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Explanation and study of the evolution of legal regulations related to the crime of gambling in Iranian criminal law

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Abstract

Gambling means playing with special equipment that is often accompanied by winning and losing, and in which the loser is required to pay money or valuables to the winner. Gambling has been foreseen in terms of its jurisprudential history in the laws and has undergone changes over time with new developments in the Islamic Penal Code. The aim is to conduct a necessary investigation in terms of changes in new articles related to gambling and the emergence and development of spaces through which gambling is possible, and how the approach of Iranian criminal law in the existing reforms against gambling has been carried out. It is also careful to what extent the legislator has foreseen and legislated in this regard, which requires special attention to this criminal title. The method of conducting the present research is descriptive-analytical. The findings of such a study revealed in summary that gambling, due to its religious sanctity and the lack of significant punishment in the previous articles, has increased the intensity of the fight against gambling in the recent amendment, in contrast to its destructive effects, whether in the traditional or virtual space. In fact, the legislator has chosen an intensified and serious approach in this regard in order to fight this crime, which severely affects the financial, psychological and comfort aspects of society. In the amendment to the law, it has considered both the virtual and traditional spaces together, which is due to the urgent need to confront this crime and the spread of this crime in the present and future. The legislator has precisely stipulated in these articles that even if the bailiffs do not perform the relevant duties according to Article 710 of this amendment, they will face the punishment of dismissal and imprisonment or a fine. This was important to increase the psychological security of the society. In the amendment to the new law, it has been organized and placed together absolute and restricted crimes, it has mentioned the material element of this crime and criminalized it article by article like the previous articles. In fact, due to the financial nature of gambling crime, efforts have been made to address and punish this expanding phenomenon through traditional and virtual space together, rather than separately in the computer crime law regarding cyberspace, especially through new tools such as digital currencies or online gambling.

Keywords: Gambling, financial crime, betting, lottery, winning and losing.

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Introduction

Gambling is a contract between two or more people who play a specific game, in which if each of them wins, the losers will give him a certain amount of money. In gambling, skill, bluffing, and luck are effective factors in winning. Since gambling is considered a financial crime, in the previous law it was dealt with by a relatively short prison sentence and a small fine that was not very deterrent, but in its new amendment, the concept of gambling has become more general and includes gambling, betting, and lotteries. On the other hand, considering the financial nature of gambling, in the new amendment, its financial treatment and deterrent aspect will be considered by predicting a significant fine. On the other hand, crimes through cyberspace, which online gambling is not an exception, are progressing and spreading, and the legislator has criminalized cyberspace alongside traditional space in the amendment of the relevant articles, while there was a separate special law for computer crimes in this regard. Gambling today is not only considered in the traditional space, and the existence of virtual currencies and digital cryptocurrencies has given rise to a wide range of these crimes. It should be emphasized that gambling through digital currencies has become much easier. Gambling today is very popular in cyberspace and is expanding in the form of seemingly reasonable events, but in fact, in a gambling-like manner, betting, and lotteries, and has involved many people in this regard due to the use of cyberspace and its wide scope. There are other studies regarding gambling and the use of virtual currencies, but due to the amendment of the relevant materials, it seems that there is a need for further examination in the upcoming article. The necessity and innovation of the research is also due to the existence of new laws and the examination of regulations on the relevant subject. This article seeks to answer these questions: What is Iran's legislative criminal policy towards gambling and its types? Are the existing laws sufficiently coherent and strong to effectively deal with this phenomenon? What is the explicit and modern approach of the legislator in enacting and amending the new law? In the following article, the hypothesis is that Iran's legislative criminal policy has chosen the approach of complete prohibition and criminalization towards gambling and its types. The purpose of the existing laws regarding gambling and its types, despite the emergence of tools facilitating this crime, is still not sufficiently coherent and strong. The legislator seems to have considered financial penalties in amending the new law compared to the previous law with high amounts of cash fines for this crime of gambling and its types, considering the self-imposed nature of the gambling phenomenon, which is a financial crime. The purpose of the following article is to express the legislator's new will and take a more severe approach towards gambling, and finally to re-examine the existing gaps in combating this crime, both in the traditional space and in cyberspace, which can be examined by students and the legislature in formulating the relevant law and enacting laws for the aforementioned gaps on the relevant subject and its new tools in this regard. The research method in the following article is descriptive-analytical in order to obtain the author's desired result.

1- The article has been compiled into four sections, the first of which is about the history of gambling, the second is about explaining the concept of gambling, the third is about examining Iran's legislative criminal policy in the previous law and the new law, and the fourth is about examining and explaining the legislator's explicit and new approach in enacting the new law.

