

Examining the Foundations of Omission and Its Instances in Iranian Criminal Laws

1. Hossein Yazdanshenas¹: Department of Criminal Law and Criminology, Bushehr Branch, Islamic Azad University, Bushehr, Iran

2. Ahmad Mirzaei²*: Department of Criminal Law and Criminology, Bushehr Branch, Islamic Azad University, Bushehr, Iran

3. Mohammad Chamkouri³: Assistant Professor, Department of Jurisprudence and Law, Payam-e Noor University, Bushehr Branch, Bushehr, Iran

*Correspondence: e-mail: mirzaei_ahm@yahoo.com

Abstract

This study was conducted to examine the foundations of omission and its instances in Iranian criminal laws. The research employed a descriptive and analytical method using a library-based approach, utilizing books, articles, theses, and other sources. Initially, the study defines omission, followed by a discussion on the distinction between crimes of commission and omission, along with different types of omission-based crimes, including pure omission (simple negative crimes) and commission by omission (result-oriented negative crimes). Furthermore, the study introduces the origins of omission-based crimes and explores the historical trajectory of criminal liability arising from omission in Iranian criminal laws, along with relevant instances.

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1. Introduction

In Iranian criminal law, criminal liability generally arises from the commission of a prohibited act (a criminal act). However, in some cases, omission (failure to fulfill a legal duty) can also result in criminal liability. In Iranian criminal law, punishable omissions are recognized as a form of criminal conduct within the framework of general and specific laws, which are grounded in legal principles, Islamic jurisprudence (fiqh), and statutory laws. Omission becomes punishable when a person is legally or contractually obligated to perform a specific act but fails to do so, thereby causing harm to another individual or society. In this context, omissions and their instances present significant challenges, such as ambiguity in determining the duty to act when it is not explicitly stated, difficulty in proving causation—establishing a link between omission and the criminal outcome, which often requires expert analysis—and potential conflicts with the principle of

individual freedom. Some legal scholars argue that the criminalization of omissions may infringe upon personal privacy. Unlike offenses based on positive acts, which involve the commission of a prohibited act, omission entails the failure to fulfill a legal or religious duty, leading to harm to society or individuals.

Furthermore, judicial authorities face inconsistencies and contradictions in their jurisprudence, as they do not have a uniform approach to interpreting legal duties and determining penalties. In legal systems such as common law and Romano-Germanic law, omission is criminalized only in exceptional cases, such as parental obligations toward children or contractual duties. However, in Iranian criminal law, under the influence of Imami jurisprudence, the scope of criminalizing omissions is broader. Iranian criminal law establishes three fundamental elements for omissions to be punishable: (1) the existence of a legal, religious, or contractual duty; (2) proof of causation between the omission and the criminal outcome; and (3) the occurrence of a prohibited result as defined by law. These elements present serious challenges, including ambiguity in determining duties in unclear cases, evidentiary difficulties—especially in establishing causation—and incompatibility with social developments, such as liability arising from new technologies. While criminal liability in Iranian law is generally based on the commission of positive acts (engaging in a prohibited act), in certain circumstances, omission (failure to fulfill a legal duty) can also be considered a crime and be subject to punishment. This concept is particularly evident in the Islamic Penal Code of 2013 and specific laws, which criminalize omissions based on jurisprudential foundations and legal principles. Accordingly, this study examines the foundations of omission and its instances in Iranian criminal laws.

2. Definition of Crime

The lexical meaning of crime is synonymous with sin, transgression, error, and disobedience {Dehkhoda, 2011 #153443}. Sociologists and criminologists define crime as an anti-social act that contradicts public conscience. Durkheim considers crime to be an act that wounds the collective conscience, while Raffaele Garofalo, an Italian judge and criminologist, defines crime as an act that, in any time or place, offends human dignity and altruistic feelings. From an Islamic perspective, crime is a violation of divine rights (huqūq Allāh) and human rights (huqūq al-nās), leading to individual or social corruption.

At the Conference on the Implementation of Islamic Criminal Law and Its Impact on Crime Prevention, held in October 1976 in Saudi Arabia, crime was defined as an act contrary to the commands and prohibitions of the Quran and Sunnah or any act that leads to the corruption of an individual or society. Each crime is associated with a prescribed punishment, explicitly stated by Islamic law or left to the discretion of the ruler or judge {Gorji, 1986 #153445}.

