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A Comparative Analysis of the Principle of Penal Minimalism in the Iranian Legal System and International Human Rights Instruments

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ABSTRACT

The principle of penal minimalism is a strategic doctrine in contemporary criminal policy, emphasizing the restriction of state criminal intervention and the use of criminal law as a last resort (*ultima ratio*). This study comparatively analyzes this principle within the Iranian legal system and international human rights instruments. Employing a descriptive-analytical and comparative methodology, data were collected through a review of library resources, domestic legislation, and international documents. The findings reveal a normative convergence between the Iranian legal system and international standards regarding the necessity of restricting criminal intervention, developing non-custodial measures, and emphasizing restorative justice. Recent Iranian legislative reforms, such as the Islamic Penal Code (2013) and the Law on Reduction of Punishment for Ta'zir Imprisonment (2020), reflect this progressive shift. However, practical implementation faces significant challenges, including penal inflation, a persistent carceral approach in special laws, weak infrastructural support for alternative punishments, and traditional judicial culture. Consequently, fully realizing penal minimalism in Iran necessitates targeted legislative reforms, the systematic expansion of non-custodial mechanisms, and a paradigm shift toward restorative justice.

Keywords: *Penal Minimalism; Criminal Policy; Alternatives to Imprisonment; Human Rights; Restorative Justice; Iranian Legal System.*

Introduction

As the most severe manifestation of state intervention in the realm of individual rights and liberties, criminal law has consistently been subject to fundamental inquiries regarding the limits of its legitimacy and the scope of public power. Unlike other branches of law that primarily focus on regulating private relations or providing compensation for damages, criminal law directly impacts the liberty, security, reputation, and inherent dignity of individuals through the processes of criminalization, prosecution, adjudication, and the imposition of sanctions. Consequently, resorting to criminal mechanisms is not merely a legislative or technical choice; rather, it constitutes an exercise of sovereign power that must invariably be justifiable on the grounds of necessity, proportionality, rationality, and respect for human dignity (1, 2).



Despite these considerations, developments over the past few decades indicate that many legal systems have encountered a phenomenon referred to in criminal law literature as "overcriminalization," "penal inflation," or "penal expansionism." In this context, to address a broad spectrum of social, cultural, economic, and even moral issues, the legislature resorts to criminalization and the imposition of penalties instead of utilizing non-criminal mechanisms. The consequence of such an approach is an increase in criminal offenses, the accumulation of criminal cases, the expansion of the prison population, rising costs for the criminal justice system, and ultimately, a reduction in the efficacy of criminal responses—a reality that challenges the legitimacy of state criminal intervention (3, 4).

In response to this trend, the principle of penal minimalism has emerged as one of the most significant approaches in contemporary criminal policy. This principle posits that criminal law must serve as the *ultima ratio* (last resort) for safeguarding fundamental societal values, to be invoked only when alternative legal, administrative, civil, economic, or cultural mechanisms prove ineffective in achieving the desired objectives. Accordingly, the legitimacy of criminal law lies not in the breadth of its domain, but in the restrained, purposeful, and necessity-driven application of state penal power (5, 6). From this perspective, penal minimalism does not merely entail reducing the number of penalties or restricting the use of imprisonment; rather, it necessitates a paradigm shift across all stages of the criminal justice process, from criminalization and prosecution to adjudication, sentencing, punishment execution, and the social reintegration of offenders (5, 7).

The significance of this approach is further amplified when examined through the lens of contemporary human rights discourse. The international human rights system, by emphasizing principles such as inherent human dignity, personal liberty and security, the prohibition of arbitrary detention, the right to a fair trial, and the humane treatment of persons deprived of liberty, has established a normative framework for constraining the penal power of states. Under this framework, the mere legality of a criminal intervention is insufficient for its legitimacy; rather, such intervention must also pass the tests of necessity, proportionality, rationality, non-discrimination, and respect for human dignity (8, 9). In this vein, international instruments and standards, including the International Covenant on Civil and Political Rights (ICCPR), the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Tokyo Rules, the Bangkok Rules, and documents pertaining to restorative justice, uniformly emphasize the reduction of unnecessary reliance on imprisonment and the development of non-custodial responses (8, 10, 11).

Within the Iranian legal system, although the principle of penal minimalism has not been explicitly recognized by the legislature as an independent doctrine, its theoretical foundations and practical manifestations can be observed across various legal and jurisprudential (Fiqh) sources. Principles such as the presumption of innocence, the principle of legality of crimes and punishments, the strict interpretation of criminal laws, the principle of proportionality between crime and punishment, and the prohibition of unwarranted infringement upon individuals' liberty and reputation, alongside significant jurisprudential maxims such as the rule of *Dar'* (averting hudud by doubt), the rule of *La Darar* (no harm), and the principle of caution in imposing penalties, all indicate the necessity of restricting criminal intervention (12, 13). Furthermore, recent legislative developments, including the enactment of the Islamic Penal Code (2013), the Code of Criminal Procedure (2013), and the Law on the Reduction of Punishment for *Ta'zir* Imprisonment (2020), have created avenues for a shift toward a minimalist criminal policy. This has been achieved through the expansion of mechanisms such as the deferral of sentencing, suspension of punishment execution, suspension of prosecution, criminal mediation, alternative punishments to imprisonment, semi-liberty systems, and electronic monitoring (14, 15).

However, the existence of such capacities does not necessarily equate to the full realization of the principle of penal minimalism within the Iranian legal system. The persistence of criminalization trends in certain domains, the fragmentation and proliferation of special criminal laws, the predominance of a carceral approach in parts of criminal policy, limited infrastructural capabilities for developing alternative punishments, and the gap between statutory capacities and the practical performance of criminal justice institutions remain among the most significant obstacles to realizing this principle (14, 15). Consequently, evaluating the degree of alignment between Iran's criminal policy and the human rights standards governing necessity, proportionality, and the restriction of criminal intervention is deemed both a scientific and practical imperative.

Accordingly, the present study seeks to answer the fundamental question of what position the principle of penal minimalism holds in international human rights instruments, and to what extent the Iranian legal system aligns with the requirements and standards derived from this principle. Employing a descriptive-analytical method and a comparative approach, this article examines the theoretical foundations of penal minimalism, analyzes its standing in international human rights documents and Iranian legislation, and ultimately evaluates the challenges and strategies for strengthening the minimalist approach within Iran's criminal policy. This research investigates the principle of penal minimalism not merely through the lens of alternatives to imprisonment, but as a comprehensive criterion for assessing the legitimacy of state criminal intervention across all stages of the criminal justice process.

