Conflict Between Penal Populism and Decriminalization in Iran's Criminal Justice System

1. Mohammad Safarpour Dobakhshari: PhD student, Department of Criminal Law and Criminology, Ardabil Branch, Islamic Azad University, Ardabil, Iran
2. Mehdi Haghighatjoo*: Assistant Professor, Department of Law, Rasht Branch, Islamic Azad University, Rasht, Iran
3. Ahmad Pourebrahim: Assistant Professor, Department of Law, Rasht Branch, Islamic Azad University, Rasht, Iran

*Correspondence: Haghighatjommehdi@yahoo.com

Abstract

The policy of decriminalization has been embraced within the Iranian criminal justice system, and it is assumed that under such circumstances, this policy should be uniformly reflected across criminal laws. However, in certain cases, contradictory and opposing approaches by the legislature can be observed. On one hand, the legislator aims to moderate punishments; on the other hand, a completely different orientation supports punitive and severity-based policies. Under such circumstances, the ordinary living space of citizens turns into a penalized environment, leading to the marginalization of justice-centered approaches and the dominance of security-driven and punitive tendencies in the realm of criminal law. Given the significance of this issue, the present article adopts a descriptive-analytical and library-based methodology to examine the contradiction between penal populism and decriminalization policies in Iran's criminal justice system. According to the conducted analysis, it can be stated that the new legislative period (beginning in 2013) may be referred to as a period of expanded decriminalization policies. Nevertheless, from a policy depth perspective, within both general and specific laws, signs of tension between penal populism and decriminalization—or a lack of confidence in the new regulatory frameworks—persist. Examples of this contradiction can be found in several statutes, including the Law on the Protection of Promoters of Virtue and Preventers of Vice (2015), the Plan for Intensifying the Fight Against Violent Crimes (2011), the Law on Combating the Financing of Terrorism (2015), the Law on the Punishment of Persons Involved in Unauthorized Audiovisual Activities (2007), and the Islamic Penal Code (2013). A notable manifestation of penal populism is particularly evident in the Islamic Penal Code (2013), which reveals a strong inclination toward the use of severe punishments. Therefore, it is imperative for the legislator to address and rectify the contradiction between penal populism and decriminalization by undertaking the necessary legal reforms aligned with the overarching national policy of adopting minimal penal intervention.

Keywords: punishment, penal populism, decriminalization, contradiction, criminal justice system

Received: 13 May 2025
Revised: 2 July 2025
Accepted: 10 July 2025
Published: 21 July 2025

Citation: Safarpour Dobakhshari, M., Haghighatjoo, M., & Pourebrahim, A. (2024). Conflict Between Penal Populism and Decriminalization in Iran's Criminal Justice System. *Legal Studies in Digital Age*, 3(3), 219-226.

1. Introduction

Different societies adopt various approaches to respond to criminal phenomena. Some of these approaches reflect severity toward the offender, while others indicate tolerance and leniency. When resorting to punishment is perceived as the first solution and punitiveness in sentencing is regarded as the preferred method for controlling criminal behavior, it is said that the domain of criminal justice has become afflicted by penal populism. Conversely, when criminal justice policies—particularly decriminalization—are employed as alternatives to punishment for the purpose of rehabilitation, correction, and providing the offender with an opportunity for reintegration, and punishment is considered the last resort, the prevailing criminal policy is described as decriminalizing in nature (Moradi Shahdadi & Ahmadi Far, 2021).