Defining crime distinguishes this social phenomenon from related concepts such as sin, error, and deviance. Moreover, the definition of crime reflects a society's perspective on norm-violating behaviors, helping to enumerate socially condemned actions and uphold the principle of legality in criminal law. The technical definition of crime differs from its lexical meaning, as scholars provide various definitions based on their disciplinary perspectives. Consequently, finding a comprehensive definition that includes all aspects while excluding unrelated elements is challenging. Many legal systems prefer not to define crime explicitly because, like other social phenomena, crime consists of multiple elements, conditions, and characteristics that cannot be fully captured in a single definition {Zareat, 2021 #153459}.

From a legal standpoint, the statutory definition of crime is "an act or omission that is punishable by law." This definition is objective, explicit, and concise but has some shortcomings, such as its failure to reference security measures as a potential consequence. Crime, however, precedes legislation and originates from societal dynamics rather than merely from criminal law. Cultural, social, and environmental factors play a significant role in criminal behavior, and criminal law is merely a mechanism to address it.

3. Constituent Elements of Crime

Crime is defined and analyzed through its constituent elements and conditions. These elements include:

1. **Material Element (actus reus):** This refers to the external act of an individual. No crime can exist without a material manifestation. Thus, only external acts can be criminalized, and mere criminal thoughts or intentions are not punishable unless they manifest in an observable act.

2. **Legal Element (principle of legality):** This principle underpins modern criminal law, meaning that legislators must explicitly define criminal acts, their conditions, and corresponding punishments in a codified law to prevent arbitrary judicial decisions.
3. **Mental Element (mens rea):** To attribute a crime to an individual and impose punishment, the act must not only be legally defined as a crime and materially manifested but must also be committed with intent or negligence. In other words, there must be a psychological or volitional link between the act and the perpetrator, referred to as the moral, psychological, or mental element {Goldouzian, 2014 #153444}.

3.1. *Material Element of Crime*

Mere criminal intent or malevolent thoughts that are not actualized do not constitute a punishable offense in criminal law. Only acts that manifest externally through material or physical conduct are subject to punishment. Unlike moral principles, which govern human conscience and condemn any impure thoughts, criminal law establishes enforceable rules governing human behavior, ensuring societal security. The general material elements of a crime consist of three components: (1) physical conduct, (2) a resulting harm, and (3) causation between the act and the harm. This study specifically focuses on the physical conduct element of crime, which will be analyzed in detail below.

3.2. *Criminal Conduct*

Criminal conduct is categorized into two types: affirmative conduct (i.e., an act) and negative conduct (i.e., an omission). In either case, the offender must engage in an act or omission that is tangible, perceptible, and objective, carrying a criminal designation under the law. In other words, it is not sufficient for criminal conduct to be merely prohibited by law; rather, there must be an external manifestation of an act resulting from criminal intent (i.e., a will directed toward prohibited objectives in criminal law) or criminal negligence by the principal perpetrator, accomplice, or accessory {Mirsaeidi, 2011 #153454}.

3.3. *Affirmative Conduct (Act)*

Criminal statutes are replete with provisions imposing penalties on affirmative criminal conduct, meaning that punishment is contingent upon the commission of an act that the legislator has prohibited. Crimes such as murder, theft, defamation, and insult are always associated with affirmative actions. In some cases, the legislator focuses on the outcome, meaning the transformation or alteration that occurs in nature, where the crime is essentially the change that has taken place. The legislative approach to these crimes is not always uniform. In some cases, the legislator considers the means and method by which the outcome is achieved to be significant, meaning that if the same outcome is reached through a means not specified by law, it does not fall within the intended legal provision. However, for certain crimes where the legislator focuses on the result, the means are not significant, and regardless of how the result is achieved, the individual whose act directly leads to the result is punishable. In affirmative crimes, the legislator does not always emphasize the outcome. In some cases, certain acts are deemed socially harmful regardless of their consequences, and the legislator considers the perpetrator deserving of punishment.

3.4. *Omission*

Omission stands in contrast to affirmative conduct, meaning that no physical movement occurs, and no change is introduced into the existing situation. Lexically, "omission" means to desist, abandon, or leave something or someone, while "act" refers to movement or action {Dehkhoda, 2011 #153443}. In legal and statutory terms, omission refers to a specific affirmative act that is mandated by law, contract, or custom, which an individual voluntarily fails to perform despite having the ability to do so. This definition consists of three key elements:

1. **Failure to perform a specific affirmative act:** The notion of failure does not imply that a person assumes a wholly passive stance. Rather, it means that the person does not fulfill a specific legally required duty, whether they engage in other activities at the time or remain entirely inactive. In both cases, omission has occurred. However, if an

individual merely refrains from an action but complies with the law, they are not considered to have committed an omission.