History of Gambling

According to what economists say, a growing economic system is a system in which the production of goods and services increases by any means possible, ultimately leading to an increase in capital and labor. In this regard, legislators are trying to pave the way for sustainable economic growth by enacting appropriate regulations and removing obstacles to the production of capital and labor from the activists in this field. One of the obstacles that makes the path to using capital for production and employment uneven is the use of financial resources from gambling as an unproductive economic activity. By spending large amounts of capital on their games, instead of playing a role in generating wealth in society, gamblers waste their achievements overnight and without earning anything in return, causing disruption in the economic system. Regardless of the economic disadvantages of this type of activity, the destructive social effects of the spread of this game as entertainment among people are also of concern. However, in many countries, political and economic authorities, in addition to adopting non-repressive methods, have used criminal law as a tool to combat this anti-economic and anti-social phenomenon and have provided sometimes severe criminal laws to combat it. In Iran, there have been and are special criminal regulations in this field, both before and after the Islamic Revolution, which shows the attention of the authorities to the negative consequences of the spread of this game. In addition, the religious prohibition of gambling has prompted the Islamic legislator to revise the criminal regulations and increase the severity of the fight against gambling. (Habibzadeh, 2010, 47)

Archaeologists discovered the first signs of gambling tools made from sheep or dog ankle bones in caves that are forty thousand years old, dating back to the era before the emergence of writing. During the great civilizations of history, special gambling squares with a history of 4,300 years in ancient China, dice with a history of 4,000 years by Greek soldiers, and ivory dice with a history of 4,500 years in the pyramids of Egypt have been discovered, all of which indicate the ancient past of this pastime throughout history. In Roman civilization, historical writings also indicate that the ancient Romans were insanely fond of gambling, and some sources even state that when Roman soldiers imagined that they had crucified Christ (PBUH), they gambled over the division of his clothes and personal belongings. The same source states that the Romans' excessive interest in gambling was so great that they built the first casino in history in their country so that they could also engage in this game in entertainment venues. On the other hand, Native Americans and Native Americans believed, based on their religious beliefs, that their gods gambled. (Habibzadeh, 2010, 49)

Therefore, the history of gambling has shown an interest in gambling and the use of any means for gambling. In the first case, we discussed the history of gambling, and in the second case, we will explain the concept of gambling and its types.

1- Explaining the concept of gambling

In fact, the word gambling (gambling is correct in the sense of a shortened form of qaf, and it is a misnomer that has been overcome due to frequent use) means playing with special equipment that is often accompanied by winning and losing, and in which the loser is required to pay money or valuables to the winner. The word gambling has an Arabic root and was introduced into Persian from Arabic due to its jurisprudential roots. Gambling is a verb and conveys the duality of the verb. It means something that sometimes decreases and sometimes increases; just as the moon is sometimes incomplete and sometimes complete. The word taqamar that we hear also means that he made a bet with someone, then won over that person. (Khaleqi, 1400, 6-8)

The Holy Quran also says in Surah Al-Ma'idah about the abomination of gambling: "They ask you about gambling and wine. Say: In them is great sin and loss, and there is profit (in material terms) for people, but their sin outweighs their profit." Explaining the concept of gambling and the difference between gambling and betting, which in the new law also includes betting and lottery regulations related to gambling, it should be said: Betting, which is interpreted in Arabic from the word "rahan", means making an agreement between two or more people in which an agreement is made on the occurrence or non-occurrence of a subject. In other words, betting is a contract between two parties in which one proves a certain matter and the other denies it, and they undertake that if each of them is right, the other will give him a certain amount of money. However, gambling is a contract between two or more people who play a special game, and if each of them wins, the losers give a certain amount of money to the winner. (Khaleghi, 1400, 7)

The important point here is that in gambling, skill, bluffing and luck are effective factors in winning, while betting is exclusively based on luck and fortune.

2- A study of Iran's legislative criminal policy in the previous law and the new law

In Chapter 28 of Book 5 of the Penal Code approved in 1375, the phrase (open consumption of alcoholic beverages, gambling and profligacy) was amended to the phrase (open consumption of alcoholic beverages, profligacy and winning and losing (gambling, betting, lottery)); in fact, here the title of gambling has become more general and includes (gambling itself in a specific sense and betting and lottery) and the explicit title of winning and losing, which is a general concept, has been stated and referred to in this law. In the previous law and before the recent amendment, the articles related to gambling did not address the types of gambling, but in the new amendment, the concept of gambling has become more general. So the first more general feature is the concept and clarification of the three cases of gambling, betting, and lottery in the text of the amendment.

Analysis of Article 705 of the Islamic Penal Code (Penalties and Deterrent Punishments): Considering the separation of crimes into real crimes and virtual crimes and taking into account the existence of the Computer Crimes Law, the legislator has consciously stipulated and criminalized traditional and virtual crimes together due to the urgent need to combat gambling. This prediction of the prohibited act in the aforementioned article as a combination is very noteworthy. The precision in the punishment prescribed in the aforementioned article is such that the approach to punishment is considered a heavy fine and maximum fight against gambling.