Penal populism has been one of the significant transformations in criminal justice in recent decades and is rooted in multiple factors. This school of thought emerged following claims regarding the ineffectiveness of rehabilitative and corrective policies—mainly rooted in decriminalization—in preventing crime and reforming offenders. If the belief persists that an individual who differs from society must either conform to the majority or be eliminated and excluded, it paves the way for relying on punitive measures. Such a perspective provides a broad foundation for utilizing exclusionary punishments during the sentencing and execution phases and fosters penal-oriented actions. In contrast, decriminalization—while preserving the criminal nature of the act—enables the removal or moderation of punishment through sentence reduction, substitution with lighter penalties, or replacing punishment with non-penal measures. While the criminality of the act remains legally intact, the sanction is adjusted either by reducing the sentence, substituting it with a less severe punishment, or replacing it with a non-criminal alternative. On the other hand, a penal populist approach resorts to punishment not only as the initial response but also reveals a pattern of disproportionality, severity, and excessive reliance on harsh repressive sanctions such as the death penalty, long-term imprisonment, and brutal corporal punishments like flogging or amputation (Moradi Shahdadi & Ahmadi Far, 2021). As can be seen, these two approaches represent contradictory models of responding to crime. Hence, the penal–decriminalizing discourse in the domain of criminal law is an arena for conflict between two perspectives, each striving to dominate the criminal justice narrative.

The Iranian penal system, throughout its history, has employed diverse methods in addressing crime. Although the criminal justice system seeks the most appropriate means of responding to crime, the most common response has traditionally been through penal mechanisms. When this approach results in disproportionate sentencing, harsher penalties, and greater rigor in their execution, it is said that penal populism has permeated the domain of criminal justice. However, when the legislator, while maintaining the criminal status of the act, opts to eliminate or moderate punishment through reduction, substitution with a lighter penalty, or replacement with non-criminal measures, this is referred to as decriminalization. Penal populism, as one of the chronic issues of the penal system, infiltrates various layers of society and poses a fundamental challenge to any welfare-oriented policy grounded in penal retreat. It fosters severity, a security-centric attitude, and a withdrawal from decriminalizing strategies.

A review of Iranian penal legislation reveals the manifestations and influence of these two opposing approaches, and the legislator's oscillation between penal populism and, at times, decriminalization across different statutory provisions. Naturally, the tendency toward these two orientations has not been constant over time and has fluctuated across different legislative periods and laws. Based on this context, the central issue of the present study is, first, to examine how penal populism and decriminalization—and their multiple manifestations—have influenced Iran's criminal justice system, and second, to determine the extent of the conflict between these two approaches within the same system. In sum, the core question of this article is to elucidate the contradiction between penal populism and decriminalization in Iran's criminal justice system.

2. Definition of Concepts

2.1. Punishment

Punishment (in Persian, *kifar*) refers to the penalty for wrongful acts or misdeeds and is defined as a legal sanction. In legal terminology, it refers to the retribution or sanction imposed on offenders (Mojavarian et al., 2021). Therefore, punishment is synonymous with legal sanction. From a legal perspective, various definitions of punishment have been proposed: "Punishment is a penalty or disciplinary measure imposed on the perpetrator of a crime. The concept of suffering is inseparable from the concept of punishment, and indeed, suffering and hardship constitute the essential nature of punishment" (Amiri et al., 2021).

*2.2. **Penal Populism***

Penal populism is the Persian equivalent of the English term *punitiveness*, indicating an excessive tendency toward imposing punishments and a form of disproportion in resorting to penal responses and criminal justice measures. Penal populism has emerged as a major development in criminal justice in recent decades and stems from various origins. This intellectual movement gained traction following the claim that rehabilitative and reform-oriented policies—rooted in decriminalization—were ineffective in preventing crimes and reforming offenders. When the belief emerges that a person who diverges from societal norms must either conform to the majority or be excluded from society, it creates fertile ground for the imposition of punishment. This mindset lays the foundation for exclusionary punishments at the sentencing and enforcement stages and ultimately leads to penal populist practices (Moradi Shahdadi & Ahmadi Far, 2021).

Penal populism, which denotes an extreme inclination toward punishment and its excessive application, results from neglecting non-penal and extra-legal policies—particularly from disregarding social welfare and supportive approaches. Penal populism shifts the focus away from offender-centered views to a crime-centered perspective. In this approach, the offender is viewed as an economic actor who calculates the costs and benefits of their actions before committing a crime, and the only viable response is the implementation of severe and definitive punishments. Penal populism implies an unlimited tendency toward punishment, exceeding the ordinary bounds established for its application. "This can manifest in the use of specific types of punishment, excessive quantities, enforcement under harsh conditions, and violations of fair and just trial norms during prosecution and adjudication" (Nasrasfahani et al., 2021). Indeed, punitive severity, by sidelining the rehabilitative and corrective purpose of punishment, prioritizes goals such as retribution, incapacitation, and crime risk management.