2. **Voluntary omission:** Will plays the most crucial role in the formation of material criminal conduct and the realization of the material element of a crime (Mirsaeidi, 2011, p. 154). Without volition, for example, in cases of unconsciousness or coercion, a crime does not materialize. However, this lack of volition must not stem from prior intentional conduct.
3. **Ability to perform the act:** The capability or power to perform the act is a latent or inherent attribute of the perpetrator, meaning that the person is in a position where they possess the ability to either act or omit. Therefore, the essential elements of a punishable omission include a voluntary failure to act while having the ability to do so, at a minimum leading to duty-based liability.

The material element of these offenses consists of "refraining" or "omission", which is why they are categorized as offenses of omission. A causal link can be established between omission and its result, as this is a matter of social convention, which does not generally impose restrictions on such causal inferences. Legislative mandates may require individuals to fulfill legal duties, and failure to comply can assume criminal liability, subjecting the offender to punishment. Depending on the circumstances, these crimes may be categorized as intentional, quasi-intentional, or strict liability offenses.

4. Distinction Between Affirmative Crimes and Crimes of Omission

As noted, affirmative crimes constitute a large portion of legal offenses, while crimes of omission are less frequently criminalized. One reason for this is that broad criminalization of omissions could significantly restrict individual freedoms. The material element of affirmative crimes is the commission of a positive act in violation of legal prohibitions. In contrast, the material element of omission-based crimes consists of a negative act, namely, the failure to comply with a statutory obligation.

Another distinction between these two types of criminal conduct is the foundation of criminalization. In affirmative crimes, the justification for criminalization is broad, with the primary rationale being the prevention of harm to individual and societal interests. Social life requires individuals to uphold order and public security, and failure to comply with these legal norms necessitates punitive sanctions. Conversely, the criminalization of pure omission is primarily based on benevolence, duty to others, and fostering cooperation among members of society.

The final distinction between affirmative and omission-based crimes lies in their legal conditions. An affirmative crime occurs when the legislator prohibits the commission of an act, meaning that violating this prohibition constitutes the crime. In contrast, omission-based crimes occur when the legislator mandates a particular action, and failure to comply with this obligation constitutes the crime.

5. Types of Crimes of Omission

To better understand omission-based crimes, it is necessary to classify them. Crimes of omission are divided into two categories:

5.1. *Pure Omission (Simple Negative Crimes)*

The increasing complexity of societies, particularly in administrative systems, has led legislators to criminalize failures to act in order to maintain public order. The material element of these crimes does not require a specific result; rather, mere failure to act as prescribed by law is sufficient for criminal liability. The individual does not cause the criminal outcome, as the legal provision solely emphasizes omission and prescribes punishment for it without reference to any result {Hasani Ranjbar, 2001 #153446}.

This type of omission may be intentional, in which case it constitutes an intentional crime of omission, or unintentional, leading to a negligent offense. Examples include failure to pay alimony or a judge's refusal to issue a ruling.

2. Commission by Omission (Result-Oriented Negative Crimes)

This category is defined as "the failure of an offender to perform a legally required act, leading to a criminal result" {Malmir, 2004 #153450}. In other words, this type of omission results in a tangible consequence. There is ongoing debate as to whether a person should be punished for omission itself or as a principal offender. While some argue that an offender in such cases should be punished as the principal perpetrator, this raises legal challenges, even though such conduct is morally reprehensible. The main issue is that a criminal result can only be attributed to an omission if the law explicitly imposes an obligation to act. Only under such circumstances can the failure to act result in criminal liability.

One of the earliest cases of commission by omission originates from France. In this case, the relatives of an elderly, disabled woman suffering from mental illness abandoned her in a room devoid of light, air, and food, leading to her death. The legal question was whether the relatives, who had knowingly and intentionally caused her death through omission, should be punished for murder. This case became a precedent in analyzing whether criminal liability for a result-oriented omission can be equated with affirmative criminal conduct.

5.2. *Origins of Crimes of Omission*

As previously discussed, the liability of an individual for an omission arises from their duty to act, which they fail to fulfill. The source of this duty can vary, and each is examined below:

1. **Omission Arising from Law:** In cases where the legislator imposes a duty upon all individuals or a specific group within the legal framework, failure to fulfill this obligation carries legal consequences. In other words, this obligation does not originate from contracts, unilateral legal acts, or contractual clauses; rather, it is an obligation that the legislator, considering social interests, directly imposes on individuals, irrespective of their will.
2. **Omission Arising from Contract:** In some cases, the source of the duty stems from a contract. Contemporary social relationships are largely contract-based, and these contracts impose specific obligations on the parties involved. Failure to perform these contractual obligations can, in some instances, result in criminal liability. Such contracts may be oral or written, formal or informal, with or without compensation. For example, a lifeguard employed under a contract with a swimming pool is legally obligated to ensure the safety of individuals who visit the facility.
3. **Omission Arising from a Special Relationship:** These relationships are not limited to familial ties between parents and children or spouses but extend to any scenario in which a relationship creates a reasonable expectation of assistance from one party to another. For instance, if two individuals engage in a hazardous sport such as mountaineering, each expects the other to provide assistance in the event of danger. Failure to meet this expectation and refusal to assist in such situations can result in criminal liability for omission.
4. **Omission Arising from Creating a Prior Risk:** The fourth category involves situations where an individual creates a hazard and thus has a duty to minimize the resulting harm caused by their dangerous conduct.
5. **Omission Arising from Voluntary Assumption of Duty:** In some cases, an individual may voluntarily assume the responsibility of caring for others, thereby creating a reasonable expectation of assistance. Failure to respond to this expectation can give rise to liability for omission.

5.3. *Historical Development of Criminal Liability for Omission in Iranian Criminal Law*

In Iran, the criminal justice system prior to the Constitutional Revolution (1905-1911) lacked a structured legal framework and was predominantly governed by the ruling authorities. Although, in certain periods, Islamic criminal laws were partially enforced in specific regions, the legal system before the Constitutional era had key characteristics, including arbitrary punishments, the dominance of rulers' personal discretion, severe penalties, the absence of structured legal procedures, and the widespread use of torture.

During the reign of Naser al-Din Shah Qajar, attempts were made to standardize the criminal justice system and reform penalties, but these efforts were ultimately unsuccessful (Mazaheri Tehrani, *Ettela'at Newspaper*).

1. The 1925 Penal Code

Since criminal law is closely linked to public order and security, the formulation of penal laws was a priority from the onset of the legislative movement following the Constitutional Revolution. However, the drafting of penal codes faced

numerous challenges, including opposition from religious scholars due to the perceived neglect of Islamic jurisprudential principles, as well as the blind imitation of Western legal texts without adaptation to local cultural and religious contexts. Additionally, ruling authorities were often reluctant to enact clear laws concerning crimes and punishments, viewing legal restrictions as a limitation on their power and authority (Iran's Criminal System During the Pahlavi Era: Challenges and Considerations).

The 1925 Penal Code, enacted that year, was the first independent legal framework dedicated to defining crimes and punishments, making it a significant milestone in the history of Iranian criminal law.

Article 2 of this code, which enshrines the principle of legality in criminal law, states:

"No act shall be considered a crime unless it is explicitly recognized as such by law."

As evident, this provision exclusively criminalized affirmative conduct, with no discussion of criminal liability for omission. However, between 1925 and 1973, various laws, such as the 1941 Highway Crimes Act, introduced criminalization of omission.

2. The 1973 Penal Code

The 1973 Penal Code introduced fundamental changes to Iran's criminal justice system, replacing the previous 1925 Penal Code and incorporating modern legal principles from progressive legal systems. Inspired by the New Social Defense School, this law modernized Iran's criminal justice framework. From this point onward, Iranian criminal legislation gradually began to criminalize omissions in limited cases.

Article 2 of the 1973 Penal Code stipulated:

"Any act or omission that is punishable by law or necessitates protective or corrective measures shall be considered a crime."

Although this article acknowledged omission, it did not specify which omissions were criminalized.

3. The 1975 Law on Failure to Assist the Injured and Prevent Fatal Hazards

For the first time, Iranian legislators explicitly criminalized a specific omission-based offense with the enactment of the 1975 Law on Failure to Assist the Injured and Prevent Fatal Hazards.

Helping individuals in emergencies is a fundamental human duty recognized across all cultures and religions. However, the prevalence of social apathy led legislators to criminalize the failure to render assistance in emergencies.

4. The 1982 Islamic Penal Law

Following the Islamic Revolution of 1979, Iranian criminal laws were revised to align with Islamic principles. The 1982 Islamic Penal Law marked a major transformation, reflecting a combination of religious jurisprudence and modern criminal law.

Religious scholars sought to reestablish Islamic legal principles, while also preserving certain elements of secular law that were not in direct conflict with Sharia. Thus, many pre-revolutionary laws remained unchanged, while new laws adhering to Islamic principles were introduced.

Similar to the 1973 Penal Code, Article 2 of the 1982 Islamic Penal Law briefly referred to omission but did not specify its instances.