Theoretical Foundations of the Principle of Penal Minimalism

The principle of penal minimalism constitutes a fundamental tenet of contemporary criminal policy, emphasizing the necessity of restricting state intervention within the domain of criminal law. The foundational premise of this principle is that, given its coercive and liberty-depriving nature, along with its profound impact on individuals' rights, reputation, and inherent dignity, criminal law must be employed solely as a last resort for social control. Consequently, recourse to criminalization and penalization is justifiable only when alternative legal, administrative, civil, or social mechanisms prove insufficient or ineffective in safeguarding the fundamental interests of society. Accordingly, penal minimalism does not merely entail a quantitative reduction in penalties or the mitigation of their severity; rather, it necessitates a paradigm shift in redefining the role of criminal law within the broader framework of social control. Within this framework, criminal law is not regarded as a default mechanism, but rather as an exceptional, necessity-driven instrument. From this vantage point, the principle is intrinsically linked to the doctrine of *ultima ratio* (the last resort), mandating that criminal intervention be justified exclusively upon the demonstrated inefficacy of less intrusive alternatives.

The theoretical underpinnings of this principle can be systematically analyzed across three distinct levels. First, at the criminological level, the unchecked expansion of criminalization and excessive reliance on punitive measures, particularly imprisonment, not only fails to guarantee crime reduction but can also precipitate penal inflation, prison overcrowding, the imposition of severe social costs, and the erosion of the rehabilitative function of the criminal justice system (3). Second, at the human rights level, penal minimalism is inextricably linked to the principles of human dignity, personal liberty, and proportionality. This implies that any criminal intervention must be strictly necessary and proportionate to a legitimate aim, as the unjustified expansion of the penal domain risks contravening fundamental human rights norms (8). Third, at the philosophical and normative level, this principle underscores the inherent limitations of state penal power, conditioning the legitimacy of punishment on its application as an unavoidable necessity, strictly within the boundaries of justice and respect for human autonomy (7).

Within the Iranian legal system, the theoretical underpinnings of this principle can also be traced to specific jurisprudential (Fiqh) doctrines and fundamental principles of criminal law. Maxims such as the presumption of innocence, the rule of Dar' (averting hudud punishments in cases of doubt), and the rule of La Darar (the prohibition of harm), collectively advocate for caution in the application of penal sanctions and the avoidance of unjustified expansions of criminal intervention (12). Nevertheless, although Iran's criminal policy has recently exhibited a partial shift toward reducing criminal intervention through mechanisms such as alternative punishments to imprisonment, deferral of sentencing, and suspension of prosecution, the persistence of criminalization trends and a pervasive reliance on penal sanctions indicate that a significant gap remains between the theoretical endorsement of penal minimalism and its practical realization (14).

In sum, the principle of penal minimalism must be conceptualized as a theoretical and normative framework designed to strike a delicate balance between the imperative of maintaining public order and the obligation to safeguard the fundamental rights and liberties of individuals. From this vantage point, the principle serves as a crucial benchmark for evaluating the legitimacy, proportionality, and efficacy of criminal policies within both domestic legal frameworks and international human rights instruments.

The Position of the Principle of Penal Minimalism in International Human Rights Instruments

Although the term "penal minimalism" is rarely employed explicitly as an independent terminological concept within the text of international human rights treaties, its normative foundations, practical obligations, and legal ramifications are clearly identifiable within the architecture of international instruments. In reality, penal minimalism should be understood not merely as a criminological theory or a domestic criminal policy, but as a fundamental human rights requisite for constraining state penal power. Accordingly, in contemporary international law, the exercise of state punitive authority is no longer considered an absolute, unlimited prerogative based solely on domestic sovereignty. Rather, it is subject to scrutiny and limitation in light of fundamental principles such as human dignity, legality, necessity, proportionality, the prohibition of inhuman treatment, and the right to liberty and security of person.

From this perspective, the principle of penal minimalism is inextricably linked to the processes of the "human rights-ification of criminal law" and the "humanization of the criminal justice system" (10). States, in exercising their *ius puniendi* (the right to criminalize and punish), are obligated to refrain from the unnecessary use of criminalization, prosecution, detention, imprisonment, and other coercive interventions. They must resort to criminal mechanisms only when social necessity, legal legitimacy, and normative proportionality are firmly established. Therefore, penal minimalism can be construed as the logical corollary of states' international human rights obligations; obligations that dictate criminal law must be utilized as the *ultima ratio* (last resort), rather than the primary instrument of social governance (8). The standing of this principle can be analyzed across several tiers of international instruments and standards.

Binding Instruments and Universal Covenants

Among binding international instruments, the International Covenant on Civil and Political Rights (ICCPR) occupies a pivotal role in restricting state penal power. Although the Covenant does not explicitly invoke the term "penal minimalism," it establishes a comprehensive array of fundamental guarantees that collectively preclude the unjustified and excessive expansion of criminal intervention.

First, Article 9 of the Covenant, by recognizing the right to liberty and security of person, conditions any deprivation of liberty on compliance with the law, the prohibition of arbitrariness, and the existence of reasonable grounds. From a human rights perspective, detention—particularly pre-trial detention—must not devolve into a routine instrument of social control or a mere procedural formality. Instead, it must possess an exceptional, necessary, and proportionate character. The United Nations Human Rights Committee, in its General Comment No. 35, has explicitly clarified that pre-trial detention is justifiable only when there is a genuine necessity, such as the risk of flight, collusion, recidivism, or serious disruption of the judicial process. The routine or stereotypical application of pre-trial detention is incompatible with the requirements of Article 9 (8, 9). This interpretation corroborates the premise that liberty is the rule, and deprivation of liberty is the exception—a principle that aligns perfectly with the logic of penal minimalism.