This approach gained momentum in the 1970s, following the failure of reform and rehabilitation programs, and with a shift away from offender-focused perspectives, it emphasized the necessity of imposing punishment or intensifying penal measures while abandoning tolerance- and leniency-based strategies. In this approach, the offender is regarded as a rational economic agent who calculates gains and losses before acting, and the only effective deterrent is the imposition of strict and definitive punishment to achieve both general and specific crime prevention. When this tendency penetrates criminal justice systems, it also influences enforcement agents and officials. In such a situation, the normal living environment of citizens becomes a penalized environment, and as a result, justice-centeredness is replaced by a security-oriented and severity-based approach in the realm of criminal law (Moradi Shahdadi & Ahmadi Far, 2021).

2.3. Decriminalization

"Decriminalization refers to partial criminal exemption, in which a form of social intervention or measure replaces punishment, while the criminal label for the act or omission remains intact" (Pedram & Borhani, 2020). Another definition holds that decriminalization encompasses all forms of moderation and mitigation within the criminal system aimed at leniency, such as reclassifying a felony as a misdemeanor or replacing custodial sentences with alternative measures (Roche, 2020). The United Nations Office on Drugs and Crime defines decriminalization as the reduction or elimination of criminal sanctions for specific offenses (UNODC, 2013, p. 45). Another definition regards decriminalization as a tool of criminal policy that encompasses a continuum from penalty reduction to elimination, introducing a sequence and alternation between punishment and non-penal responses to crime (Abdous et al., 2020). Marc Ancel defines decriminalization as the moderation of the criminal justice response to crime. According to him, decriminalization generally means a softening of the social response

achieved by abandoning or modifying criminal methods or replacing them with alternatives that cause less suffering and have greater effectiveness (Simplice et al., 2020).

Decriminalization is applied in various ways:

1. The legislator reclassifies a felony as a misdemeanor or infraction, thereby converting the corresponding punishment into a more lenient disciplinary sanction.
2. In the prosecution phase, aggravating elements are overlooked for various reasons, and the case is referred to court under a less severe charge.
3. The judge describes the criminal act as a minor offense or, in some cases, orders the file to be archived without prosecution (Dashtbani & Mohammadi, 2022).

3. The Conflict Between Penal Populism and Decriminalization in Iran's Criminal Justice System

Although one of the main indicators of decriminalization is the emphasis on minimal and least punitive responses, it is observed in some instances that "not only has the scope of criminalization and judicialization not diminished, but the trend of criminalization has continued and even new criminal offenses have been introduced" (Sadeghi & Habibzadeh, 2020, p. 70). In some cases, new offenses have been accompanied by severe penalties.

In general, to demonstrate that a criminal justice system has adopted a penal populist approach, multiple factors must be assessed. Indicators include excessive criminalization and legislative overreach, extreme reliance on harsh and repressive sanctions such as long-term imprisonment, corporal punishment (e.g., flogging, amputation), intensification of punishments, severity in enforcement, use of vague and undefined terms in laws enabling broad interpretation, violation of fair trial standards, removal or reduction of legal provisions allowing for the suspension or elimination of punishment, and the limitation or elimination of mitigating factors. All these elements may represent components reinforcing a penal populist approach. When such tendencies infiltrate criminal systems, their administrators and enforcers also become aligned with them. In this situation, the normal life space of citizens transforms into a penal environment. Thus, understanding the concept of penal populism clearly reveals its contrast with the concept of decriminalization. This clarification allows us to analyze the contradiction between penal populist and decriminalizing policies in Iran's criminal justice system.