Its material element consists of three clauses: in the first clause: any type of explicit or implicit agreement that is limited to the explicit purpose of the title of this article called winning and losing, where two losers or losers or a third party are committed to paying explicit items (money, property, benefit, service or financial privilege) directly or indirectly to two winners or winners or a third party. (The explicit payment items are like the criminal title of fraud) [The title of the obligation to pay is the same as the commitment to these matters] In this first clause, those matters and agreements are stated absolutely. (Saolani, 2014) The second clause: any type of participation that is not limited here is consistent with participation in a crime in the Penal Code, which punishes the independent perpetrator of the crime and stipulates that the participation of individuals in terms of predicting (a specific issue or assuming the occurrence of a specific matter) will include the above punishment, which ultimately requires them to pay the explicit items of the first clause to the losers or third parties and an agreement has been made on them. In this clause, the participation of individuals is stated absolutely. In the third paragraph: The participation of two or more persons who participate in this paragraph in conducting a lottery and drawing lots absolutely with any matter based on chance or random selection, as a result of which the losers of the lottery must pay the winners who, based on the rules of that lottery that have been defined and agreed upon between them, undertake to pay the explicit items of the first paragraph, or if it was previously with those winners and has already been paid, it will not be withdrawn.

In this article, in view of the application of the first and second paragraphs, contrary to the third paragraph, some cases have been excluded and allocated from those paragraphs. This article also specifies the legal excuses for exemption from punishment. Any effective cooperation in identifying the administrators and leaders and the property resulting from the crime that they have before the prosecution or even after the prosecution begins will be completely exempted from the prosecution of this amended article after the seizure of the property resulting from the crime. Therefore, a stay of prosecution will be issued for them in the prosecution office, and only the property resulting from the crime and the proceeds from them will be confiscated for the benefit of the state and will forever become the property of the state. (Saolani, 2014)

Of course, this exemption from punishment is entirely and completely dependent on the fact that the perpetrator or perpetrators of paragraphs one to three of this article did not repeatedly perform the act as a profession for earning a living or as a leader of a criminal group that is the same as the cases of Article 130 of the Penal Code in terms of forming, designing, organizing, or managing an organized criminal group consisting of three or more people. So here, this exemption is limited to these cases, which in the absence of this profession and leadership, will be subject to explicit exemption from punishment.

The second paragraph refers to the assumption that two or more people do not compete with each other, but rather predict something and agree that whoever predicts incorrectly will pay money or property or benefit or service or national privilege to the person who made the correct prediction or to a third party, such as if a football match is to be held between the national teams of Iran and the United States and A predicts that Iran will win and B predicts that the United States will win and A and B agree that whoever predicts incorrectly will pay a sum of money to the other party or a third party. , service such as the loser doing something for the winner and financial privilege such as giving a loan are also mentioned; therefore, the realization of the crime of gambling (betting) is not only subject to the exchange of money or property, but also benefit, service and financial privilege can be the subject of the crime of gambling (betting). (Ghafouri, 1403, 599)

According to Note 1 of this article, betting on equestrian, shooting, and fencing competitions, and competitions with tanks, airplanes, and other war equipment that have military and defensive uses, is exempt from the provisions of the article and is not a crime, provided that these two conditions are met: 1) These competitions are held in a real space (not virtual). 2) The betting is between participants (not others). The provision mentioned in Note 2 is mandatory. In other words, if the conditions mentioned in Note 2 exist, the perpetrator is exempted from prosecution. However, the provision to confiscate property and proceeds from the crime in favor of the state is carried out in any case (even in the case mentioned in Note 2).

Analysis of Article 706 of the Islamic Penal Code: In the text of the phrase (any person, place or any type of virtual or real space), this phrase has stipulated computer, real and traditional crimes, so-called Islamic Penal Code, together, which according to the previous article of the Penal Code, this institution or administration, which is the material element of the crime of the article, are two different crimes [here, administration will mean the same legal concept as specified in the previous article and in the form of inviting people there], which, if committed, will be sentenced to sixth-degree ta'zir imprisonment and six months to two years, and in case of repetition, two to five years of deprivation of explicit social rights, Note 2.

The alternative article stipulates that if money was paid for it or obtained through the commission of these material acts of this article, it will be sentenced to fifth-degree ta'zir imprisonment (two to five years of imprisonment) and permanent confiscation of these properties and a fine of two to five times the proceeds of the crime and six months to two years, and in case of repetition, two to five years of deprivation of explicit social rights, Note 2. (Ghafouri, 1403, 599)

A very interesting and new point is also included in this Article 706, which states in Note 1 of this Article that cover-up measures mean (any type of action that is taken in the form of Article 706, such as establishing or managing a space or place in a real or virtual way (virtual page) on various virtual pages in the form of carrying out charity work under the cover of charity work or services and carrying out service work) in various fields or selling goods and merchandise and the like (so it is not confined and closed and these are metaphorical); the punishment for the perpetrator is the maximum punishment stipulated in this Article.