Second, Article 10 of the Covenant, by emphasizing the humane treatment of all persons deprived of their liberty and respect for their inherent dignity, distances the penal execution system from a purely retributive and vengeance-driven logic. In accordance with paragraph 3 of this Article, the essential aim of the penitentiary system must be the reformation, rehabilitation, and social reintegration of offenders. Such an approach necessitates that imprisonment be utilized not as a normal, ubiquitous response to criminality, but as a restricted, necessary, and proportionate measure. This is because the unchecked expansion of incarceration not only conflicts with human dignity but frequently produces counterproductive, stigmatizing, and exclusionary criminogenic effects.

Third, Article 15 of the Covenant, by guaranteeing the principle of legality of crimes and punishments and prohibiting the retroactive application of criminal laws, establishes one of the most significant barriers against the expansionist tendencies of state penal power. The principle of legality, in its broad sense, pertains not merely to the existence of a prior law, but mandates that criminal offenses be clear, precise, foreseeable, and unambiguous. Consequently, broad, expansive, analogical, or floating conceptualizations of criminalization are incompatible with the dictates of the rule of law and penal minimalism (16). Thus, the ICCPR can be regarded as one of the paramount human rights sources for limiting penal power and safeguarding a criminal policy grounded in necessity and proportionality.

Soft Law Instruments and the Development of Non-Custodial Measures

Alongside binding treaties, United Nations "soft law" instruments have played a remarkable role in elucidating, detailing, and operationalizing the principle of penal minimalism. The significance of these instruments lies in the fact that, although non-binding in form, they possess substantial normative and interpretive value due to their widespread international acceptance, frequent citation in the jurisprudence of human rights bodies, and profound influence on domestic legislative reforms.

Among these, the United Nations Standard Minimum Rules for Non-custodial Measures, commonly known as the Tokyo Rules, constitute one of the most pivotal international instruments in the realm of minimalist criminal policy. These rules emphasize the necessity of reducing the reliance on imprisonment, developing alternative sanctions, and avoiding the unnecessary entry of individuals into the formal criminal justice process. Rule 2.2 of the Tokyo Rules explicitly states that non-custodial measures should be developed with the aim of providing a wider range of alternatives to imprisonment, thereby reducing the use of imprisonment and rationalizing criminal justice policies, while respecting the human rights, the requirements of social justice, and the rehabilitation needs of the offender (1, 10). This orientation demonstrates that an effective penal response is not necessarily synonymous with

imprisonment or severe judicial intervention. In many instances, mechanisms such as the suspension of prosecution, deferral of sentencing, mediation, community service, social supervision, parole, and therapeutic or educational programs can be effectively utilized.

Furthermore, by emphasizing institutions such as diversion, decriminalization, and alternatives to prosecution, the Tokyo Rules endorse an approach aimed at mitigating the deleterious effects of criminal stigmatization and preventing case backlogs within the criminal justice system. From a minimalist perspective, formal criminal proceedings should be activated only when alternative social, administrative, civil, or restorative mechanisms prove inadequate.

Complementing this approach, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, known as the Bangkok Rules, introduce a differential and gender-sensitive dimension to penal minimalism. Acknowledging that many female prisoners are victims of poverty, violence, economic dependency, addiction, or familial responsibilities, these rules urge states to maximize the use of non-custodial measures and avoid unnecessary imprisonment. Rule 60 of the Bangkok Rules specifically underscores the necessity of designing alternatives tailored to the circumstances of women and addressing the socio-economic root causes of their offending (9, 10). Consequently, these rules illustrate that penal minimalism is not merely confined to the quantitative reduction of penalties, but also necessitates a contextually grounded understanding of vulnerabilities and structural discriminations.

Standardizing the Execution Phase and Limiting the Severity of Punishment

Penal minimalism is not restricted to the stages of criminalization or sentencing; it holds fundamental significance during the execution phase as well. In this regard, international instruments concerning the treatment of prisoners, particularly the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Nelson Mandela Rules, play a crucial role in limiting the quality, severity, and collateral consequences of custodial sanctions.

The Nelson Mandela Rules are predicated on the premise that the deprivation of liberty constitutes the punishment itself and must not be aggravated by the infliction of additional suffering, degrading conditions, extreme isolation, or unnecessary restrictions. This logic is directly linked to the "normalization principle," which posits that life in prison should approximate, as closely as possible, the positive aspects of life in the wider community, and that restrictions should be imposed only to the extent necessary for security, order, and the legitimate aims of punishment.

In this vein, Rule 43 of the Nelson Mandela Rules absolutely prohibits certain practices, including prolonged solitary confinement, indefinite solitary confinement, placement of a prisoner in a dark or constantly lit cell, and any punishment that constitutes torture or cruel, inhuman, or degrading treatment. The prohibition of prolonged isolation is of particular significance from the perspective of penal minimalism, as it demonstrates that even assuming the legitimacy of imprisonment per se, the state is not permitted to structure its execution in a manner that leads to psychological destruction, human degradation, or the disproportionate intensification of penal suffering (8).

Therefore, the Nelson Mandela Rules signify the transition of penal minimalism from the level of the "quantity of punishment" to the "quality of punishment execution." In other words, the principle of penal minimalism dictates that not only should unnecessary recourse to imprisonment be avoided, but in unavoidable cases, the execution of

imprisonment must be accompanied by the minimal level of intervention, the maximum respect for human dignity, and the most conducive conditions for social reintegration.

Penal Minimalism in Juvenile Justice and Restorative Justice

The domain of juvenile justice represents one of the most explicit and pronounced arenas for the manifestation of penal minimalism in international law. In this sphere, international instruments, emphasizing the vulnerability, immaturity, reformability, and the necessity of special protection of children, have adopted a distinctly non-retributive and rehabilitative approach.

The Convention on the Rights of the Child (CRC), particularly in Articles 37 and 40, obligates states to ensure that in dealing with children in conflict with the law, the principles of the best interests of the child, human dignity, social reintegration, and proportionality of response are strictly observed. Article 37(b) of the Convention explicitly mandates that the arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. This provision constitutes one of the most unequivocal legal articulations of the ultima ratio principle in international instruments.

Similarly, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules, stipulate in Rule 17 that the reaction to juvenile offending shall always be in proportion to the circumstances of both the offenders and the offense, and that deprivation of liberty shall be justified only in severe cases and as a measure of last resort. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, known as the Havana Rules, which focus on the protection of children deprived of liberty, emphasize the necessity of minimizing the placement of children in closed facilities and guaranteeing their contact with family, education, treatment, and the community. Collectively, these instruments demonstrate that in juvenile justice, penal minimalism is not merely a policy recommendation, but a binding human rights obligation grounded in the best interests of the child (8, 9).

