



**How to cite this article:**

Dehghan, J., Hashemi, S. H., & Azizi, A. (2027). Pathology of Iran's Criminal Policy during the COVID-19 Pandemic (Challenges and Solutions). *Journal of Historical Research, Law and Policy*, 5(3), 1-17. <https://doi.org/10.61838/jhrp.297>



Article history:  
Original Research

**Dates:**

Submission Date: 20 February 2026

Revision Date: 07 June 2026

Acceptance Date: 13 June 2026

First Publication Date: 14 June 2026

Final Publication Date: 01 May 2027

# Pathology of Iran's Criminal Policy during the COVID-19 Pandemic (Challenges and Solutions)

1. Javad. Dehghan <sup>1</sup>: Department of Jurisprudence and Islamic Fundamentals, Bi.C., Islamic Azad University, Birjand, Iran
2. Seyed Hassan. Hashemi <sup>2</sup>: Department of Jurisprudence and Islamic Fundamentals, Bi.C., Islamic Azad University, Birjand, Iran
3. Alireza. Azizi <sup>3</sup>: Department of Jurisprudence and Islamic Fundamentals, Bi.C., Islamic Azad University, Birjand, Iran

\*corresponding author's email: 0651486793@iau.ir

## ABSTRACT

The outbreak of the COVID-19 pandemic confronted legal systems and criminal policy frameworks worldwide with profound challenges concerning the protection of public health, the preservation of social order, and the determination of the reciprocal responsibilities between the state and citizens. In the Islamic Republic of Iran, responses to this crisis were primarily implemented through a set of fragmented regulations, traditional criminalization approaches, and emergency executive measures that lacked legislative coherence and a unified theoretical foundation. The present study, employing a descriptive–analytical method based on documentary and library sources, provides a comprehensive examination of Iran's criminal policy toward threats arising from epidemic diseases, with particular emphasis on COVID-19. The findings indicate that despite the existence of considerable jurisprudential, legal, and institutional capacities, Iran's criminal policy in this field has faced multiple challenges, including ambiguity in the legal foundations for restricting individual freedoms, difficulties in proving causation in the transmission of contagious diseases, weaknesses in establishing criminal intent (*mens rea*), disproportionality of sanctions, overlapping institutional jurisdictions, and the absence of a comprehensive epidemic diseases law. At the same time, the experience of the COVID-19 crisis demonstrates a gradual shift in Iran's criminal policy away from excessive criminalization toward the adoption of hybrid preventive mechanisms, participatory governance policies, non-custodial sanctions, and compensatory state responsibility. The study concludes that enhancing the effectiveness of criminal policy in confronting biosecurity threats requires a fundamental reconsideration of legislative approaches, the enactment of a comprehensive communicable diseases law grounded in the principles of necessity and proportionality, strengthened inter-institutional coordination, the development of rule-based executive policies, increased social participation, the establishment of coherent judicial practice, and the protection of fundamental rights alongside the safeguarding of public health.

**Keywords:** *Criminal policy; COVID-19; Criminalization; Sanctions; Prevention; Public health; Social participation; Criminal liability.*

## Introduction

The emergence and global spread of the COVID-19 pandemic in late 2019 and early 2020 confronted legal systems and criminal policy frameworks across the world with one of the most significant public health, social, and economic crises of the twenty-first century. This contagious disease, which rapidly crossed geographical borders, not only caused extensive human and economic losses worldwide but also challenged the legal, criminal, and health



policy capacities of states in addressing biosecurity threats and exposed the structural deficiencies of traditional legal systems.

The practical experience of many countries demonstrated that reliance solely on punitive and punishment-oriented responses is not sufficient and may even result in the inefficiency of criminal justice systems in effectively controlling epidemic threats. Within Iran's legal system, Article 29 of the Constitution of the Islamic Republic of Iran explicitly provides that access to social security—including retirement, unemployment, old age, disability, lack of guardianship, emergency situations, accidents, and the need for health and medical services—is a universal right, and the government is obligated to provide such services through public revenues and public participation. This constitutional provision forms the fundamental legal basis of the right to health and the state's obligation to secure it, reflecting the recognized position of health as a fundamental human right within both Islamic and international legal discourse (1).

Nevertheless, the widespread outbreak of COVID-19 revealed that the existing Iranian legal framework suffers from serious gaps, multiple ambiguities, and regulatory fragmentation, while outdated and insufficient laws lack the capacity to respond effectively to the complexities of a comprehensive crisis. Earlier legislative instruments concerning communicable disease prevention, despite establishing preliminary preventive foundations, are no longer compatible with contemporary realities. Furthermore, Article 688 of the Islamic Penal Code (Ta'zirat Section, enacted 1996), which criminalizes acts against public health or public security, suffers from ambiguity regarding the precise definition of "acts against public health" and from a lack of proportionality between prescribed penalties and current socio-economic conditions (2).

### **Concept of Criminal Policy and Epidemic Diseases**

The concept of criminal policy and epidemic diseases is examined below.

#### *Concept of Criminal Policy and Its Manifestations*

Criminal policy refers to the set of principles, methods, and strategies adopted by the state and institutions associated with the criminal justice system to prevent, control, and punish behaviors that threaten public order. In its broader sense, criminal policy extends beyond mere criminalization and sentencing and encompasses all legislative, executive, judicial, and social measures aimed at safeguarding security, public order, and societal health (3).

#### Legislative Criminal Policy

Legislative criminal policy concerns the enactment of laws, criminalization of conduct, determination of sanctions, and formulation of criminal regulations. Within this dimension, the legislator identifies behaviors that disrupt public order and public health and subjects them to criminal penalties while establishing the legal framework necessary for addressing violations (4).

#### Executive Criminal Policy

Executive criminal policy refers to the practical measures and operational actions undertaken by executive authorities, law enforcement agencies, and health institutions to prevent, detect, control, and respond to crimes and

threats. This dimension includes enforcement of laws, monitoring compliance with regulations, implementation of sanctions, and crisis management mechanisms (5).