Note 2 of this Article has come and determined a punishment in addition to the punishment in the text of the article, which is six months to two years, and in case of repetition for two to five years, one or more cases will be deprived of receiving the aforementioned affairs and social privileges and social rights indefinitely. Of course, in the prosecution stage, the prosecutor can issue an order to stop providing the aforementioned services to the defendants until the time of issuing a final verdict and clarifying the matter. Of course, the prosecutor is not required and can, and if approved at the court stage and a final judgment is issued, and the judge executing the sentences, the judge is also required to submit a list of these persons for notification to the relevant authorities, as specified in Note 2 of Article 706 of the Penal Code, and make them available to them. Failure to implement the court order by the aforementioned service providers is subject to the following penalties, as specified in the law and criminalized by the relevant authorities for the consequences of not carrying out the matters sent by the judge executing the sentences: dismissal from government services for one to five years and temporary dismissal for six months to two years and sixth-degree imprisonment or sixth-degree fine, which is left to the discretion of the judge. (Ghafouri, 1403, 599)

In the author's opinion, this article has tied the judge's hand by considering its material element and has meticulously criminalized all cases, and on the other hand, it has limited the judge's hand in punishment. Compared to the previous article of the previous Penal Code, which was repealed, it has considered more punishments and has increased the degree of punishment where the perpetrator has acquired property and has added another punishment. It has also explicitly stated the deprivation of social rights and its instances, which are completely consistent with the crime committed. It seems that it only includes the cases mentioned in Note 2, and if the legislator had included other instances, he would have broadened its scope with similar ones. Therefore, considering the narrow interpretation of the laws, we should limit ourselves to the text of the articles related to this crime.

Analysis of Article 707 of the Islamic Penal Code: Any person who has committed the crimes referred to in Articles 705 and 706 of this law as his profession or as the head of an organized criminal group, or the value or credit of funds, property, documents, money orders, receipts, securities, account statements or means of payment of checks or bank cards that he has received or kept as a result of committing the above acts exceeds the equivalent of 1.5 rials times the minimum quota for large transactions that is announced at the beginning of each year based on the Tenders Law, if it involves corruption or disruption of the economy, the penalty is Article 286 of the Penal Code, or else confiscation of property and fourth-degree imprisonment and a fine of three to six times the value of the aforementioned property, which is a relative fine, and will be sentenced.

So, this article specifically states that for professional criminals and gang leaders and anyone who financially conducts more than the minimum amount of large transactions, his behavior in the event of corruption is in violation of Article 286 of the Penal Code. Otherwise, the explicit punishment of the article, which is three cases, is a heavier punishment than Articles 705 and 706. The degree of punishment has been increased and, in addition, a relative fine has been added in addition to confiscation. In fact, Article 130 of the Penal Code has not been considered here, and due to the importance of the crimes in this chapter, a more special and, of course, more important punishment has been considered for its perpetrators, which was not mentioned in the previous chapter, Article 704 onwards, and it seems that it is newer than Article 704 onwards and in a way an innovation has been made, such as where the cyberspace is considered alongside the real space and a punishment has been considered for it, considering their separation in computer crimes. This is considered a kind of innovation, which has been considered for these crimes, a special punishment for the leader and the professional criminal who actually makes this his profession and makes a living and a living from it and continuously does it, and it will be considered a kind of continuous crime, for the professional criminal and someone who commits financial crimes to a large extent, i.e. 1.5 times the rial equivalents of the minimum amount announced by the government. (Ghafouri, 1403, 600)

If the perpetrator has made gambling (betting) his profession or is the leader of a criminal group, he is subject to this article regardless of the amount of the bet. In cases where the amount of the bet is equal to the amount specified in this article, he is also subject to this article regardless of the profession or leadership.

Analysis of Article 708 of the Islamic Penal Code: This amendment states that by raising the amount of the fine, it has increased the fine, which is in accordance with the previous law and with reference to Article 19 of the Penal Code, which considers the punishment of imprisonment to be heavier, and in this amendment, imprisonment has been eliminated, and on the other hand, a fine has been considered, which is in accordance with the express text of the article and the previous text of the previous article, the fine has been increased, and according to the general comparison, it seems that since most of these articles have a financial aspect, the legislator's approach was to deal with the perpetrator more in terms of production, supply, transportation and storage of money.