Restorative justice, by introducing mechanisms such as criminal mediation, family group conferencing, victim-offender dialogue, and restorative agreements, offers a paradigm shift in responding to crime. In this model, the primary focus is not on inflicting suffering upon the offender, but rather on reparation of harm, restoration of social relationships, active accountability of the offender, and the participation of the victim and the community in the conflict resolution process.

From a theoretical standpoint, restorative justice contributes to the practical realization of penal minimalism by challenging the state's monopoly over the penal response and reducing reliance on formal adjudication, imprisonment, and suppressive punishments. This approach illustrates that maintaining social order and responding to crime do not necessarily require the imposition of severe penalties. In many instances, repairing harm and reconstructing social bonds can prove to be more efficient, more humane, and more aligned with human rights standards (7, 11).

In summary, an examination of both binding and non-binding international instruments reveals that while the principle of penal minimalism may not always be explicitly named as such in human rights texts, it is robustly embedded within principles such as the prohibition of arbitrariness, necessity, proportionality, human dignity, the legality of crimes and punishments, the primacy of non-custodial measures, the last-resort nature of imprisonment, and the social reintegration of offenders. Consequently, penal minimalism can be recognized as a normative outcome of the evolution of criminal law under the auspices of international human rights law—an evolution that

emphasizes the restriction of state penal authority, the humanization of the response to crime, and the substitution of the logic of restoration and reintegration for that of suppression and social exclusion.

The Principle of Penal Minimalism in the Iranian Legal System

Over recent decades, particularly in light of evolving criminal policy paradigms, human rights imperatives, the crisis of penal inflation, and the inefficacy of traditional incarceration-based responses, the Iranian legal system has gradually shifted from a "carceral and authoritarian criminal policy" model toward a "minimalist, differential, and community-oriented" paradigm. Within this framework, penal minimalism is not merely a reformist recommendation or a moral stance within the realm of criminal justice; rather, as a fundamental component of rational criminal policy, it seeks to restrict state criminal intervention, reduce reliance on liberty-depriving sanctions, and bolster non-criminal, restorative, and social responses.

Penal minimalism is predicated on the premise that criminal law must serve as the state's "last resort" in regulating social relations—a principle widely recognized in criminal law literature as *ultima ratio*. According to this approach, criminalization, prosecution, and the imposition of sanctions are justifiable only when alternative legal, administrative, civil, disciplinary, or restorative mechanisms prove inadequate to safeguard public order and individual rights. From this vantage point, the unregulated expansion of criminal law not only fails to enhance the efficacy of the criminal justice system but, through case backlogs, prison overcrowding, criminal stigmatization, the erosion of offenders' social reintegration, and the imposition of extensive social costs, ultimately transforms into a criminogenic and anti-justice factor.

Within the Iranian legal system, the foundations of penal minimalism can be identified across three distinct levels: First, jurisprudential (*Fiqh*) and fundamental principles, such as the rule of *Dar'* (averting *hudud* punishments in cases of doubt), the principle of caution in matters of blood (*dima'*) and honor/reputation (*a'rad*), the rule of *Nafy-e Usr wa Haraj* (negation of hardship and distress), the rule of *La Darar* (no harm), and the principle of *Satr* (concealment) and *Ighmaz* (leniency) in certain offenses. Second, Constitutional principles, including human dignity, the legality of crimes and punishments, the presumption of innocence, the prohibition of torture, and the prohibition of infringing upon individuals' reputation. Third, macro-judicial policies and ordinary legislation, particularly the Islamic Penal Code (2013), the Code of Criminal Procedure (2013), and the Law on the Reduction of Punishment for *Ta'zir* (discretionary) Imprisonment (2020).

Macro Foundations and Upstream Documents of Minimalist Criminal Policy

In the Iranian legal architecture, the inclination toward penal minimalism was acknowledged in macro-level policy documents and overarching state policies before being explicitly institutionalized in ordinary legislation. The General Policies of the System in Judicial Affairs, the General Judicial Policies communicated by the Supreme Leader, and the transformative documents of the Judiciary all emphasize the necessity of reducing the prison population, decarceration, developing alternatives to prosecution and punishment, and strengthening restorative and community-based dispute resolution mechanisms.

In this vein, the General Judicial Policies, by emphasizing the reduction of criminal offenses, crime prevention, reform of criminal laws, the utilization of alternative punishments to imprisonment, and the promotion of peace and reconciliation, have provided a crucial theoretical and normative foundation for steering the criminal justice system toward minimalism. These policies essentially dictate that state criminal intervention must be restricted, necessary,

proportionate, and efficacy-driven, and that criminal law should not be employed as the primary, ubiquitous tool for addressing every form of social deviance.

From a constitutional perspective, significant underpinnings for penal minimalism can also be identified. Article 22 of the Constitution safeguards the dignity, life, property, rights, residence, and occupation of individuals from infringement, except as authorized by law. Article 32 prohibits arbitrary detention and mandates strict adherence to legal formalities in depriving individuals of liberty. Article 36 stipulates that sentencing and its execution fall exclusively within the jurisdiction of competent courts and must be based on law. Furthermore, Article 37, by enshrining the presumption of innocence, conditions any criminal intervention on the legal proof of the charge, while Articles 38 and 39, by prohibiting torture, coercion, and the violation of personal dignity, underscore inherent human dignity even during prosecution and punishment (17).

Alongside these constitutional provisions, jurisprudential maxims play a pivotal role in circumscribing the domain of criminal law. The rule of "Tadra' al-hudud bi-al-shubuhah" (the rule of Dar'), which dictates that severe criminal punishments must be averted in cases of doubt, overlaps philosophically with the principle of strict interpretation of criminal laws and the principle of caution in sentencing. Similarly, maxims such as "La Darar" (no harm), "Nafy-e Ushr wa Haraj" (negation of hardship), and "caution in matters of blood, honor, and reputation" serve as jurisprudential foundations that limit state penal authority and justify the necessity of avoiding excessive punitiveness.