#### Judicial Criminal Policy

Judicial criminal policy relates to the role of courts and judicial institutions in interpreting laws, adjudicating criminal cases, issuing judgments, and determining appropriate punishments. Judicial practice plays a significant role in filling legislative gaps and promoting consistency in the administration of justice during crisis situations (6).

#### Participatory Criminal Policy

Participatory criminal policy refers to the involvement of civil society, citizens, non-governmental organizations, and media institutions in crime prevention, enhancement of public awareness, and cooperation with official authorities. This dimension emphasizes social responsibility and collective cooperation as essential components for ensuring public security and public health (7).

#### *Concept of Epidemic Diseases*

Epidemic diseases (pandemics) refer to contagious diseases that spread globally or across extensive regional scales and seriously threaten public health, economic stability, and social order. Their defining characteristics include high transmissibility, rapid person-to-person transmission, limited scientific knowledge during initial outbreak stages, and the imposition of heavy burdens on healthcare systems. From a jurisprudential perspective, the prohibition of harm and the protection of collective welfare provide normative justification for preventive interventions in such circumstances (8).

#### **Jurisprudential and Legal Foundations of Criminal Policy toward Epidemic Diseases**

The criminal policy of every country is grounded in specific intellectual, philosophical, jurisprudential, and legal foundations that determine its nature, limits, and objectives. Within the legal system of the Islamic Republic of Iran, Islamic jurisprudence constitutes one of the principal sources of legislation and criminal policymaking. According to Article 4 of the Constitution, all civil, criminal, financial, economic, administrative, cultural, military, and political laws and regulations must be based on Islamic criteria. Consequently, examining the jurisprudential foundations of criminal policy regarding epidemic diseases is essential for understanding and evaluating the existing legal framework (9).

#### *Jurisprudential Foundations*

##### The Rule of "No Harm" (La Darar wa La Dirar) and the Obligation to Prevent Probable Harm

From the perspective of Islamic jurisprudence, the rule of *La Darar wa La Dirar* (no harm and no reciprocal harm) constitutes one of the most comprehensive foundations of criminal policy concerning contagious diseases. Based on the well-known Prophetic tradition prohibiting harm, this rule establishes the impermissibility of causing harm to others or society and has served as a jurisprudential basis for criminalizing behaviors that threaten public health (9).

Imami jurists regard this principle as a fundamental and universal rule applicable across all fields of jurisprudence, including transactions, criminal law, public governance, and social regulation. The rule contains two essential dimensions: first, the prohibition of causing harm to others (*la darar*), which forms the basis of individual and social responsibility in preventing the transmission of infectious diseases; and second, the prohibition of retaliatory harm (*la dirar*), emphasizing the avoidance of disproportionate or excessive responses (9).

In the context of epidemic diseases, this rule operates in two ways. On the one hand, infected or suspected individuals are obligated to avoid transmitting disease to others, and violation of this obligation may give rise to criminal or civil liability. On the other hand, society and the state bear responsibility for protecting public health and preventing disease spread, thereby justifying restrictive measures such as quarantine, mandatory mask usage, and social distancing policies (10).

Furthermore, the jurisprudential principle of the “obligation to prevent probable harm,” derived from the rule of no harm, provides the religious and legal foundation for preventive, precautionary, and restrictive measures against contagious diseases. According to this principle, even a reasonable probability of harm may create a legal obligation to adopt precautionary measures. Imami jurists maintain that the likelihood of serious harm—particularly where human life or health is at risk—creates a binding obligation to implement preventive actions, even when such measures temporarily restrict certain individual freedoms (11).

#### The Principle of “Cooperation in Righteousness and Piety” and Social Responsibility

Another important jurisprudential foundation of criminal policy concerning epidemic diseases is the principle of cooperation in virtuous acts and avoidance of wrongdoing, explicitly expressed in Verse 2 of Surah Al-Ma'idah: “*Cooperate in righteousness and piety, and do not cooperate in sin and aggression.*” This Qur'anic principle constitutes the religious basis for social participation, cooperation between citizens and governmental and health institutions, and individual as well as collective responsibility in confronting threats to public health (12).

According to this principle, safeguarding public health and combating contagious diseases are not solely governmental duties; rather, all citizens, civil institutions, and society as a whole bear mutual responsibilities toward one another. These responsibilities include compliance with health protocols and legal requirements; cooperation with health and executive authorities in identifying infected individuals; dissemination of accurate information and avoidance of rumors and misinformation; support for affected and quarantined individuals; and participation in vaccination programs and other preventive measures (13). The principle of cooperation also provides both legal and religious justification for encouraging responsible behavior, promoting positive social incentives, and strengthening a culture of collective collaboration during public health crises (14).

#### *Legal Foundations*

From a constitutional law perspective, the right to health is recognized as one of the most fundamental human rights and has been affirmed in international human rights instruments, including the Universal Declaration of Human Rights (Article 25) and the International Covenant on Economic, Social and Cultural Rights (Article 12). Within Iran's legal system, this right has been explicitly recognized and guaranteed by the Constitution of the Islamic Republic of Iran. Article 29 of the Constitution obliges the government to ensure and protect public health and provides the legal foundation for adopting necessary measures for the prevention, control, and treatment of epidemic diseases (1).

In addition to Article 29, Article 43 of the Constitution emphasizes the provision of essential needs for all members of society and identifies healthcare and medical services as fundamental necessities and inherent governmental responsibilities. This provision establishes the constitutional basis for macro-level policymaking in the field of public health.

At the same time, the right to health interacts—and at times conflicts—with other civil liberties. Article 32 of the Constitution stipulates that no individual may be arrested except in accordance with lawful procedures and judicial authorization. During public health crises, measures such as quarantine obligations or movement restrictions may potentially conflict with personal liberty guarantees, thereby necessitating careful legal justification and proportional implementation (15).