Because in these articles, the amendment has used the phrase (whichever is greater) which is intended to increase and deal financially with the perpetrators. On the other hand, in this article, it has also made the tool of this article general and criminalized both traditional and computer crimes together. The material elements of this article are production, trading, supply, transportation and storage. Although in the previous law these elements were crimes in the form of two articles, now they are covered together and in one punishment. On the other hand, if we want to deal with it in more detail, in the previous articles, the punishment for transportation and storage was 8th degree imprisonment or a fine, which in an optimistic case, considering the mandatory alternatives, imprisonment will be converted into alternatives, in which the law will be converted into a fine in principle, which in this amendment has unified and converted into a fine. (Ghafouri, 1403, 600)

However, production, trading and supply are punishable under Article 707 of the Penal Code by imprisonment and a fine of up to six years or a fine, whichever is greater, which is the maximum penalty.

Since the law has determined the specific instruments for gambling, betting and lottery, as the case may be, and even the law and Article 709 of the previous law had determined the specific instruments, but of course it was only about gambling, but now it has also considered betting and lottery. "Lottery" is a type of gambling in which paper tickets with multi-digit numbers are sold at a specific price. The winner of the lottery will be the one who has the number equal to the number drawn, and as a result, the owner of the total proceeds of the lottery or a valuable thing that has been agreed upon in advance, or valuable prizes will be awarded to that winner. Betting is also called the act in which an individual or group undertakes to receive a sum of money from the other person or persons if a certain outcome is achieved, and otherwise be required to pay it. This crime occurs today in cyberspace and real life.

In any case, the prescribed penalties prevail over its instances. Special gambling, betting, and lottery tools will be confiscated, blocked, or destroyed, as the case may be, unless they have a legitimate or rational benefit, which will be confiscated. Of course, its destruction was also foreseen in previous articles. On the other hand, although its carrying has been criminalized in both the previous articles and the amendment, however, carrying it occasionally without the intention of using it excludes it from the scope of the article, and in fact, its small number or the mere purpose of keeping it without even the intention of using it does not carry any criminal penalty. (Ghafouri, 1403, 600)

So this article was also foreseen to some extent in the previous articles with slight differences, and its slight difference is also in their punishment, which is of course a little more noticeable than the previous articles and has been considered by removing imprisonment and adding a fine, considering the financial nature of the reaction that has been taken from the material elements of this article and considering its criminological aspect. Of course, this opinion is based on the author's inference and the different opinions of different scholars should be taken into account in analyzing these articles. Carrying and keeping gambling equipment without the intention of using it for gambling is not a crime, but producing, trading or supplying gambling equipment, whether computerized or non-computerized, is absolutely a crime.

Analysis of Article 709 of the Islamic Penal Code: In this amended article, due to the recentness of the legislator's intention, it is renewed and considered for the perpetrator according to this amendment; because, it is assumed that the legislator has come with regard to Article 127 of the Penal Code and has formulated the amended Article 709; therefore, with this article, it will be punished if the material element (corpus of crime) which is accepting service in those gambling centers and the like, helping the organizer, helping the administrator, taking actions such as building a virtual page or real space, designing, maintaining, admin or supporting or launching in this traditional or virtual space, assisting in the establishment or management or establishment in one of these centers, is sentenced to one of the fifth-degree punishments except imprisonment, and the spiritual element must also be considered in all cases where the same knowledge and intent of the perpetrator to carry out these material elements.

Of course, Article 709 has other clauses, and Clause B of it is: advertising, promoting, disseminating, encouraging, or inviting people in any way and expanding these crimes mentioned in Article 705, which is punishable by imprisonment and a seventh-degree fine. If someone spends money or acquires property for this purpose, in addition to imprisonment and a seventh-degree fine, in accordance with the customary rule in this chapter that the legislator has observed, the punishment is made more severe and the property is confiscated and a fine equal to twice the value of the property is sentenced. (Ghafouri, 1403, 601)

Any person who knowingly and knowingly provides a bank account or acceptance device such as a store terminal and the explicit cases in the article, which of course seem to be allegorical and the legislator has expressed his intention with an example, to the perpetrator for the commission of the criminal acts mentioned in Articles 705 to 711, then that person must, according to Article 127 of the Penal Code, knowingly and knowingly provide the perpetrator with these cases and their crimes, so that he is subject to paragraph c of Article 709 as the punishment of an accessory in those crimes. In fact, this article considers two types of complicity, which are paragraph A, in accordance with the specific cases in paragraph A of Article 709, but in paragraph C, it considers complicity in all the material elements of Articles 705 to 709, which is complicity in a crime, which is the same as the specification of Article 127 of the Law on Reducing Imprisonment in this article, and here it has eliminated the ambiguity, which is one of the strengths of this amended article regarding these crimes, which is specified in the title of the chapter.