Consequently, penal minimalism in Iranian law is not solely influenced by modern criminological teachings or international instruments; it is also deeply rooted in domestic, jurisprudential, and constitutional foundations. This intrinsic alignment facilitates the indigenization of a minimalist criminal policy within the Iranian legal system.

Manifestations of Minimalism in Criminal Legislation: The Legislative Evolutions of 2013 and 2020

The most prominent legislative manifestations of penal minimalism in Iran can be observed in two landmark legislative developments: first, the enactment of the Islamic Penal Code (IPC) of 2013, and second, the enactment of the Law on the Reduction of Punishment for Ta'zir Imprisonment of 2020. Although differing in approach and intensity, both laws represent steps toward moderating traditional penal policy and reducing the criminal justice system's reliance on imprisonment.

A) The Islamic Penal Code of 2013 The IPC of 2013 can be regarded as a watershed moment in the evolution of Iran's legislative criminal policy. By relatively distancing itself from a purely retributive and carceral approach, this Code introduces numerous mechanisms for the individualization, moderation, suspension, and substitution of punishments. Institutions such as the deferral of sentencing, suspension of punishment execution, the semi-liberty system, parole, alternative punishments to imprisonment, exemption from punishment, mitigation of punishment, and provisions pertaining to children and adolescents can all be analyzed as efforts to reduce severe criminal intervention and to focus on the offender's personality, the circumstances of the offense, and the potential for rehabilitation and social reintegration.

One of the most significant manifestations of minimalism in this Code is the provision for alternative punishments to imprisonment in Articles 64 to 87. In this section, the legislature has endeavored to replace incarceration with sanctions such as probationary supervision, unpaid community service, fines, day-fines, and deprivation of social rights for less severe offenses. This approach is grounded in the rationale that, for many minor offenses, imprisonment is not only unnecessary but may also yield deleterious effects that outweigh any potential benefits.

Furthermore, the institution of deferral of sentencing, outlined in Articles 40 to 45 of the IPC, serves as a vital tool for relative decriminalization and the individualization of penal responses. Under this mechanism, the court may, upon meeting statutory conditions, postpone the issuance of a conviction for a specified period, thereby avoiding a criminal record if the offender demonstrates behavioral reform. This mechanism is highly compatible with the goals of penal minimalism, particularly in preventing individuals with no prior criminal record from entering the formal cycle of conviction.

Similarly, the suspension of punishment execution (Articles 46 to 55) provides a mechanism to mitigate the negative consequences of punishment execution and to facilitate the offender's rehabilitation without enduring imprisonment. Instead of emphasizing the unconditional execution of penalties, this institution allows for judicial supervision and the gradual reform of the convict's behavior.

Thus, by embracing a spectrum of lenient, rehabilitative, and alternative mechanisms, the IPC of 2013 has sought to diminish the severity of criminal intervention and render imprisonment a measure of last resort.

B) The Law on the Reduction of Punishment for Ta'zir Imprisonment of 2020 The Law on the Reduction of Punishment for Ta'zir Imprisonment (2020) represents a more substantial step toward decarceration and relative depenalization in Iranian law. Enacted in response to the rising prison population, case backlogs, the inefficacy of short-term imprisonment, and the necessity of proportionate sentencing, this law directly aimed to curtail the reliance on liberty-depriving sanctions.

One of the most significant innovations of this law is the amendment of Article 104 of the IPC, which expanded the scope of forgivable offenses (*jaraem-e ghabel-e gozasht*). Designating certain Ta'zir offenses as forgivable means that prosecution, adjudication, or execution of punishment in these cases becomes more contingent upon the victim's will, thereby strengthening the potential for peace, reconciliation, and forgiveness within the criminal process. From a criminal policy perspective, this constitutes a moderation of state public intervention and an empowerment of the victim in managing the criminal dispute.

Moreover, the 2020 Law has reduced the duration of imprisonment for many offenses or enhanced the possibility of converting and substituting it. This should be analyzed primarily through the lenses of "depenalization" and "decarceration," rather than strict "decriminalization," as the criminal title is often retained, but the severity of the penal response is diminished. In this regard, the law is more depenalizing, moderating, and decarcerating than it is decriminalizing.

The significance of this law lies in the fact that, for the first time, the country's legislative policy systematically moved toward reducing imprisonment. However, this law cannot be considered the culmination of minimalism, as many special laws, particularly in the domains of narcotics, economic crimes, security offenses, and financial crimes, retain a severe, carceral, and at times suppressive approach. Nevertheless, in terms of its overall trajectory, the 2020 Law stands as one of the most prominent examples of embracing the principles of proportionality, necessity, and minimal intervention in Iranian criminal law.

Institutionalizing Restorative Justice and Decriminalization in Criminal Procedure

Penal minimalism is not confined to the sentencing and execution phases; it is applicable throughout the entire criminal process, from crime detection and prosecution to adjudication, sentencing, and punishment execution. Accordingly, the Code of Criminal Procedure (CCP) of 2013, by introducing novel mechanisms, has created

avenues for reducing formal criminal justice intervention and strengthening restorative and consensual mechanisms.

One of the most prominent manifestations of this approach is the institution of criminal mediation, stipulated in Article 82 of the CCP. Under this mechanism, in certain Ta'zir offenses, the judicial authority may, subject to prescribed conditions, refer the matter to mediation to achieve reconciliation between the victim and the accused. Unlike the traditional criminal justice model, which positions the state as the central actor in responding to crime, criminal mediation emphasizes the active participation of the victim, the offender, and the local community in dispute resolution. Aimed at compensating for harm, repairing damaged relationships, reducing hostility, and preventing recidivism, this institution is considered one of the most vital restorative justice tools within the Iranian criminal procedure system (14).

Furthermore, mechanisms such as the suspension of prosecution, archiving the case, abandonment of prosecution in forgivable offenses, referral to Dispute Resolution Councils, and the promotion of peace and reconciliation all reflect the legislature's effort to minimize the influx of cases into the formal and comprehensive criminal trial process. From a criminal policy standpoint, these mechanisms fall under the realm of "decriminalization" (or diversion), as their objective is to prevent the unnecessary referral of disputes to criminal courts and to resolve them through simpler, less costly, and more socialized means.