5. The 1991 Islamic Penal Code

In December 1991, the Islamic Penal Code was enacted as a temporary law, consisting of four books: General Provisions, Hudud (fixed Islamic punishments), Qisas (retributive justice), and Diyah (blood money), with 497 articles. The law was initially enacted for five years, but its temporary enforcement was extended in 1996 for another ten years.

Despite multiple revisions and modifications, Article 2 of the 1991 Islamic Penal Code continued the same general reference to omission without detailing specific cases.

6. The 1996 Ta'zirat Law

The 1996 Ta'zirat Law, which was permanently enacted, explicitly criminalized certain instances of omission-based offenses.

7. Cases in the Armed Forces Crimes Act

The Armed Forces Crimes Act includes several provisions addressing criminal liability for omission among military personnel:

- Article 35: Any military commander or official who continues military operations after receiving orders to halt the operation shall be held criminally liable.
- Article 36: Any military personnel who assumes command without authorization or continues command contrary to orders shall be subject to punishment.
- Article 37: This article criminalizes revoking or disregarding orders issued by superior commanders.
- Article 41: Any violation of regulations during service or missions by military personnel shall be subject to punishment.

These articles explicitly define criminal liability for omission in the military context, establishing clear legal responsibilities for military personnel and ensuring compliance with command structures and operational protocols.

6. Instances of Criminal Liability for Omission in Iranian Law

6.1. Section One: Failure to Provide Maintenance (Nafaqah)

The family is one of the fundamental institutions of human society, and its stability significantly impacts the continuity of society. In Islam, family law constitutes an essential part of legal and ethical regulations, meticulously considered by religious law. Husband and wife must cooperate in managing the family; however, since the husband assumes the leadership role within the family unit, the legislator holds him responsible for providing for the family's financial needs. The husband's obligation to pay maintenance (nafaqah) is a natural consequence of his authority over the family (Katouzian, 2004, Vol. 1, p. 183). Although the provision of maintenance for a wife and children is primarily a civil law matter, in many countries, including Iran, criminal penalties have been established to enforce this duty.

Subsection One: Lexical Definition of Maintenance (Nafaqah)

Various meanings of nafaqah are provided in linguistic dictionaries. It is derived from words meaning expenditure, cost, and depletion of financial resources. In *Al-Munjid*, it is defined as "something that is diminished and lost." In Persian, *Moein's Dictionary* defines it as expenses, costs, financial support, livelihood, and necessary provisions for one's dependents.

From a legal standpoint, since nafaqah is a civil law concept, its definition must be derived from civil law texts. The Iranian Civil Code does not provide an explicit definition but rather lists its components. Article 1107 of the Civil Code states:

"Maintenance includes all the customary and appropriate needs of the wife, considering her social status, including housing, clothing, food, household necessities, medical and healthcare expenses, and a servant if she is accustomed to having one or requires one due to illness or disability."

Subsection Two: Essential Elements of the Crime of Failure to Provide Maintenance to a Wife

The legal element of this offense can be traced back to Article 214 of the 1933 amendment to the 1925 Penal Code, which was the first legal provision to criminalize the failure to provide maintenance. The article stipulated:

"Anyone who, despite having the means, refuses to provide essential expenses for his wife while she is obedient (tamkin) and also does not divorce her, shall be sentenced to imprisonment for a period of three months to one year. Anyone who, despite having financial means, fails to provide maintenance to individuals legally entitled to it under the law shall be subject to the same punishment."

This offense, which is categorized as an omission-based crime, was later incorporated into Article 642 of the Islamic Penal Code (Ta'zirat section). However, with the enactment of the 2012 Family Protection Law, Article 642 was explicitly repealed.

Article 53 of the Family Protection Law states:

"Anyone who, despite having financial means, fails to provide maintenance for his wife while she is obedient (tamkin) or refuses to pay maintenance to other legally entitled dependents shall be sentenced to sixth-degree ta'zir imprisonment. Criminal prosecution is subject to a private complaint, and if the complainant withdraws their complaint at any stage, criminal prosecution or execution of the sentence shall cease."

This provision, compared to the 1925 Penal Code, explicitly considers the husband's financial ability, essentially reiterating Article 642 of the Ta'zirat Law. The Family Protection Law also classifies failure to provide maintenance as a pardonable offense, meaning that prosecution depends on a private complainant.

6.1.1. Material Element

Based on the legal provisions, this offense is committed through omission, specifically by failing to provide maintenance to a wife and other legally dependent persons. As evident from the crime's title (failure to provide maintenance—*tark-e nafaqah*), certain conditions must be met for this crime to be established.