Of course, this is not limited to the punishment of the assistant, and due to the importance of these crimes and in fact, it disrupts public order and peace in a way, in addition to punishing the assistant for one to two years, he is also deprived of receiving and using explicit social rights, which seems to have clarified and confirmed the same paragraph of Article 127, which is to avoid ambiguity. Of course, this paragraph says the intentional assumption, but if the result was not intentional and the perpetrator provided it and there was a fault in it, that is, an unintentional assumption that is related, bound, documented and attributed to one of the criminal acts 705 to 711, only a one to two year deprivation of receiving or using the aforementioned tools is sentenced, and only the explicit social deprivation of the article will be applied. Of course, except for using the in-person banking services mentioned in this paragraph and its note one.

Of course, in a special clause under the last clause of Article 709, the commission of these crimes in Articles 705 to 709 using cryptocurrencies or electronic currencies increases the punishment by one degree, because again, because it disrupts public order and comfort and overshadows the financial and psychological security of society, because this financial security is part of public order and people will lose their trust in these matters, which will disrupt the security and business sectors. (Ghafouri, 1403, 602)

So the explanations of the first clause in Article 706 refer to the punishment of the founder or manager of gambling centers, and in the first clause of Article 709, the punishment of people who help the founder or manager or accept service in these places is determined, and the punishment for the perpetrator is a 5th degree punishment other than imprisonment (in other words, the court cannot sentence to 5th degree imprisonment, but must sentence to another 5th degree punishment). The explanation of the second paragraph also specifies the punishment for anyone who advertises or promotes gambling or invites people to gamble, and the mere promotion and promotion constitutes a crime even if gambling does not take place. The explanation of the third paragraph and Note 1 thereof specifies the punishment for individuals who provide their bank accounts or acceptance tools, such as store terminals or electronic payment gateways or electronic payment tools, such as bank cards, to individuals who commit gambling or related crimes (crimes under Articles 705 to 709); it is necessary to clarify that if providing a bank account and card, etc. is intentional and knowing, it is subject to Paragraph 3, and if it is due to negligence, it is subject to the Note.

Analysis of Article 710 of the Islamic Penal Code: In accordance with the previous Article 711 of the Penal Code, Article 710 is amended explicitly and briefly for bailiffs and other competent officers in this matter, if they have the power to inform the judicial authorities or their superiors or report the facts, if their behavior includes bribery, only Article 3 of the law is aggravated, and if not, they are sentenced to temporary dismissal from 6 months to two years and imprisonment or a fine of the sixth degree. In the author's opinion, one degree of imprisonment has been increased and dismissal has been added, and the power of choice has been left to the judge, who will determine them according to the circumstances of the perpetrator.

Analysis of Article 711 of the Islamic Penal Code: Any service provider in the form of banks or telecommunications, which are of course considered part of the government and government services, is obliged to immediately inform the judicial authorities if they are informed, otherwise it will be disrupted due to crimes against public order and peace and will have a psychological burden on society and will deprive the public of trust. Therefore, a fine of the fourth degree or four times the total transactions made in the aforementioned crime, whichever is greater. Here, too, considering the approach that has been taken into account and considered in this law, which has been taken into account due to the importance of crimes against property and peace and has considered the maximum punishment, it has considered between the two relative fines and the degree fines according to Article 19 of the Penal Code of 1392, which this article also has no precedent in the previous articles of this chapter, and therefore, considering that both cyberspace and traditional space are mentioned, in this revised chapter, both these providers or, in other words, abusers of these services have been punished. (Ghafouri, 1403, 602)

So the condition for the commission of a crime by providers of communication services or payment services or electronic banking operations, such as banks and telecommunications operators, is that they become aware of the occurrence of the crimes of Articles 704 to 709 in the context of their activities and do not report them. If they become aware of the occurrence of the crimes mentioned in Articles 704 to 709 in a context other than their activities and do not report them, they are not guilty.

1- The legislator's explicit and new approach in enacting the new law

In the previous gambling law, based on the common method of legal analysis of crimes, attention to the three elements of the crime required a correct and principled understanding of any crime. In this regard, an effort is made to examine the legal, material, and spiritual elements of the crime of gambling. In the legal element, as was also discussed in the legal history of gambling, Article 705 currently constitutes the legal element of the crime of gambling in Iranian law. In the previous gambling law, the term gambling by any means was referred to and a precise legal definition was not provided, and this issue has caused confusion among the audience of criminal law in determining the red lines of their behavior. (Zeraat, 2013) Regarding the material element, due to the ambiguities in the definition of gambling, its material element is also complex, which must be addressed separately.

A) Criminal behavior: According to the definition, for gambling to occur, it is necessary that, first, an agreement be made in any way regarding the conditional payment of compensation in any form. Secondly, the game operation is carried out. However, the crime of gambling is considered a crime of action that is realized through agreement and play (Saolani, 2014).