In the domain of criminal precautionary measures, the CCP of 2013 has also adopted a relatively minimalist approach. Article 217 of the CCP mandates the judicial authority to issue precautionary measures by considering the severity of the crime, the severity of the punishment, the evidence of the charge, the risk of flight or concealment, the offender's criminal record, physical and mental condition, age, gender, personality, and reputation. This statutory provision signifies the acceptance of the principle of proportionality in issuing precautionary measures. Accordingly, pre-trial detention must be an exceptional measure and a last resort, not a routine tool for managing criminal cases.

Therefore, penal minimalism in the adjudication phase manifests itself through the reduction of unnecessary detentions, the expansion of non-custodial precautionary measures, the strengthening of mediation, the support of reconciliation, and the utilization of alternatives to prosecution. These developments indicate that, at least at the legislative level, the Iranian criminal procedure system has moved toward reducing formal intervention and bolstering restorative and community-oriented responses.

Pathology and Challenges in the Practical Realization of Penal Minimalism

Notwithstanding significant advancements at the legislative level, the practical realization of penal minimalism in the Iranian legal system faces numerous obstacles and challenges. The gap between "legislative minimalism" and "judicial and executive minimalism" constitutes one of the fundamental issues in Iran's criminal policy. In other words, although new laws have provided substantial capacities for decarceration, relative depenalization, and diversion, the effective implementation of these capacities in practice encounters structural, cultural, and institutional limitations.

Penal Inflation in Special and Scattered Laws: One of the most critical challenges to penal minimalism in Iran is the persistence of penal inflation within special and scattered laws. While the IPC of 2013 and the 2020 Reduction Law have moved toward moderating penal responses and reducing imprisonment, many special laws retain a severe, security-oriented, and carceral approach. Legislation such as the Anti-Narcotics Law, the Law on the Aggravation of Punishment for Perpetrators of Bribery, Embezzlement, and Fraud, and various regulations

governing economic crimes, smuggling, and offenses against national security, frequently emphasize heavy penalties, long-term imprisonment, extensive deprivations, and restrictions on the application of lenient mechanisms. This situation has created a dichotomy in Iranian criminal policy: on one hand, general criminal laws are moving toward decarceration and penalty moderation; on the other hand, special laws continue to pursue a logic of aggravation, deterrence, and penal suppression. This dichotomy results in the uneven and selective application of penal minimalism. Consequently, the country's criminal policy lacks the necessary coherence, and in certain domains, the maximalist model of criminal intervention remains predominant.

Carceral Judicial Culture and Resistance to Alternative Mechanisms: A second challenge pertains to the judicial culture and mindset prevailing within segments of the criminal justice system. Although the legislature has provided numerous mechanisms such as alternative punishments, deferral of sentencing, suspension of punishment, mediation, and non-custodial precautionary measures, the utilization of these capacities in practice has not always been optimal. In some instances, judges still perceive imprisonment as a more secure, decisive, and effective sanction for maintaining public order, appeasing public opinion, or responding to the demands of private complainants. This mindset, rooted in retributive traditions, concerns about recidivism, a lack of supervisory resources, and occasionally the fear of disciplinary or social liability, leads to the cautious or restricted application of alternative mechanisms. In other words, legislative transformation alone is insufficient for realizing minimalism; this principle requires a transformation in judicial culture, continuous judicial training, the enhancement of criminological knowledge, the promotion of a rehabilitative approach, and the building of institutional trust in non-custodial sanctions.

Weak Executive and Supervisory Infrastructure: The successful implementation of alternative punishments and other minimalist mechanisms necessitates efficient executive and supervisory infrastructure. For instance, executing unpaid community service requires the cooperation of host organizations, a precise evaluation system, continuous supervision, and regular reporting mechanisms. Similarly, implementing probationary supervision, the semi-liberty system, electronic monitoring (ankle bracelets), and supervised release requires technical facilities, specialized human resources, and reliable electronic systems. In the absence of such infrastructure, a judge may resort to imprisonment instead of selecting an alternative sanction, as imprisonment appears simpler, more familiar, and more accessible from an executive standpoint. Consequently, infrastructural deficits practically render decarceration policies ineffective, preventing legal capacities from reaching the implementation stage.

The Prevalence of Populist Punitiveness in Certain Domains: Another obstacle to the realization of minimalism is the susceptibility of penal policy to emotional, media-driven, or short-term public demands. In some cases, the occurrence of specific crimes or heightened social sensitivity toward certain behaviors generates public pressure for harsher punishments. The outcome of such a climate is the hasty enactment of laws, the expansion of criminalization, and the escalation of penalties without a rigorous assessment of their criminological and social impacts. This phenomenon, referred to in criminal policy literature as "populist punitiveness" (18), conflicts with the logic of penal minimalism. In such scenarios, instead of being an exceptional and rational tool, criminal law is transformed into a symbolic instrument for demonstrating the state's decisive reaction.

Lack of a Coherent System for Assessing the Impact of Criminal Laws: The realization of penal minimalism requires that criminal laws be evaluated before and after enactment regarding their social, economic, criminological, and human rights impacts. In many legal systems, prior to criminalization or the aggravation of penalties, expert studies are conducted concerning the necessity of criminal intervention, the costs of law enforcement, potential

effects on the prison population, and the viability of non-criminal alternatives (19). However, in the Iranian legal system, a coherent and mandatory system for assessing the impacts of criminalization and sentencing has not yet been fully institutionalized. Consequently, criminal laws are sometimes enacted without sufficient regard for executive capacities, social consequences, or prison-generating effects. This gap remains one of the primary factors perpetuating penal inflation and undermining the efficacy of certain decarceration policies.

Comparative Analysis of the Principle of Penal Minimalism in the Iranian Legal System and International Human Rights Instruments

A comparative analysis of the principle of penal minimalism in the Iranian legal system and international human rights instruments reveals that, although this principle is recognized in both systems as a crucial criterion for constraining state penal power, significant differences and challenges exist at the levels of theoretical foundations, legislative mechanisms, and practical realization. In both systems, the primary objective of penal minimalism is to restrict criminal intervention, reduce reliance on liberty-depriving sanctions, strengthen alternative measures, and advance toward restorative and rehabilitative justice. However, the trajectory for achieving these goals within Iran's domestic law and the framework of international standards exhibits distinct characteristics regarding normative foundations, scope of implementation, and enforcement guarantees.