A. Husband's Financial Ability

Since the 1975 enactment of the Family Protection Law, the husband's financial ability has been a prerequisite for criminal liability, a condition consistently included in all subsequent legislative revisions. The law presumes that the husband's refusal to provide maintenance is deliberate, meaning he must have the financial means but still fail to pay. The court determines the husband's financial capacity at the time of non-payment.

A wife's financial status has no bearing on the husband's obligation to provide maintenance. However, in cases concerning maintenance of other relatives, two conditions must be met:

1. The provider must be financially capable.
2. The dependent must be in need {Zareat, 2021 #153459}.

Articles 1197 and 1198 of the Civil Code elaborate on these conditions:

- Article 1197: *"A person is entitled to maintenance if they are indigent and unable to support themselves through employment."*
- Article 1198: *"A person is obligated to provide maintenance only if they are financially capable, meaning they can afford to pay without falling into financial hardship. In determining financial capability, all of the person's financial obligations and living conditions must be considered."*

B. Wife's Obedience (Tamkin)

The term *tamkin*, linguistically, means submission and allowing access, while in legal terminology, it refers to a wife's fulfillment of her marital obligations. *Tamkin* is divided into:

1. General *Tamkin*: Defined in Article 1108 of the Civil Code, which states: *"If a wife, without a legitimate excuse, refuses to fulfill her marital duties, she shall not be entitled to maintenance."*

Specific *Tamkin*: This refers to sexual relations between spouses.

In certain circumstances, failure to comply (non-*tamkin*) does not result in the loss of maintenance rights.

- Article 1127 of the Civil Code states: *"If the husband contracts a contagious venereal disease after marriage, the wife has the right to refuse intimacy with him, and this refusal does not affect her right to maintenance."*
- Article 1115 states: *"If cohabitation with the husband endangers the wife's physical, financial, or moral well-being, she may choose separate housing. If the court deems the risk legitimate, it shall not issue a ruling requiring her to return to the marital home. As long as the wife has a justified reason to live separately, the husband remains responsible for providing her maintenance."*
- Article 1085 states: *"A wife may refuse to fulfill her marital obligations until her dowry (mahr) has been fully paid, provided that the dowry is immediately due. This refusal does not affect her right to maintenance."*

6.1.2. Judicial Opinions on Criminal Liability for Failure to Provide Maintenance

There has been legal debate regarding whether a husband should be punished for failure to provide maintenance in cases of non-*tamkin*. The Iranian Judiciary has issued multiple legal opinions on this matter:

1. **Opinion No. 7/2056 (June 13, 1991):** *"The portion of maintenance essential for the health and well-being of a pregnant woman (as determined by the court based on Article 1109 of the Civil Code) is legally claimable. If the husband refuses to provide it, he may face criminal prosecution. However, a disobedient wife (naashiza) cannot claim maintenance, regardless of pregnancy. Nonetheless, maintenance specifically for the fetus remains the father's responsibility, as inferred from Quranic verse (2:233), 'If they are pregnant, provide for them until they give birth.'"*
2. **Opinion No. 7/309 (April 19, 1991):** *"A wife's refusal to comply with marital obligations for the purpose of claiming her dowry (mahr) is legally justified and attributable to the husband's actions. Therefore, non-*tamkin* in this case does not prevent criminal prosecution of the husband for failure to provide maintenance."*

3. **Opinion No. 7/3049 (August 12, 1986):** *"Under Article 115 of the Civil Code, if the court rules that a wife is justified in living separately due to harm or threat, the husband remains obligated to provide her maintenance. Thus, if the husband fails to pay, he shall be subject to criminal prosecution under Article 105 of the Ta'zirat Law (now Article 53 of the 2012 Family Protection Law)."*

Finally, the Supreme Court's Grand General Assembly resolved the conflicting interpretations in Opinion No. 633 (May 18, 1999), ruling that:

"Although a wife may legally refuse to fulfill marital duties until her dowry is paid, this does not justify criminal prosecution of the husband for failure to provide maintenance. However, the 2012 Family Protection Law, by adding an exception to Article 53, explicitly criminalized failure to provide maintenance in such cases, contradicting the prior judicial ruling."

6.2. Section Two: Failure to Register Marriage, Divorce, and Reconciliation

The family plays a crucial role in establishing a healthy society. The more transparent, clear, and comprehensive family laws are, the more effectively they prevent and address various crimes and social deviations. Therefore, analyzing and examining these laws is of great importance.