Furthermore, Article 22 of the Constitution protects the dignity, life, property, rights, residence, and occupation of individuals from unlawful interference, emphasizing that any limitation must have explicit legal authorization. Accordingly, from a constitutional perspective, criminal policy concerning epidemic diseases must be grounded upon three fundamental principles: the principle of necessity, which requires that restrictions on rights be imposed only when a genuine threat to public health exists; the principle of proportionality, which mandates that restrictive measures correspond to the level of risk and avoid excessive limitations; and the principle of legality, which requires that all restrictive or executive measures possess clear statutory foundations (16).

#### Foundations of Criminal Liability Arising from Causation and Omission

Within the Iranian legal system, governmental obligations regarding the right to public health are structured around three core duties: respect, protection, and fulfillment. These obligations, rooted in international human rights norms and constitutional principles—particularly Article 29—require the state to employ criminal policy instruments and preventive as well as coercive measures to safeguard biosecurity.

In this context, the conduct of individuals knowingly carrying contagious diseases such as COVID-19 who deliberately violate quarantine regulations or conceal their illness, thereby causing infection, injury, or death, may acquire a criminal character. Relying on Article 22 of the Law on the Prevention of Venereal and Communicable Diseases (enacted 1941), which remains legally valid, alongside general provisions of the Islamic Penal Code, such behaviors may fall within criminal categories such as intentional homicide (where intent and awareness of lethality are established), quasi-intentional offenses, or bodily injury crimes. The objective of such legislative strictness is the preservation of public order and prevention of norm violations that threaten collective life (14).

Civil and criminal liability arising from disease transmission is founded upon the principles of the duty of safety and the obligation of reasonable care, meaning that every individual must refrain from risky conduct threatening the bodily integrity of others. This obligation, grounded in jurisprudential principles such as the rule of no harm, encompasses both acts and omissions, including failure to warn others or engaging in direct contact capable of transmitting disease.

However, liability depends on establishing a causal link between the carrier's conduct and the harmful outcome. From a jurisprudential analytical perspective, where an infected individual provides adequate warning to others (implementation of the rule of warning) and a third party knowingly exposes themselves to risk, the causal relationship may be considered interrupted, thereby removing criminal and civil liability from the carrier. Conversely, intentional concealment of illness constitutes a clear example of causation in harm and, due to its incompatibility

with the precautionary principle and the sanctity of human life, results in full legal responsibility being attributed to the carrier (5).

### The Principles of Legality, Necessity, and Proportionality in Criminal Legislation

Throughout the historical development of human societies, communicable diseases have consistently been regarded as among the most serious threats to life, bodily integrity, and public health security. By “communicable diseases” is meant a category of physical and infectious conditions capable of transmission through direct or indirect contact with humans, animals, objects, the environment, and other vectors, and which typically spread rapidly within society. In terms of consequences, communicable diseases may be divided into fatal diseases—such as cholera, AIDS, MERS, and COVID-19—and non-fatal diseases. Fatal diseases may also be classified, in light of the severity and certainty of their effects, into absolutely fatal and relatively fatal diseases. The widespread outbreak of such diseases, regardless of type and degree of risk, has always entailed the possibility of large-scale mortality and serious disruption of the public health order.

In recent decades, the emergence and spread of new diseases—particularly the coronavirus—has constituted a clear example of a pervasive threat to global health. Pathogens may be transmitted through various routes such as respiration, everyday contact, contaminated blood transfusion, uncontrolled sexual relations, and other conventional social interactions. Given the serious risks posed by these diseases to public health, purely medical prevention is insufficient, and the formulation and enforcement of effective legal rules become necessary in order to safeguard societal health and protect victims. Depending on the virus type and the intensity of its effects, communicable diseases may be typically or relatively fatal, or may not lead to death at all; in any event, they are considered an actual or potential threat to the fundamental rights to health and life of citizens (1).

In legal analysis, the doctrine of attribution concerns the causal or contributory link between two material phenomena—namely, “conduct” and the “harmful result”—and the establishment of non-contractual liability depends on proving precisely this link. A review of juristic opinions likewise indicates that the common element that must be established for the imposition of liability is attribution in a general sense, and causation or contribution in its more specific sense; that is, the mere occurrence of harmful conduct, absent the capacity to attribute the outcome to the actor in customary and legal terms, is not sufficient to establish liability. Iranian legislation has explicitly adopted this foundation and, in Article 529 of the Islamic Penal Code (enacted 2013), obliges the court—whenever fault is regarded as the source of civil or criminal liability—to ascertain the attribution of the result to the offender’s fault. Accordingly, criminal and civil liability is not constructed merely on the occurrence of the result, but on the basis of its valid attribution to the actor’s conduct.

Within this framework, the legislator has clarified, in multiple provisions of the Islamic Penal Code, the scope and limits of attribution. Under Article 526, where two or more factors—whether direct perpetrators or indirect causes—have contributed to the occurrence of an offence, liability falls upon the factor to whom the offence is attributable; and where the offence is attributable to all factors, the default rule is equal liability, unless the impacts of the offenders’ conduct are different, in which case each bears responsibility in proportion to their respective causal contribution. Article 492 likewise provides that the establishment of retaliation (qīṣāṣ) or blood money (diyāh) depends on attributing the result to the offender’s conduct, whether such attribution arises through direct perpetration, indirect causation, or a combination of both (17). Conversely, Article 500 negates liability where the offence or harm is caused by force majeure and is not attributable to a person, and Article 531 provides—regarding

collision incidents—that where the incident is customarily attributable to one party, only that person bears liability. This body of provisions reflects the central role of attribution as a shared condition for establishing liability (18).