Publicity is a special state on the part of the perpetrator that he does not hesitate to make his criminal behavior public, and at the same time, he does not respect the law and tries to make it public. (Tarihi, 2016, 253)

While in the Penal Code of 1983 and the General Penal Code of 1986, committing gambling publicly was considered an aggravating quality of the crime. From the perspective of the aforementioned laws, gambling had to be done in public places, including streets, alleys, parks, etc., in order to be subject to increased punishment, and in practice, the legislator had determined an objective criterion. However, in the Islamic Penal Code of 1986, the legislator has moved from an objective criterion to a subjective criterion and has taken into account the specific mental state of the perpetrator, which can be ascertained from external evidence and circumstantial evidence. Accordingly, it is not necessary for the perpetrator to gamble in public places and in public, but even in a closed and private environment where a group is present, the above aggravating quality can be realized.

b) Subject of the crime: Although this crime may be considered a crime against public peace for some reasons, it seems that due to the existence of numerous indications, this crime is a crime against property; because firstly, the Imamiyyah jurists have examined the religious prohibition of gambling under the book of commerce and forbidden earnings; secondly, the legal doctrine of Western countries, when examining this crime legally, has also examined it under crimes against property and ownership. Thirdly, gambling, first and foremost, causes damage to the property of the parties to the game and throws them into the trap of addiction to it and ultimately affects the macro-economy of society. Fourthly, although gamblers may bet on rewards other than financial rewards, the prevailing custom is based on financial rewards. Despite the above evidence, it seems that the inclusion of this crime under crimes against property has a logical justification.

c) Criminal means: In this crime, the phrase “by any means” in Article 705 of the former Penal Code is irrelevant, and gambling without any means can also be considered punishable.

d) Criminal result: For gambling to be committed, it is not necessary that the reward or condition be transferred or made by the loser to the winner. As soon as the agreement on the reward is made, the game is completed, and the winner is determined, the crime of gambling is committed.

Regarding the mental element, in the crime of gambling, it seems that if one of the parties does not intend to win the reward and has acted only with the intention of participating in the game without receiving or paying the reward, it will not be subject to the gambling ruling. This is because in gambling, the condition is that the parties engage in the game by any means to win the reward, and playing with specific devices without the condition of a reward, although it is permissible according to Sharia law, does not qualify as gambling. (Saolani, 2014) In the previous law, the legislator, by amending Article 705 of the Penal Code, with regard to the definition of this crime in the drafting of the Islamic Penal Code, reduced the diversity of perceptions in this field and insisted on observing the principle of legality of crimes.

But in the author's opinion, with the new amendment to the articles related to gambling, as we can see, the new amendment articles have examined both the cyberspace and the traditional space in a combined manner; which is an approach that, in the previous law, had examined the separate and virtual in the Computer Crimes Law, which is due to the necessity of urgency for the legislator because gambling these days through betting, gambling and lottery sites is a serious issue both inside and outside the country. Of course, the punishment is more than the previous articles, and the cases of separation and sometimes a relative fine have been included in addition to the degree fine of Article 19 of the Islamic Penal Code, which is very important. On the other hand, it has sometimes considered it necessary to examine the material elements that are sometimes examined in the previous articles in the form of two articles in one article with a heavier penalty. (Ghafouri, 1403, 597-602)

Because of its preventive aspect, which is considered one of the important approaches and goals of criminology of this crime, and on the other hand, regarding its means, other cases have been considered besides the missing, which will be a serious deal of the legislator with this category; in fact, it should be said: these have examined crimes related to gambling; correctional materials and betting and lottery are also considered types of gambling, which the legislator has specified due to its progress due to the expansion of cyberspace and sites in this regard.

In the author's opinion, the legislator has actually taken a more serious and intensified approach in this regard in order to combat this crime that severely affects the financial, psychological and comfort aspects of society. Of course, we know that if these crimes occur abroad and are not prosecuted under the conditions of Articles 7 and 8, they will definitely be prosecuted under Article 9 of the Islamic Penal Code approved in 1992 and with universal jurisdiction. Of course, this is considering that the crime of gambling and its examples is not considered a crime in the country of origin, but is only a crime in Iran.

It is possible that outside of Iran, there are lotteries that are explicitly forbidden in Iran and punishable, in addition to the civil laws and principles that also consider this crime to be abominable and this behavior explicitly considers the claims arising from these crimes to be inadmissible for the winner, but for the loser, it can even be an unfair performance to confront the criminals with this civil crime and trap the winners because the unfair performance provides the losers and the losers with their claims, which of course are explicitly admissible, but of course because they are considered facilitators of the crime, they are often included in the unprosecuted crimes because the facilitator itself is part of the legal element and the pyramid and triangle of the crime of gambling and its instances are included, and the triangle of this crime consists of facilitators, including winners and losers or third parties designated by them, and the proceeds from this crime, which are also subject to liability in Article 49 of the Constitution.