4. The Law on the Protection of Promoters of Virtue and Preventers of Vice (2015)

One instance of the conflict between penal populism and decriminalization in Iran's criminal justice system is reflected in the Law on the Protection of Promoters of Virtue and Preventers of Vice, enacted in 2015. Article 9 of the law stipulates that if individuals obstruct or harass those promoting virtue and preventing vice in a manner recognized as a criminal act under the law, they shall be sentenced, in addition to the stipulated punishment, to a degree-seven discretionary imprisonment or monetary fine. Regarding legal entities, administrative penalties are also applicable in addition to Subparagraph "P" of Article 20 of the Islamic Penal Code. These are instances of legislative expediency wherein the lawmaker, based on certain social considerations, diverges from decriminalizing policies.

5. Plan for Intensifying the Fight Against Violent Crimes (Enacted in 2011)

Another instance of penal populism by the Iranian legislator concerns offenders who commit violent crimes and, through their criminal acts, provoke public outrage. For example, in 2011, a proposal titled "Plan for Intensifying the Fight Against Violent Crimes" was introduced by 21 members of Parliament and was granted fast-track status. As evident from the term "intensifying" in the title, the legislator's approach is clearly punitive. According to Article 1 of this proposal, in order to increase public security, in cases where, due to the commission of violent crimes such as murder, intentional bodily harm, rape, armed robbery, acid attacks, kidnapping, crimes causing insecurity, and offenses against women and children, the public conscience is offended or public order is disrupted (as determined by the head of the provincial judiciary), the trial must be conducted publicly and broadcast via mass media. Additionally, the proceedings for such violent crimes shall be conducted on an urgent and out-of-turn basis. Pursuant to Note 1 of this Article, the deadline for issuing a verdict is a maximum of three days after the conclusion of the trial, and the time limit for appeal in such cases is one week.

Regarding the analysis of the legislator's punitive stance toward such offenders, several points are noteworthy. For instance, according to general principles of criminal procedure, proceedings are presumed to be non-public, and deviation from this principle reflects a penal-oriented execution of justice (Nasrasfahani et al., 2021). Moreover, the urgency of proceedings, expedited trials, swift verdict issuance, and the brief one-week appeal window all indicate that the legislator, influenced by public agitation, has opted for security-driven and harsh policies, sacrificing the minimum legal protections for the accused or convicted in an effort to satisfy public demand for restoring lost security.

6. Law on Combating the Financing of Terrorism (Enacted in 2015)

Another manifestation of the legislator's penal populism can be observed in the context of penal inflation in the realm of sentencing, often referred to as the misuse of punishment. Regardless of the nature of punishment, proportionality between crime and punishment is one of the key principles that restrict legislative authority in criminalization and serves as a fundamental basis for the justification of punishments. Hence, assuming the ability to assess proportionality between crimes and punishments and the severity of penalties, the extreme intensification of punishments is a prominent feature of legislative penal populism. In this context, reference can be made to the Law on Combating the Financing of Terrorism enacted in 2015, which, under Article 2, prescribes the death penalty if the perpetrator's action is deemed as *moharebeh* (waging war against God) or *corruption on earth*. However, the term *corruption on earth* itself is very vaguely and ambiguously defined in the Islamic Penal Code, and such ambiguity and overgeneralization are, in their own right, examples of legislative penal populism.

7. Law on the Punishment of Individuals Involved in Unauthorized Audiovisual Activities (Enacted in 2007)

A similar approach by the legislator is also evident in the Law on the Punishment of Individuals Engaged in Unauthorized Audiovisual Activities, enacted in 2007. According to part of Paragraph (a) of Article 3 of this law, numerous audiovisual activities such as the production, reproduction, and distribution of obscene content fall within the scope of *corruption on earth* and are consequently punishable by death. Therefore, with such approaches applied by the legislator in the domain of criminal law, it can be asserted that the more rigorous and severe the approaches become in legislating and implementing heavy punishments, the more difficult it becomes to operationalize decriminalizing policies.

8. Islamic Penal Code (Enacted in 2013)

Given that the policy of decriminalization has been adopted within Iran's criminal justice system, it is assumed that this policy should uniformly prevail throughout the criminal legal framework. However, in practice, we observe contradictory and divergent approaches by the legislator. On one hand, there is an attempt to moderate punishments, while on the other, the legislator supports punitive and severity-based policies. For instance, certain behaviors have recently been criminalized, despite the fact that the creation of new crimes inevitably entails the establishment of punitive sanctions, and the legislator sometimes prescribes the most severe penalties for such newly defined offenses.