Article 49 of the Family Protection Law states that if a man enters into a permanent marriage, divorce, or dissolution of marriage without registering it in official registries, or if he fails to register reconciliation within one month of its occurrence, or if he refuses to register a temporary marriage in cases where such registration is mandatory, he shall be required to register the event and be sentenced to a fifth-degree fine or a seventh-degree ta'zir imprisonment. The same penalty applies to any man who refuses to register the annulment or invalidation of a marriage or divorce. With the enactment of this law, Article 645 of the Islamic Penal Code (Ta'zirat section) was repealed. Article 645 had previously mandated the registration of permanent marriage, divorce, and reconciliation to protect the institution of the family, stating that any man who failed to register these events in official registries would be sentenced to up to one year of ta'zir imprisonment.

The first law that criminalized this act was Article 1 of the Marriage Amendment Law of 1937, which stated that in regions designated by the Ministry of Justice, all marriages, divorces, and reconciliations must be registered in official registries established under the Ministry's regulations. Any man or officiant who failed to comply with this requirement was subject to one to six months of disciplinary imprisonment.

The amendments introduced by the legislator in the Family Protection Law include:

1. **Mandatory Registration of Temporary Marriage in Certain Cases:** Article 21 of the Family Protection Law states that the legal system of the Islamic Republic of Iran supports permanent marriage as the foundation of family formation. However, temporary marriage is also subject to Islamic regulations and the Civil Code, and its registration is mandatory in the following cases:
 - If the wife becomes pregnant.
 - If both parties agree to register it.
 - If a registration clause is stipulated in the marriage contract.
2. **Modification of Penalties:** Article 645 of the Islamic Penal Code had imposed up to one year of imprisonment for failure to register a marriage, divorce, or reconciliation. However, the Family Protection Law introduced two alternative penalties: a fifth-degree fine or seventh-degree ta'zir imprisonment, leaving the determination of the appropriate penalty to the judge based on the circumstances of the case.

- **Effects and Consequences of Registering Marriage in Official Registries**

The benefits of registering marriage in official registries include:

A) The Marriage Certificate as an Official Document

- Official documents cannot be denied or challenged, except on the grounds of forgery, similar to other official records.
- Prevention of legal disputes related to proving marital status or lineage, as official documents cannot be refuted based on circumstantial evidence.

B) Enforcement of Dowry Without Court Ruling

- Under the 1931 Marriage and Divorce Registry Regulations, the dowry (mahr) recorded in the official marriage certificate is directly enforceable without the need for a judicial ruling.
- The registration office can issue an execution order for the dowry's collection without court intervention {Katouzian, 2004 #153449}.

C) Compliance with Health Regulations in Marriage

- Article 2 of the 1938 Marriage Law requires both spouses to provide a health certificate to the marriage registry.
- Marriage registrars must verify and record certificates of immunity from communicable diseases, as determined by the judiciary.

D) Legal Recognition of Children's Status

- The registration of marriage ensures that children's legal status is clearly defined.
- Failure to register a marriage may result in legal disputes initiated by children upon reaching adulthood.
- Reasons for Failure to Register Marriage, Divorce, and Reconciliation

Several factors contribute to the failure to register marriage, divorce, or reconciliation, including:

- Discrepancies in spouses' nationality and occurrence of marriage abroad, leading to ignorance of registration requirements.
- Family disputes, such as polygamy, financial neglect (nafaqah), or the type of marriage (permanent or temporary).

Women are disproportionately affected by unregistered marriages, divorces, and reconciliations. Consequently, the majority of complainants in such cases are women. Additionally, children may also suffer the consequences, potentially filing legal complaints upon reaching adulthood.

6.2.1. *Material Element of the Crime*

The material element of this crime is the failure to register a permanent marriage, divorce, or reconciliation in official registries, which constitutes an omission-based offense. The criminalization of omissions is based on principles of benevolence and social responsibility. However, in this particular case, criminalization primarily serves to protect specific vulnerable groups and impose duties on others.

To safeguard the integrity of the family, the legislator has mandated the registration of marriages, divorces, and reconciliations in official registries. Failure to comply is subject to penalty, and the punishment applies only to men. The wife bears no legal obligation in this regard.

The legislator's decision not to criminalize the wife's failure to register—despite her being a party to the marriage contract—reflects legal protection for women, who often lack direct involvement in marital formalities or may not have consented to the marriage in certain cases.

One ruling from the Supreme Court of Iran affirms this position:

"A man who marries a woman has only one obligation: to register the marriage in an official registry. However, failure to report the marriage to the Civil Registry does not constitute a criminal offense if the marriage itself was performed outside the formal legal framework" (Judgment No. 1969, Second Branch of the Supreme Court).

6.2.2. *Territorial Application of the Law*

According to the principle of territoriality in criminal law, as well as the principle of personal jurisdiction, any individual committing a crime within Iranian territory is subject to Iranian law, regardless of their nationality.