Broadly speaking, within international human rights instruments, penal minimalism is predominantly crystallized through a set of fundamental human rights principles, such as inherent human dignity, proportionality, necessity, the prohibition of arbitrary deprivation of liberty, and the primacy of non-custodial measures (10). Conversely, in the Iranian legal system, this principle, while influenced by international standards, is also deeply rooted in Islamic jurisprudential (Fiqh) foundations, constitutional principles, and the evolution of domestic criminal policy. Consequently, a comparative analysis of these two domains can facilitate a deeper understanding of their points of convergence and divergence, as well as an assessment of the degree to which Iran's criminal policy aligns with international standards.

Normative and Conceptual Convergences

One of the most significant findings of this comparative analysis is the substantial normative convergence between the Iranian legal system and international human rights instruments. In both systems, the principle of human dignity is recognized as a foundational basis for limiting state penal power. In international instruments, particularly the International Covenant on Civil and Political Rights (ICCPR), inherent human dignity forms the basis for obligating states to treat defendants and convicts humanely. Similarly, in Iranian law, the principle of human dignity holds a prominent position in the Constitution and Islamic jurisprudential teachings, serving as a valid foundation for restricting severe and unnecessary punishments (17).

Furthermore, the principle of legality of crimes and punishments, a cornerstone of the modern criminal justice system, is accepted in both frameworks. By preventing vague, expansionist, or broadly interpreted criminalization, this principle plays a vital role in circumscribing state penal authority. In international instruments, this principle is emphasized in Article 15 of the ICCPR, while in Iranian law, it is enshrined in Article 36 of the Constitution and various provisions of the Islamic Penal Code.

Conversely, the principle of proportionality between crime and punishment represents another major point of commonality. International human rights instruments, particularly in the interpretations provided by the Human

Rights Committee and other monitoring bodies, consistently emphasize that punishments must be proportionate, necessary, and non-excessive. In Iranian law, this principle is operationalized through mechanisms such as penalty mitigation, suspension of punishment execution, deferral of sentencing, and alternative punishments to imprisonment.

Finally, the development of non-custodial measures and the reduction of reliance on imprisonment constitute another area of convergence. International instruments, such as the Tokyo Rules and the Bangkok Rules, emphasize the necessity of expanding alternatives to imprisonment. Correspondingly, the Islamic Penal Code (2013) and the Law on the Reduction of Punishment for Ta'zir Imprisonment (2020) in Iran were enacted with this very objective in mind. This indicates that, at least at the legislative level, Iran's criminal policy has somewhat aligned with global trends toward decarceration.

Divergences in Theoretical Foundations and Normative Frameworks

Despite the aforementioned convergences, notable divergences exist in the theoretical foundations and normative frameworks of penal minimalism between the Iranian legal system and international human rights instruments. In the international human rights system, penal minimalism is primarily grounded in the liberal philosophy of human rights and the principle of limiting state power. Within this framework, criminal law is perceived as a potentially dangerous tool to individual liberties and, therefore, must be subjected to stringent human rights oversight (9).

In contrast, in the Iranian legal system, the foundations of penal minimalism are influenced not only by human rights principles but also by Islamic jurisprudence. Maxims such as the rule of Dar' (averting punishments in cases of doubt), caution in matters of blood (dima') and honor (a'rad), the negation of hardship (Nafy-e Usr wa Haraj), and the principle of concealment (Satr) can all be construed as jurisprudential foundations that restrict severe punishments. However, in certain domains, penal provisions based on traditional jurisprudence, particularly within the realms of Hudud (fixed punishments) and Qisas (retribution), may exhibit inherent tensions with modern minimalist approaches.

Another divergence lies in the degree of institutionalized human rights oversight over penal policy. In the international system, bodies such as the Human Rights Committee, UN Special Rapporteurs, and regional human rights courts play a pivotal role in monitoring state conduct and interpreting human rights standards. Conversely, in the Iranian legal system, oversight mechanisms are predominantly domestic, and international monitoring of the country's penal policy is considerably more limited.

Disparities in Implementation and Practical Realization

One of the most critical areas of disparity between the Iranian legal system and international standards is observed at the level of practical implementation of penal minimalism. In many international instruments, imprisonment is regarded as a measure of last resort in response to crime, with a strong emphasis on the widespread use of alternative measures, mediation, restorative justice, and rehabilitative programs.

Although recent laws in Iran have created capacities for decarceration, in practice, the use of imprisonment remains prevalent for many common offenses. One factor contributing to this situation is the inflation of criminal titles across various laws and the persistence of stringent penal policies in specific domains, particularly economic crimes, narcotics offenses, and security-related crimes.

Furthermore, the inadequate development of the necessary infrastructure for implementing alternative punishments constitutes a major obstacle to the full realization of minimalism. While many countries utilize advanced electronic monitoring systems, organized community service programs, and social rehabilitation initiatives, such mechanisms have not yet been fully developed in Iran.

Additionally, judicial culture and traditional attitudes toward the function of punishment play a significant role in this context. In some instances, imprisonment is still perceived as the primary and most effective response to crime, whereas contemporary criminal policy approaches emphasize its limited and purposeful application (14).

Assessing the Alignment of Iran's Criminal Policy with International Standards

Given the foregoing discussions, it can be asserted that Iran's criminal policy has taken steps in recent years toward convergence with international standards of penal minimalism. The enactment of the Islamic Penal Code (2013), the expansion of alternative punishments, the introduction of criminal mediation in the Code of Criminal Procedure (2013), and the passage of the Law on the Reduction of Punishment for Ta'zir Imprisonment (2020) are among the most prominent indicators of this transformation.

However, to achieve a more comprehensive alignment with international standards, further reforms appear necessary. Such reforms include reducing criminal titles in special laws, strengthening restorative justice institutions, developing the infrastructure for executing non-custodial sanctions, providing specialized training for judges in modern criminal policy, and establishing a coherent system for the ex-ante and ex-post impact assessment of criminal legislation (19).

In summary, it can be concluded that the principle of penal minimalism in the Iranian legal system is currently in a transitional phase. Although the necessary theoretical and legislative foundations have largely been established, the full realization of this principle requires structural, cultural, and institutional reforms within the criminal justice system. Strengthening restorative approaches, reducing excessive reliance on imprisonment, and paying greater attention to human rights standards can pave the way for the more effective realization of this principle in Iran's criminal policy.