An example of this contradiction can be found in offenses such as *corruption on earth (efsad-e fel-arz)*, *rebellion (baghi)*, and *blasphemy against the Prophet (sabb al-nabi)*, all of which carry the death penalty. In the 2013 law, the offense of *corruption on earth*, after being largely abandoned for centuries, reemerged as an independent crime—contrary to the principle of legality in criminal law. Previously, the legislator had considered *moharebeh* (waging war against God) and *corruption on earth* as a single offense with a unified ruling.

Article 286 of the Islamic Penal Code defines *corruption on earth* as follows: "Anyone who, on a large scale, commits crimes against the physical integrity of individuals, crimes against domestic or foreign security, dissemination of falsehoods, disruption of the country's economic system, arson and destruction, spreading toxic, microbial, and dangerous substances, or establishing centers of corruption and prostitution or aiding therein, in such a way that it causes severe disruption of public order, insecurity, or significant damage to the physical integrity of individuals or to public and private property, or leads to widespread propagation of corruption or prostitution, shall be considered *mofsed-e fel-arz* (corrupt on earth) and shall be sentenced to death."

Another critique of the criminalization of *corruption on earth* in the 2013 Penal Code lies in the expansive and ambiguous enumeration of acts under this category. Actions such as "establishing centers of prostitution," "spreading prostitution," and "disseminating falsehoods" are included, despite the risk that, with the proliferation of mass communication tools, an individual who sends an obscene email to many recipients might fall under this category. Although such behavior is undoubtedly immoral, issuing a capital punishment in such cases is not justifiable under Islamic jurisprudence (Moradi Shahdadi & Ahmadi Far, 2021), reflecting the broader tension between penal populism and decriminalization within Iran's justice system.

Furthermore, terms used in Article 286, such as "on a large scale," are open to interpretation and lack concrete standards, creating potential for misuse by criminal justice actors—especially judges who favor retributive approaches.

This same tendency is evident in the legislator's handling of the offense of *baghi* (armed rebellion), newly criminalized in Article 287 of the Islamic Penal Code. It defines a group that engages in armed insurrection against the foundations of the Islamic Republic as *baghi*, and if weapons are used, members of the group are to be sentenced to death. The concept of *baghi* did not exist in prior criminal laws. Some legal scholars classify it among *hudud* (fixed punishments in Islamic law), even though fixed punishments are traditionally considered immutable (Eidi & Kazemiyeh, 2023). The inclusion of *baghi* among *hudud* thus contradicts this legal principle.

Likewise, the offense of *blasphemy against the Prophet* (*sabb al-nabi*), though not novel, was codified as a standalone offense in the chapter on *hudud* in the 2013 Penal Code. Accordingly, the number of religion-related crimes has increased, as has their formal codification within the Penal Code.

Despite the visible expansion of decriminalizing institutions in the new Penal Code, we observe that the legislator adopts retributive and punitive approaches toward crimes perceived as threatening to the political or religious order. In some cases, such as *corruption on earth*, the legislator has allowed for broad interpretive discretion, which stands in stark opposition to decriminalization strategies.

Penal severity is also visible in *collateral* and *complementary* punishments. A comparison between Article 25 of the 2013 Code and Article 62 (Repeated) of the previous Code reveals that, under the current law, convictions resulting in death or life imprisonment carry continuing collateral punishments even after the main sentence is completed—unlike in the previous code. Furthermore, offenses such as bodily retaliation (*qisas*), partial or full *diyya* (blood money), exile (*nafi al-balad*), and fifth-degree imprisonment (ranging from two to five years) have been added to the scope of social deprivation. Therefore, both in terms of scope and severity, collateral sanctions have increased.