On the basis of jurisprudential foundations and the legislator's explicit recognition, the rules of liability—whether in the form of *diyah* or *qiṣāṣ*—turn upon the correctness of attributing the offence to the effective actor or actors, such that only those acts and factors fall within the ambit of attribution that have played an effective and identifiable role in producing the result. “Effectiveness,” as the distinguishing feature of the causes and contributing factors involved in producing the outcome, is treated as the primary criterion for identifying the responsible factor, and this criterion is clearly reflected in Article 526 of the Islamic Penal Code (enacted 2013). Accordingly, where the direct perpetrator lacks volition, awareness, or criminal capacity—such as a non-discerning minor, an ignorant person, or an insane person—liability is transferred to the principal cause. From this perspective, examining the nature of attribution, methods for establishing it, and the practical challenges of proving the impact of conduct in producing the result assumes fundamental importance in analyzing criminal and civil liability and constitutes the basis of judicial decision-making in claims related to liability.

### **Pathology of Iran's Judicial Criminal Policy in Preventing Communicable Diseases (COVID-19)**

The right to health and public hygiene, as a prominent instance of “positive rights,” requires active state intervention and the allocation of sufficient resources. In examining the legal nature of the state's obligations in this domain, the distinction between an “obligation of result” and an “obligation of means” (a duty of care) is of foundational significance: under the former, failure to achieve health standards is in itself a breach; under the latter, liability is assessed by measuring the state's reasonable and customary efforts, even if the desired outcome is not achieved. This legal regime rests upon solid ethical principles such as non-maleficence (a negative dimension of rights), the provision of benefit (affirmative obligations), and distributive justice. At the same time, robust jurisprudential rules—such as the rule of no harm, the obligation to preserve protected life, and especially the rule of preventing probable harm—provide a coherent theoretical framework for public policymaking. The conceptual extension of preventing probable harm to the level of governance forms the foundation of the “precautionary principle,” which authorizes the state to adopt anticipatory and restrictive measures to protect public health even under conditions of scientific uncertainty.

#### *Elements of Criminal Liability in Disease Transmission: From Quasi-Intentional Offences to the Doctrine of Assumption of Risk*

In establishing criminal liability arising from viral transmission, careful attention to the material and mental elements of the offence and the differentiation of various scenarios is necessary. Variables such as the carrier's knowledge or ignorance of their condition, the recipient's awareness of the risk, and the perpetrator's intent are determinative for the criminal characterization of conduct. If the carrier is unaware of their illness, but through voluntary conduct causes transmission without intending an offence, their conduct may fall—under paragraph (a) of Article 291 of the Islamic Penal Code—within the category of a quasi-intentional offence. A notable point is that, from both jurisprudential and legal-doctrinal perspectives, the treatability or non-treatability of a disease does not eliminate the principle of criminal liability. However, where the victim (the recipient) knowingly exposes themselves to risk despite warnings, the attribution link is interrupted by reference to the doctrine of assumption of risk and the warning principle, and criminal liability is removed from the carrier.

### *The Legal Regime of Compensation and Financial Liability for Bodily Injury and Death*

Iran's legal system, in addressing the harmful consequences of disease transmission (whether death or injuries short of death), has adopted a comprehensive compensation-based approach. By employing the general concept of "offence," the legislator has extended the rules of *qisās*, *diyāh*, and *arsh* to injuries resulting from disease transmission. One procedural challenge concerns cases in which the carrier (the perpetrator) dies before the victim's death or before the claim is made; in this regard, Articles 372, 373, and 392 of the Islamic Penal Code, by establishing an independent regime of financial liability, secure the payment of *diyāh*—depending on the circumstances—from the perpetrator's property, and where there is inability to pay or no estate, through the institutions of the *'āqilah* or the public treasury. This approach reflects the legislator's effort to provide the broadest possible protective coverage for victims of contagious diseases so that no bodily harm remains uncompensated (19).

### *Legislative Gaps and the Need for a Differentiated Criminal Policy in Medical Liability*

An examination of the criminal liability of healthcare personnel during the pandemic reveals a persistent deficiency: the absence of a "comprehensive communicable diseases law" and the consequent reliance on the general rules of criminal law. This legislative gap underscores the necessity of formulating a "National Health Document" to articulate professional duties and to define medical causation standards with precision. A desirable criminal policy in this area requires a delicate balance between "professional autonomy of physicians" and the "patient's right to health," meaning that imposing strict criminal liability on physicians (liability without fault)—a move that would suppress clinical initiative and encourage "defensive medicine"—is unacceptable, while, conversely, absolute immunity in the face of negligence is also indefensible. Accordingly, establishing a regime of "differentiated criminal liability" that, while protecting physicians' therapeutic courage, responds decisively to gross negligence and serious professional misconduct is among the foundational requirements for achieving the objectives reflected in upstream policy instruments.

### *Judicial Practice and Fluctuating Decisions during the COVID-19 Crisis*

Judicial performance in adjudicating COVID-19-related offences reflected the fragmentation generated by the absence of specialized legislation. Courts issued decisions by relying on broad criminal labels such as "threat against public health" (Article 688) and public order offences, while also referencing administrative resolutions of the national COVID-19 task force—an approach that resulted in the lack of a coherent and unified judicial practice. An analysis of issued judgments indicates oscillation between two poles: a "supportive–lenient approach" (use of alternatives to imprisonment and suspension of sentences) and a "repressive approach" (expansive interpretation and severe punishments). This duality and unpredictability challenged core principles of criminal law, including the "strict interpretation of penal statutes" and the "principle of legality of crimes and punishments," and demonstrated the need for intervention by the Supreme Court to develop coherent judicial practice for future crises (20).