Conclusion

The principle of penal minimalism stands as a fundamental tenet of contemporary criminal law, emphasizing the restriction of state criminal intervention to cases that are strictly necessary, exceptional, and proportionate. According to this principle, criminal law must not serve as the primary instrument for responding to social issues; rather, it should be deployed as a measure of ultima ratio (last resort), only after alternative legal, civil, administrative, cultural, or restorative mechanisms have proven ineffective. The foundations of this principle can be traced to the philosophy of limiting state power, the preservation of human dignity, personal liberty and security, the principle of proportionality, the prohibition of arbitrary detention, and the necessity of avoiding unnecessary punitive measures.

An examination of international human rights instruments reveals that although the explicit term "penal minimalism" is rarely used, its substantive content is clearly observable in documents such as the International Covenant on Civil and Political Rights (ICCPR), the Tokyo Rules, the Bangkok Rules, the Nelson Mandela Rules, the Beijing Rules, and the Havana Rules. These instruments consistently emphasize reducing reliance on

imprisonment, developing non-custodial measures, humanizing the execution of punishments, protecting vulnerable groups, and expanding restorative justice.

Within the Iranian legal system, although penal minimalism is not explicitly codified as an independent principle in criminal statutes, its manifestations are evident in the Constitution, jurisprudential (Fiqh) maxims, and recent criminal legislation. Principles such as the presumption of innocence, the legality of crimes and punishments, the prohibition of arbitrary detention and torture, and the protection of personal dignity, alongside jurisprudential maxims like the rule of Dar' (averting punishments in cases of doubt), La Darar (no harm), Nafy-e Ushr wa Haraj (negation of hardship), and caution in matters of blood (dima') and honor (a'rad), provide significant capacities for circumscribing state penal power. Furthermore, the Islamic Penal Code (2013), the Code of Criminal Procedure (2013), and the Law on the Reduction of Punishment for Ta'zir Imprisonment (2020) have taken substantive steps toward decarceration and depenalization by introducing mechanisms such as the deferral of sentencing, suspension of punishment execution, alternative punishments to imprisonment, parole, criminal mediation, and the expansion of forgivable offenses.

Nevertheless, comparative analysis indicates a discernible gap between the theoretical and legislative acceptance of this principle and its practical realization. Challenges such as the inflation of criminal offenses, the fragmentation of criminal laws, the persistence of a carceral approach in certain domains, weak infrastructural support for alternative sanctions, traditional judicial culture, and the absence of ex-ante impact assessments of criminalization have hindered the full realization of penal minimalism in Iran.

In sum, it can be concluded that the Iranian legal system is currently in a transitional phase regarding penal minimalism. While the requisite legal, jurisprudential, and human rights capacities largely exist, transforming this into a coherent and sustainable policy necessitates legislative reforms, the strengthening of restorative justice, the development of executive infrastructure, and a paradigm shift in the perception of imprisonment's role. Therefore, penal minimalism does not imply the abolition of punishment; rather, it signifies the rationalization, humanization, and proportionality of state criminal intervention, aimed at maintaining public order while safeguarding individual rights and liberties.

Recommendations

Based on the research findings, realizing the principle of penal minimalism in the Iranian legal system requires a comprehensive set of legislative, judicial, and executive reforms:

First, the principles of the "necessity of criminal intervention" and the "ultima ratio nature of criminal law" must be explicitly recognized in fundamental criminal statutes, particularly within the General Provisions of the Islamic Penal Code or through a comprehensive Criminal Policy Act. This would provide a clear, binding foundation for criminalization, sentencing, and judicial interpretation.

Second, a thorough review of special and scattered criminal laws is imperative, as the inflation of criminal offenses constitutes a primary obstacle to penal minimalism. In this regard, unnecessary, redundant, vague, or minor criminal offenses should be either eliminated or converted into civil, administrative, or disciplinary sanctions. Furthermore, it is recommended that a "Criminal Impact Assessment" system be implemented prior to the enactment of new crimes or the aggravation of penalties, to rigorously evaluate the necessity of criminalization, its projected impact on the prison population, execution costs, and its alignment with human rights principles.

Third, the practical development of alternative punishments to imprisonment and non-custodial measures must be prioritized. Merely providing for these mechanisms in legislation is insufficient; their effective execution requires the establishment of robust supervisory infrastructure, the enhancement of electronic monitoring systems, the expansion of host organizations for community service, the specialized training of social workers, and the regular evaluation of offenders' rehabilitation progress. In the same vein, pre-trial detention should be applied exclusively in exceptional circumstances, while non-custodial precautionary measures, such as bail, proportionate surety, personal recognizance, electronic monitoring, and prohibition on leaving the judicial jurisdiction, should be systematically expanded.

Fourth, strengthening restorative justice and criminal mediation can play a pivotal role in reducing formal criminal intervention. Therefore, the scope of utilizing peace and reconciliation, mediation, victim-offender dialogue, and restorative agreements, particularly in minor and moderate offenses, must be broadened. Concurrently, specialized mediation centers staffed by legal professionals, social workers, psychologists, and local community representatives should be fortified.

Fifth, the realization of penal minimalism is unattainable without a transformation in judicial culture. Consequently, specialized training for judges, prosecutors, investigators, assistant prosecutors, and judicial officers regarding the principle of proportionality, the criminogenic effects of imprisonment, alternative sanctions, restorative justice, and criminal human rights is essential. Additionally, a differential and protective approach must be adopted toward vulnerable groups, such as children and adolescents, women, the elderly, individuals with mental illnesses, persons with substance use disorders, and first-time offenders, with imprisonment avoided to the greatest extent possible.

Finally, criminal policymaking must be data-driven and grounded in precise empirical evidence. The systematic collection and publication of data regarding criminal offenses, the utilization rates of imprisonment, pre-trial detention, alternative punishments, recidivism rates, and prison costs can serve as the foundation for scientific and efficient reforms. Within this framework, the prison must be divested of its status as the default or normal response, and utilized exclusively as the ultimate and most exceptional penal response for severe and dangerous crimes—and even then, strictly in adherence to human dignity and with the explicit goals of rehabilitation, treatment, education, and the social reintegration of the convict.

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