In terms of duration, the legislator has inconsistently increased or decreased social deprivation periods. For example, under the previous code, the social deprivation period following *hadd* lashing was one year; it has now increased to two years. Conversely, for amputation, the previous five-year deprivation has been reduced to three years. Such inconsistencies in sentencing policy suggest that the punitive tendencies of the legislator, especially regarding collateral punishments, require reevaluation in light of the overarching decriminalization orientation of the 2013 Penal Code. Collateral punishments, being additional penalties, contradict the goal of reducing or eliminating primary penalties, and thus their expansion is unjustifiable under a decriminalizing framework.

In terms of *complementary punishments*, the legislator's approach also conflicts with the dominant decriminalization policy reflected throughout much of the Penal Code. Complementary punishments are those added to the principal sentence and, by nature, run counter to decriminalization, which—especially in its strictest form—aims at eliminating punishment. The previous code, in Article 19, allowed for complementary punishments only in intentional crimes punishable by *ta'zir* or deterrent penalties. However, Article 23 of the new Code has expanded their application to include *hudud* and *qisas* offenses as well. Moreover, both the number and categories of complementary punishments have increased. Interestingly, the 2020 "Law on Reducing the Sentences of Ta'zir Offenses" has further broadened the scope of these punishments, now extending them to seventh- and eighth-degree crimes, whereas previously they only applied to offenses of degrees one through six.

9. Conclusion

Throughout different periods in Iran's criminal justice history, the legislator has consistently recognized institutions for decriminalization. Nonetheless, the new legislative era (beginning in 2013) may be characterized as a period of expanded decriminalization policy, marked by prison and capital punishment reduction efforts and signaling the legislator's intent to

implement these policies. Despite this, while the surface level of legislation may appear lenient and pragmatic, at a deeper policy-making level, contradictions between penal populism and decriminalization—or mistrust toward new regulations—remain, and arguably have intensified in the current era.

This trend has raised serious concerns about the resurgence of penal populism in Iran. Examples of this contradiction include the 2015 Law on the Protection of Promoters of Virtue and Preventers of Vice, the 2011 Plan for Intensifying the Fight Against Violent Crimes, the 2015 Law on Combating the Financing of Terrorism, the 2007 Law on the Punishment of Individuals Engaged in Unauthorized Audiovisual Activities, and the 2013 Islamic Penal Code. Penal populism is especially apparent in the 2013 Code, which demonstrates a strong inclination toward severe punishment. Expanding the scope of religion-related crimes and criminalizing *sabb al-nabi* as a *hadd* crime punishable by death is a prominent manifestation of penal populism and contradicts decriminalization policy.

Moreover, while *moharebeh* and *corruption on earth* were once treated as a single offense, they were separated in the 2013 law. The use of vague and broadly interpretable terms such as "on a large scale," "severe disruption," "major damage," "spreading corruption," "prostitution," and "to a broad extent"—none of which are clearly defined in Iranian legal doctrine—combined with the application of harsh penalties like death, signal a penal populist approach. The criminalization of *baghi* and the imposition of severe punishments further reflect this trend and have contributed to the rise in national security-related offenses.

Flogging, a highly severe and punitive measure, remains among the most common *hadd* punishments in Iran's criminal statutes, especially as the primary response to numerous offenses.

In sum, it is essential that the legislator address the contradiction between penal populism and decriminalization and implement necessary legal reforms aligned with the national policy of minimal penal intervention. To this end, it is recommended that: (1) the scope of penal populist tendencies, particularly regarding collateral and complementary punishments, be confined to specific and limited cases; and (2) exceptions to the application of leniency mechanisms be clearly and legislatively defined in a restrained manner under an appropriate criminal policy. Furthermore, to ensure the consistent implementation of decriminalization institutions, details regarding their enforcement should not be left solely to executive regulations—or, where so delegated, such regulations must be provided with enforceable timelines and legal guarantees for implementation.

Authors' Contributions

Authors contributed equally to this article.

Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

Ethical Considerations

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

Acknowledgments

Authors thank all individuals who helped us do this study.

Conflict of Interest

The authors report no conflict of interest.

Funding/Financial Support

According to the authors, this article has no financial support.

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