Within the current legal system, criminal liability for violations of health regulations is not confined to natural persons. Pursuant to Article 143 of the Islamic Penal Code, legal persons (public bodies and economic enterprises) may also incur criminal liability. Whereas the liability of natural persons is based on establishing criminal conduct and individual fault, the liability of legal persons is formed on the basis of "organizational will" and systemic failure

in crisis management. Failure to adopt preventive measures, deficiencies in organizational protocols, and the creation of risk-generating environments may independently lead to the criminal conviction of an institution, irrespective of the liability of individual employees. Through the capacity of corporate criminal liability, judicial criminal policy possesses an effective instrument to correct defective structures and ensure compliance with public health standards at the macro level.

### **Pathology of Legislative Criminal Policy in Managing Bio-Crises**

The most significant challenges of legislative criminal policy in managing bio-crises can be summarized in the following areas.

#### *Assessing the Legislative Approach and the Foundations of Healthcare Professionals' Criminal Liability*

A review of Iran's legislative criminal policy in confronting pandemics such as COVID-19 indicates the predominance of a reactive approach and the legislator's reliance on traditional capacities of general criminal law—such as the broad offence of “threat against public health” and liability arising from causation and omission—rather than developing a coherent and specialized normative framework for epidemic conditions. Within this setting, the criminal liability of the medical community assumes particular importance, because refusal to admit or treat infectious patients on the ground of occupational risk does not remove responsibility; rather, pursuant to the statutory framework governing the duty to assist and related regulations, such conduct may constitute a paradigmatic instance of “criminal omission.” Moreover, under paragraph (c) of Article 158 of the Islamic Penal Code, non-compliance by a physician with governmental regulations and health protocols may independently ground criminal liability. Nonetheless, where harm results from “pure mistake” and the absence of fault, criminal policy—transitioning from punitive to restorative orientations—provides for compensation through mechanisms such as the *ʿāqilah* or the public treasury (17).

#### *System Assessment of Penal Sanctions: From Enduring Statutes to Novel Administrative Measures*

To respond to biosecurity threats, Iran's legal system has employed a hybrid of classic statutes—such as the Law on the Prevention of Communicable Diseases (enacted 1941)—and general penal provisions such as Article 688 of the Islamic Penal Code, which, through an illustrative approach, criminalize any risky conduct against public health. At the highest levels of penal response, the intentional transmission of disease resulting in death or injury may be pursued within the regimes of retaliation and blood money; and where it is widespread and disrupts public order, it may be prosecuted under the title of “corruption on earth” (Article 286 of the Islamic Penal Code), which may entail capital punishment. Simultaneously, in the sphere of administrative law, a notable shift occurred toward a more differentiated and authority-centered enforcement model, in which disciplinary punishments were delegated directly to executive authorities and, by reducing usual procedural formalities, emphasis was placed on speed and decisiveness in addressing health-related violations (21).

#### *Genealogy of Legislative Gaps and Challenges to the Principle of Legality*

The pathology of the existing situation indicates the absence of a “comprehensive epidemic disease management law.” Existing statutes, including the 1941 law and the public vaccination law (enacted 1943), due to

enumerative disease listings and the age of their language, lack full adaptability to the requirements posed by emerging diseases. In addition, the generality and ambiguity of Article 688 of the Islamic Penal Code, and the lack of precise clarification of the actus reus and mens rea elements of the offence of “threat against public health,” create serious challenges to the “principle of legality of crimes and punishments.” Likewise, Article 295 of the Islamic Penal Code regarding disease transmission faces evidentiary difficulties in proving both “attribution” and “criminal intent,” and cannot effectively cover non-intentional transmission resulting from negligence. These gaps—together with the absence of proportionate sanctions and the failure to specify governmental responsibility—have reduced the effectiveness of criminal policy (22).

#### *The Necessity of Enacting a Comprehensive Law and Reengineering Article 688 of the Islamic Penal Code*

To overcome legislative fragmentation, establishing an integrated legal regime under the title of a “Comprehensive Epidemic Disease Management Law”—aimed at explicitly defining rights and duties, ensuring inter-institutional coordination, and creating a composite enforcement system (criminal, administrative, and civil)—is vital. In this regard, reforming Article 688 of the Islamic Penal Code as a cornerstone of public health penal policy is unavoidable, by replacing vague terminology with concrete and precise definitions, and by “grading offences and penalties” based on the degree of impact on public health. Such reforms must ensure deterrence while observing the principle of proportionality and preventing expansive and discretionary judicial interpretations (22).

#### *Refining the Legal Regime of Disease Transmission and Legalizing Policing Restrictions*

Completing the regulations governing disease transmission requires explicit rules addressing “non-intentional transmission” and establishing technical criteria for proving causation, such that lack of knowledge of one’s carrier status or full compliance with health protocols are recognized as factors negating criminal liability. At the same time, sovereign restrictions such as quarantine and travel bans must be removed from the realm of purely executive decisions and incorporated into statutory frameworks, with clear determination of scope, duration, and conditions. Along this path, recognizing the right to challenge and seek judicial remedy and establishing judicial oversight mechanisms over crisis-management bodies are essential to protect fundamental rights and prevent unlawful infringements upon legitimate freedoms (23).

#### *Clarifying Vaccination and Consolidating the State’s Civil and Criminal Responsibility*

Institutionalizing the public vaccination process requires explicit statutory clarification of the grounds for mandates, exceptions, and enforcement mechanisms, while respecting core principles of medical ethics such as informed consent and the right of access to information. The legislator must establish effective compensatory mechanisms for potential vaccine side effects, including through dedicated compensation funds. Moreover, strengthening good governance in health requires the recognition and explicit codification of the “civil and criminal responsibility of the state” for negligence, omissions, or harmful decision-making in crisis management, so that citizens may seek and obtain full compensation for material and moral damages and a culture of accountability becomes entrenched within the executive structure.

## **Pathology of Participatory Criminal Policy in Relation to Communicable Diseases**

The most important challenges of participatory criminal policy in managing bio-crises can be summarized in the following five areas.