In fact, in this new law, which has been organized and combined with absolute and restricted crimes, the material element of this crime has been mentioned and criminalized article by article like the previous articles. It seems that the legal sanction of this crime is a compound legal element that has been criminalized in Articles 705 and 709 of this law, which takes into account the prediction of the prohibited act of this crime in the law, and its psychological element, which is evident and very important, which has been emphasized again in some articles.

In fact, in these articles, the topics of assistance, which are completely consistent with the Islamic Penal Code, Article 127 of the Penal Code, and participation are both part of the material element and the same is consistent with the participation of the general rules of the Islamic Penal Code, Article 125 of it, both in the intentional and unintentional assumption. In this amendment, the punishment of corrupting the land has been clarified and included, which has been considered in Article 286 of the Penal Code.

A noteworthy point for the author is that the legislator has stipulated in these articles so precisely that he has not even gone beyond the aggravation law, and somewhere in Article 710 of the amended law, he has explicitly considered bribery and has examined this crime and its instances very meticulously and meticulously, even through government departments, and in order to increase the psychological security of the society, even through telecommunications and banks, he has added them to the bailiffs and competent officers, and in Article 711, he has included a maximum fine for them, and in this, considering its precedent in previous articles, it can be said that he has intensified the punishment by one degree.

Of course, in addition to the dismissal for bailiffs, which did not exist at all in the previous Article 711, and has increased the preventive and instructive aspect to clean up the real atmosphere of the judicial authorities and those related to them. In addition to bailiffs, banks have taken into account and criminalized communication service providers and other related institutions. The previous Article 709 only referred to instruments and money, but the amendment has considered it as fraud and any type of account reconciliation, funds, privileges, remittances, receipts, and common securities through the stock exchange and means of payment such as checks, promissory notes, bills of exchange, and checks are merely an example that the article has considered and the bank cards that are common today. An interesting point to note is that for someone who is a leader or professional or has a value and reputation of more than 1.5 times the minimum quorum of large transactions declared by the government, it has been excluded from the scope of Article 130 of the Penal Code and is included in the scope of Article 707 of the amendment, corruption on the ground, or confiscation and imprisonment of the 4th degree and a fine of 3 to 6 times, which is the most severe type of relative fine.

Conclusion

From the summary of the material, we conclude that gambling is a type of game that involves winning and losing. In the amended articles related to gambling, the title of gambling has become more general and includes gambling, betting, and lottery itself. The explicit title of winning and losing, which is a general concept, has been stated and referred to in these new articles. As we can see, in general, the new amended articles have examined both the virtual and traditional spaces in a combined manner, which is an approach that was examined separately in the previous law in the Computer Crimes Law, which is due to the need for urgency for the legislator because gambling these days through gambling and lottery betting sites is a serious issue both inside and outside the country, and the losers, of course, its psychological and criminological examination is a separate category from the criminal system, and the necessity of examining it is no less than its legal and criminal system, and it will be considered important and necessary.

Therefore, with this approach, the legislator has considered the necessity of its existence important and of course, the punishment is more than the previous articles, and the cases of separation and sometimes a relative fine have been considered in addition to the graded fine of Article 19 of the Islamic Penal Code, which is very important. On the other hand, it has sometimes considered it necessary to examine the material elements that are sometimes examined in the previous articles in the form of two articles in one article with a heavier penalty. Due to its preventive aspect, which is considered one of the important approaches and goals of criminology of this crime, and on the other hand, it has considered other cases in addition to the missing one, which will be a serious deal with this category by the legislator. In fact, it should be said that these have examined crimes related to gambling in the correctional articles, and betting and lottery are considered types of gambling, which the legislator has specified due to its progress due to the expansion of cyberspace and sites in this regard. In fact, the legislator has taken an intensified and serious approach in this regard and in order to combat this crime that severely affects the financial and psychological aspects and comfort of society, the new amendment articles have dealt more severely with the crime of gambling and its types than the previous articles. Considering the financial nature of gambling, an attempt has been made to deal more financially with this crime. If the previous law meant that it could be generalized to cyberspace, the articles related to gambling, but the new articles have explicitly considered cyberspace alongside the traditional space.

Suggestions

1- Punishment of gamblers, who are themselves considered victims and criminals in a way, should be considered in a reduced form in order to prevent these crimes from remaining black due to fear of being accused and giving an excuse to the operators of gambling and betting websites, and instead, impose severe punishment on the operators of the websites; Because the criminal has the mind of the crime and examines the scale of punishment and the benefits derived from the crime and chooses the crime if the scale of benefits is heavy.

2- It should be noted that the excessive growth of these crimes cannot be stopped by simply imposing punishment; rather, in this regard, the opinions of criminology experts should be sought to address the reasons for gamblers' tendency to this crime and provide preventive measures appropriate to it; in order to control the factors affecting it and then deal with this crime.

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