, the legislator has shown attention to reformative and treatment methods for offenders of these crimes in the Islamic Penal Code of 1392. Article 225 of this law converts the punishment of stoning to 100 lashes if the crime is not proven beyond doubt. Limitations on the conditions of "Hadd," the determination of "Qalb" and "Akthar" in the punishment of Ta'zir lashes, and the reduction of the maximum from 99 to 74 lashes, the abolition of the punishment for elderly adulterers, the elimination of the punishment for shaving the head and public shaming, and the removal of the punishment of exile in the first degree of "Qawadi" crime are other examples of this change in approach.

The provision of the principle of "Dara" and the non-proving of crimes due to doubt or uncertainty in the conditions of the crime's occurrence or criminal responsibility, as stated in Articles 120 and 121 of the Islamic Penal Code, is among the most important indicators of the legislator's reluctance to apply and enforce punitive punishments. This approach is also evident in judicial policies. Accepting doubt in crimes subject to Hudud, not considering police reports sufficient, and doubting the conviction of a complainant for adultery when the complainant claims it was committed through violence or coercion are examples of the judicial practice's lenient approach.

In a case based on the complaint of Mr. B.M. against Ms. A.F. and Mr. M.Sh. Ms. A.F. is accused of committing adultery with Mr. B.M. and Mr. Sh. is accused of committing adultery without the protection of the marriage. The complainant claims that Ms. A.F. was in a temporary marriage with him and later married Mr. Sh. Ms. A.F. denies the complainant's claim, stating that due to disagreements, the complainant expelled her from the house and paid part of her dowry, and she later married Mr. Sh. Despite the complainant's denial of the temporary marriage, the First Branch of the Ardabil Criminal Court considered this as a doubt regarding adultery and issued a verdict of innocence based on the principle of "Dara." This verdict was confirmed and upheld by the Supreme Court's Decision No. 91000766-02/11/1391 from Branch 6.

## 11. Conclusion

Crimes against public morality, given their nature and characteristics, deserve special sensitivity and attention, and our criminal and penal laws' response to these crimes is based on jurisprudence, which requires that all bills and proposals submitted to the parliament be checked for compatibility with Sharia, a task also performed by the Guardian Council.

From a jurisprudential and legal perspective, the response to crimes against public morality in the country's legislative system has been flawed and creates ambiguity. For example, proving adultery through violence may involve difficulties. According to Articles 172 and 199 of the Islamic Penal Code, the confession of the perpetrator and the testimony of four just men are required, which rarely occurs, and in most cases, sufficient evidence for proving adultery through violence is not available, leading the judge to face doubt and create ambiguity.

In some cases, there is a legal gap in protecting sexually abused women. The second explanatory note of Article 224 of the recent Islamic Penal Code uses ambiguous terms such as "if the woman is not willing to have sex with him." The issue of consent or lack thereof in Iranian criminal law has a patriarchal doctrine that undoubtedly makes it difficult to prove the woman's lack of consent. Another issue in the text of the same article is the use of the term "minor," which the legislator should have specified the age, as "minor" has a very broad definition.

Another criticism of the Islamic Penal Code is the limitation of sexual assault to adultery in Article 221 of the Islamic Penal Code and its criminalization, while a large portion of sexual crimes that threaten our moral security do not necessarily involve sexual penetration but cause damage comparable to adultery. Sometimes penetration does not occur, but the victim is forced into other forms of immoral relationships for which there is no legal remedy.

In addition to limiting sexual assault to adultery in the above article, the legislator, in the second explanatory note of Article 114, has complicated the application of punishment by using the issue of repentance and stated: "In adultery and sodomy, the perpetrator shall be sentenced to imprisonment or Ta'zir lashes of degree six, or both, if they repent." The use of repentance in cases involving violence is problematic. Repentance has specific conditions, but its criminal form is not precise.

To date, the country's criminal laws do not have a legal text for sexual crimes and criminal protection of victims of such crimes, whereas in other countries, sexual crimes are categorized. Our law only has the crime of adultery through violence, which is not applicable to sexual assault through violence, as the evidence required for proving it is different, and the handling method varies; this is a challenge.

Another issue in social support for sexually abused women is that these women, after being sexually assaulted and victimized, become individuals whose presence in society is not accepted, and society defines a new identity for them because they are no longer ordinary girls. Their families do not accept them; this is another form of injustice and oppression they endure. Our laws in sexual crimes have only focused on punishment. Since the punishments have not been appropriate and legal protection has not been provided to the victims, and these victims, who are intertwined with class, ethnicity, marginalization, and nationality, are viewed by society with contempt, it is certain that these individuals cannot defend themselves.

These victims often have no way to prove the assault due to legal and cultural flaws, and their families and relatives do not support them, living with a sense of injustice and victimhood in society, which harms the mental health of society.

However, in response and confrontation with crimes against public morality, the dominance and supremacy in the country's criminal policy have been with a punitive and retributive approach. Of course, the use of the capabilities and potentials of other approaches, such as reformative, therapeutic, and restorative, has not been overlooked by the country's criminal policymakers.

### **Ethical Considerations**

All procedures performed in this study were under the ethical standards.

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### **Conflict of Interest**

The authors report no conflict of interest.

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