### *Lack of Normative Infrastructure and Ambiguity in the Legal Nature of Participation*

A fundamental deficiency of participatory criminal policy during the COVID-19 crisis was the failure to define precisely the legal status of public participation within the country's legislative and executive architecture. Although this approach was framed as a complement to state-centered, authority-based policies, in practice the transition from "directive governance" to "participatory governance" confronted the challenge of lacking codified protocols. Measures adopted by the National COVID-19 Task Force—characterized by a "flexible and fluid" nature—often lacked the stability necessary to create a unified legal practice. While such flexibility appeared necessary for crisis management, it produced ambiguity regarding the scope of citizens' and civil institutions' duties and blurred the boundary between "legal obligation" and "ethical–social responsibility." The outcome was reduced effectiveness of non-penal enforcement mechanisms and uncertainty among social actors concerning the modalities of effective intervention (2).

### *Crisis of Public Trust and Erosion of Social Capital as an Executive Pillar*

The effectiveness of participatory criminal policy is fully dependent on levels of "social capital" and "public trust" in governing institutions. Pathological assessment of pandemic management showed that a widening gap between state and society, and the decline of public trust in official decision-making, functioned as a serious obstacle to "normative self-regulation." When citizens doubt the transparency of statistics, the fairness of allocating medical resources, or the scientific grounding of restrictions, motivation for voluntary compliance with protocols (as a core component of social prevention) is undermined. Under such conditions, criminal policy—rather than relying on persuasion and participation—becomes compelled to revert to traditional coercive methods and to employ policing levers to force compliance with health order, a dynamic that contradicts the very logic of participatory criminal policy.

### *Tension between Protecting Public Health and Individual Liberties*

The imposition of extensive restrictions through social distancing and quarantine highlighted a serious legal challenge: the "conflict between public interests and individual rights." In a participatory model, the assumption is that citizens accept limitations by recognizing social responsibility; however, in the absence of a robust legal culture, such restrictions were often perceived as infringements upon freedom of movement, occupational freedom, and privacy. The pathology indicates that the legal system struggled to balance the "right to collective health" against constitutionally protected "rights of the people." The failure to persuade public opinion regarding the necessity and proportionality of these limitations produced civil resistance and repeated regulatory violations. Consequently, the state was compelled to rely on "situational prevention" (e.g., physical road closures) and heavy fines—signals of failure in securing voluntary participation (24).

*Weak Legal Culture and Ineffectiveness of Public Oversight Mechanisms*

Participatory criminal policy is built upon “social monitoring” and citizen reporting of high-risk behaviors. Yet weak legal culture and the lack of institutionalization of concepts such as “citizenship responsibility” prevented public oversight from performing effectively during COVID-19. In many cases, citizen reporting of health violations was not regarded as a civic virtue but rather as socially disapproved behavior. In addition, the absence of legal protections for whistleblowers in the health domain and the lack of secure and effective communication channels between the public and supervisory authorities neutralized the substantial capacity of civil society and non-governmental organizations to identify and control hotspots of risk (25).

*Dominance of Punishment-Oriented Approaches over Restorative and Preventive Dimensions*

Despite theoretical emphasis on participation and social prevention, analysis of the National COVID-19 Task Force’s performance indicates that “punishment-oriented” and disciplinary measures gained dominance during critical phases. Monetary penalties for not wearing masks, widespread sealing of business units, and vehicle impoundments, while projecting an appearance of authority, reflected an inability to implement participatory criminal policy properly. This reactive approach, rather than focusing on education, empowering civil institutions, and strengthening cultural infrastructure for “self-control,” resorted to penal and quasi-penal tools. It demonstrated that, in emergency conditions, the legal system still lacks sufficient readiness to transition fully from “classical criminal justice” (punishment-centered) to “participatory justice” (responsibility-centered), and at critical junctures tends to prefer the ease of coercion over the difficulty of mobilizing participation (26).

**Pathology of Executive Criminal Policy and the Need to Reengineer Crisis-Management Structures**

In the arena of executive criminal policy, pandemic management faced deep structural challenges, the most prominent being “fragmentation among decision-making authorities” and overlapping jurisdictions among parallel bodies such as the Ministry of Health, the National COVID-19 Task Force, and law enforcement institutions. This overlap produced dual command structures and reduced the effectiveness of control measures. Moreover, lack of transparency in public communication and ambiguity in decision-making rationales not only weakened public trust but also made voluntary acceptance of restrictions more difficult. Weaknesses in critical infrastructure—such as tracing and quarantine systems—further reduced implementation effectiveness. In addition, disproportional and sometimes discretionary enforcement mechanisms occasionally resulted in infringements of citizens’ fundamental rights and disruptions of fair process. Accordingly, to overcome this situation, fundamental reforms are required, including establishing a centralized institution with clear legal authority, legalizing the boundaries of state intervention, developing electronic monitoring infrastructure, and recalibrating enforcement measures with restorative and educational orientations.

*Legal Challenges of Imposing Social Restrictions and Quarantine*

To manage the bio-crisis, executive criminal policy concentrated on a broad spectrum of “restrictive measures,” including travel bans, closure of public centers, and mandatory quarantine. Although these measures appeared epidemiologically unavoidable, they faced legitimacy challenges from the standpoint of public law. The most significant legal critiques concerned the absence of explicit and transparent legislative foundations for restricting

lawful freedoms, ambiguity regarding the inherent and delegated competencies of executive bodies (such as the National COVID-19 Task Force), and the apparent conflict of these restrictions with the core of citizens' fundamental rights and liberties—thereby further highlighting the need for legislative intervention to legalize emergency governance (27).

Executive prevention policy was based on establishing general duties, such as mandatory use of protective equipment (masks) and compliance with social distancing in public spaces and transportation systems. To ensure compliance and address risky behavior, the state's response mechanisms shifted away from classical penal tools and moved toward "administrative and financial sanctions." This shift manifested primarily through monetary fines and social deprivations (such as denial of certain banking or administrative services), aiming to achieve deterrence with lower costs and higher speed (27).

### *Human Rights Challenges in the Process of Mass Vaccination*

The national immunization strategy, initially based on prioritizing vulnerable groups, later underwent a substantial transformation in the state's approach. The shift from "voluntary vaccination" to "indirect mandates," including conditioning access to civic rights (such as employment and public services) on presenting vaccination certificates, raised serious debates concerning rights conflicts. This approach created an explicit tension between the imperatives of protecting "public health" and fundamental human rights principles such as bodily autonomy, freedom of will, and privacy, thereby requiring precise clarification of the limits of state intervention in individual self-determination (28).

### *Pathology of the Supervisory System and Fragmentation in Executive Practices*

The principal burden of field supervision and enforcement fell upon law enforcement officers, municipal agents, and other competent authorities, using tools such as sealing business units and imposing fines. However, performance evaluation reveals the absence of a "uniform administrative and judicial practice" at the national level. Ambiguity in criteria for identifying violations and fragmentation in enforcement approaches across provinces generated a form of "legal uncertainty" and inequality in applying the law, underscoring the need to adopt harmonized regulations and centralized oversight of enforcement authorities (29).

## **Conclusion**

The experience of the COVID-19 pandemic demonstrated that Iran's criminal policy in confronting epidemic diseases, despite possessing considerable jurisprudential, legal, and institutional capacities, has faced profound structural, legislative, and executive challenges. These challenges include the absence of a comprehensive and integrated legal framework, ambiguity regarding the legal foundations for restricting individual freedoms, difficulties in proving causation in disease transmission, weaknesses in establishing criminal intent, disproportionality of sanctions, overlapping institutional jurisdictions, the absence of coherent judicial practice, and the lack of effective mechanisms for governmental accountability. From a legal and criminal perspective, epidemic diseases generate specific challenges, including difficulties in establishing causal links between the conduct of an infected individual and transmission to victims, uncertainty in determining the mental element of offences, the necessity of balancing public health protection with respect for fundamental rights and freedoms, and the need for inter-institutional coordination in crisis management and implementation of preventive and control measures.

Analysis of the legal foundations of the right to health, in light of binding international instruments and constitutional principles of the Islamic Republic of Iran, indicates that safeguarding public health and managing crises arising from epidemic diseases constitute an unavoidable sovereign obligation resting upon the state, understood broadly to encompass all governing institutions. This obligation manifests through the duties to respect, protect, and fulfill the right to health. At the same time, examination of Iran's legislative and executive criminal policy reveals significant shortcomings, including fragmented legislation, reliance on outdated statutory texts, and the predominance of punishment-oriented and reactive approaches over preventive and participatory strategies. Accordingly, the state is obligated not only to ensure equitable and non-discriminatory distribution of healthcare services and to impose proportionate emergency restrictions, but also—where policy failure, negligence, or omission contributes to aggravation of a crisis—to compensate citizens for material and moral damages under general principles of civil liability. Enhancing the effectiveness of the health governance system therefore requires transition toward a coherent, data-driven, and forward-looking criminal policy capable of clarifying causation and ensuring legal certainty.

Nevertheless, analysis of the four dimensions of criminal policy in Iran indicates a gradual movement away from excessive criminalization and purely punitive responses toward the use of hybrid mechanisms combining prevention, participatory governance, non-custodial sanctions, compensatory state responsibility, and public awareness promotion. This transformation reflects an emerging acceptance of criminal law as a measure of last resort and emphasizes the supportive and facilitative role of the state alongside its regulatory and punitive functions.

Improving the effectiveness of Iran's criminal policy in confronting biosecurity threats and epidemic diseases requires fundamental reforms in four principal domains.

In the legislative domain, enactment of a comprehensive epidemic diseases law grounded in the principles of necessity, proportionality, and legality is essential. Existing criminal regulations must be revised and completed; criminal behaviors must be clearly defined; proportionate sanctions must be established; legally applicable restrictions must be codified; and explicit recognition of the civil and criminal liability of the state for failures in safeguarding public health must be incorporated.

In the executive domain, establishment of a coordinated and centralized structure for health crisis management is required. Executive actions must be legalized and made transparent; essential infrastructures—including quarantine systems, tracing mechanisms, laboratory capacity, and strategic reserves—must be strengthened; enforcement measures must be proportionate; and respect for citizens' fundamental rights must remain central to governance during emergencies.

In the participatory domain, public awareness must be enhanced through transparent and continuous information dissemination; a culture of social responsibility should be strengthened; positive incentives for compliance with health protocols should be developed; civil society organizations, non-governmental institutions, and media actors should be actively engaged; and individuals adversely affected by restrictions should receive adequate social and economic support.

In the judicial domain, development of coherent judicial practice is necessary, alongside increased reliance on expert knowledge, moderation of punitive approaches, expanded use of alternatives to criminal sanctions, emphasis on civil liability and compensation mechanisms, and improvement of specialized judicial education.

Ultimately, the COVID-19 experience revealed that effective confrontation with biosecurity threats requires a comprehensive, multidimensional, and balanced approach in which criminal law functions not as the primary

instrument but as a last resort, operating alongside preventive, educational, supportive, and compensatory mechanisms. Such an approach simultaneously protects public health, respects fundamental rights and freedoms, strengthens public trust, and promotes social cohesion.

Accordingly, in light of the necessity of transitioning from traditional approaches toward an efficient and balanced model of health-related criminal policy, immediate and fundamental reform of the Law on the Prevention of Communicable Diseases enacted in 1941 appears unavoidable. It is therefore proposed that legal reforms include recognition of strict criminal liability for conduct leading to disease transmission, revision of key statutory provisions to explicitly criminalize refusal to comply with health regulations and professional duties of medical personnel with proportionate penal sanctions alongside civil compensation mechanisms, provision of legal grounds for meaningful participation of non-governmental organizations within criminal proceedings, and formulation of a Charter of the People's Right to Health through cooperation with judicial authorities. Through integration of punitive measures with comprehensive judicial and social protections, a participatory, legitimate, and non-authoritarian criminal policy framework for managing future bio-crises may be achieved.

### **Acknowledgments**

We would like to express our appreciation and gratitude to all those who helped us carrying out this study.

### **Authors' Contributions**

All authors equally contributed to this study.

### **Declaration of Interest**

The authors of this article declared no conflict of interest.

### **Ethical Considerations**

All ethical principles were adhered in conducting and writing this article.

### **Transparency of Data**

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

### **Funding**

This research was carried out independently with personal funding and without the financial support of any governmental or private institution or organization.

### **References**

1. Abdi Y, Ketabi Roudi A. The Position of the Right to Health in Islam and International Law. *Social Security Quarterly*. 2014(44).
2. Sadeghi V, Moradi H. Iranian Criminal Policy Responses to Violations of Regulations Regarding the Corona Virus. *Scientific Quarterly of Criminal Law Research*. 2022;10(39).
3. Levasseur G. *Criminal Policy*. Translated by Ali Hossein Najafi Abrandabadi. 1993(11 and 12).

4. Ghasemi N. Book Review: Criminal Policy in Islam and in the Islamic Republic of Iran. *Critical Research Journal of Humanities Texts and Programs*. 2018(57).
5. Hooshmand Firouzabadi H. Feasibility Study of Removing Civil Liability of Carriers of Epidemic Diseases (Corona) in Light of the Rule of Caution. *Islamic Law*. 2020;17(64).
6. Abbasi E. Pandemic Crises and Politics. *Politics Quarterly Journal of the Faculty of Law and Political Science*. 2020;51(1).
7. Jookar SM. Jurisprudential and Legal Foundations of Government Duties in the Necessity of Prevention and Control of Contagious Diseases, Case Study of Corona. *Medical Law Journal, Iranian Scientific Association of Medical Law*. 2021;15(56).
8. Sadr SMB. *No Harm and No Harassment*. Qom: Dar al-Sadeghin; 1999.
9. Mohaghegh Damad SM. *Rules of Jurisprudence*. Tehran: Islamic Publishing Center; 2019.
10. Ashrafi Rizi H, Kazempour Z. Explaining the Coronavirus Crisis (COVID-19) Based on the Disinformation Theory of Expressing Views. *Health Management Magazine*. 2020(1).
11. Khansari SA. *Comprehensive Understanding in the Explanation of the Useful Abridgment*. 2nd Edition ed. Qom: Esmaeilian Institute; 1984.
12. Ramezani Ghavam Abadi MH. The Corona Pandemic and International Peace and Security. *Legal Research*. 2020;23(90).
13. Taghvaei A, Colleague. International Law and Pandemic-Prone Diseases (A Case Study of Coronavirus). *Political Strategies*. 2020;4(13).
14. Saghafi M, Yazdanian A, Jalali M. The Nature of the Safety Obligation and its Application in the Civil Liability of Physicians in Iranian and French Law. *Comparative Law Research*. 2017;21(3).
15. Gazarani M. Investigation of the Legal Position of the World Health Organization in the Outbreak of Contagious Diseases. *Ghanounyar Legal Research Electronic Quarterly*. 2020;3.
16. Saberi Majd A, et al. Re-examining the Foundations of Civil Liability in Compensation for Damages Caused by Contagious Diseases with Emphasis on the Corona Pandemic. *Jurisprudence, Law and Criminal Sciences*. 2022(24).
17. Hosseini SS, Hosseini SS, Hosseini SY. Jurisprudential and Legal Analysis of Dangerous and Fast-Spreading Contagious Diseases (Corona) Removing Civil Liability of Carriers of Epidemic Diseases (Corona). Karaj2020.
18. Karimi Verki MG. *Criminal Liability in Corona Contagious Disease*. Meybod2020.
19. Mossadegh Rad AM, et al. Strategic Analysis of Iran's Communicable Disease Surveillance System in Critical Conditions, A Scoping Review. *Health Management Journal*. 2023(92).
20. Shamloo B. Re-reading Preventive Criminal Policy in Light of the COVID-19 Pandemic and Chaos Theory. *Legal Research Quarterly*. 2020;23.
21. Valipour A, et al. Civil Liability of the Government in Damages Resulting from Corona Disease Against Citizens in Iranian Law and Imami Jurisprudence. *Human Rights and Citizenship*. 2021(12).
22. Badini H, et al. Normal Risks of Life and its Role in the Realm of Civil Liability. *Journal of Judicial Law Perspectives*. 2017(77 and 78).
23. Ameri Z, Habibzadeh SA. Control of Quarantine Implementation for Communicable Diseases with a Look at the Iranian Legal System. *Journal of Public Law Studies*. 2021(51).
24. Ebrahim Gol A, et al. Human Rights and the Fight Against Communicable Diseases in the International Arena: Necessities and Challenges. *Journal of Public Law Studies*. 2021;51(1).
25. Ghomian Z, et al. Mass Human Gatherings During the Outbreak of Communicable Diseases: COVID-19. *Journal of Culture and Health Promotion*. 2020(10).
26. Niazpour A. Principles of Executing Prison Sentences After the Outbreak of the COVID-19 Virus (Corona). *Legal Research Quarterly*. 2020;23.
27. Nazmfar H. Analysis of the Spatial Distribution of Corona Disease in Urban Areas. *Sustainable Urban and Regional Development Studies*. 2025;6(1).
28. Shams Nateri ME, et al. Analysis of Criminal Behavior Resulting from the Transmission of Corona Disease. *Religious Human Research*. 2022(47).
29. Khamarnia M, et al. Emerging Disease of Corona, Prevention of Social Stigma in Society. *Medical Ethics and History Quarterly*. 2021;14.