6.2.3. *Mental Element of the Crime*

The mental element of this crime is general intent. The legislator's primary objective, as explicitly stated in Article 645 of the repealed Islamic Penal Code, is the protection of family integrity. However, the perpetrator does not need to have the specific intent to undermine family stability for the crime to be established. Thus, this offense does not require specific intent {Zareat, 2021 #153459}.

Moreover, the omission must be deliberate. Registering a marriage helps prevent various legal disputes, such as claims related to proving marital status or lineage. This aligns with the legal principle that official documents cannot be challenged with circumstantial evidence.

6.2.4. *Preventing Fraud and Deception in Marriage*

Marriage registration also prevents fraud, deception, and legal complications related to:

- Bigamy and polygamy.
- Marriages based on false representations, such as misrepresenting virginity status or marital history.
- Preventing marriage during the waiting period ('iddah) or with a married individual.

Because marriage records are entered into official identity documents (shenasnameh) and accessible through national registries, they provide proof of marital status.

For example, Article 643 of the Islamic Penal Code (Ta'zirat section) prohibits marriage with a woman still in 'iddah (waiting period after divorce or widowhood). Additionally, Article 647 of the same code criminalizes cases where one spouse unknowingly enters into a bigamous marriage {Asadi, 2008 #153442}.

- Multiplicity of Offenses in Non-Registration Cases
- If marriage is not registered, the subsequent non-registration of divorce becomes legally irrelevant.
- If divorce is not registered, the non-registration of reconciliation is also void.
- Failure to register multiple marital events (marriage and divorce separately) constitutes multiple offenses, whereas failure to register a divorce related to an unregistered marriage does not.

6.2.5. *Legal Debate on Whether This Crime is Continuous or Instantaneous*

The Judiciary's Legal Department has issued two conflicting opinions regarding whether the crime of failing to register marriage is continuous or instantaneous:

1. Opinion No. 7/3212 (August 30, 1997) states that as long as the marriage remains unregistered, the offense continues, making it a continuous crime.
2. Opinion No. 1349/10/1 (1970) argues that the crime occurs the moment an unregistered marriage takes place, making it an instantaneous crime.

However, the prevailing legal interpretation classifies it as a continuous offense, but with legal consequences similar to an instantaneous crime.

6.3. *Section Three: Refusal to Perform Legal Duties*

Legal claims are often initiated to assert rights, as rights, in their normal state, remain dormant and undisputed unless challenged or violated by another party. Consequently, a legal claim does not arise unless there is denial or infringement by the defendant. In society, some individuals, driven by negative instincts, are not content with their own rights and may deny or encroach upon the rights of others. In such cases, the affected party seeks legal redress by initiating a lawsuit against the offender or denier. When individual rights are violated, public order necessitates that people seek justice through legal channels rather than resorting to revenge or force (Mazandarani, 2012).

The right to a fair trial is a fundamental right, enshrined in Article 34 of the Iranian Constitution, which states that litigation is an indisputable right of every individual and that anyone can seek justice by referring to competent courts. The law ensures that all citizens have access to these courts, and no one can be denied their right to legal recourse. International legal instruments, such as Article 14(1) of the International Covenant on Civil and Political Rights, also guarantee the right to a fair and public hearing by a competent, independent, and impartial tribunal. Similarly, Article 10 of the Universal Declaration of Human Rights affirms that everyone is entitled to a fair and public hearing by an independent and impartial tribunal. The Cairo Declaration on Human Rights in Islam (1990) also recognizes the right to seek justice and legal protection under Article 19(b).

In domestic criminal procedure, Article 64 of the Code of Criminal Procedure recognizes a victim's complaint as a legal basis for initiating prosecution. The victim of a criminal act, as a member of society, reports the offense as an injury to the social order, and the state is obligated to investigate and prosecute the offender. Additionally, the victim has the right to seek compensation for damages caused by the crime. The victim's engagement with the criminal justice system begins with the occurrence of the crime.

According to Article 69 of the Code of Criminal Procedure, the prosecutor is obligated to accept both written and oral complaints at all times. In other words, judicial authorities are legally bound to investigate complaints, and failure to do so is punishable under Article 597 of the Islamic Penal Code (Ta'zirat section).

Article 597 states:

"Any judicial authority who, despite being legally obligated to do so, refuses to accept a complaint, investigate it, or unjustifiably delays issuing a ruling—whether citing legal ambiguity, contradiction, or silence—shall be sentenced to imprisonment for six months to one year for the first offense, and in case of repetition, to permanent dismissal from judicial office. In any case, the offender shall also be liable for damages incurred by the complainant."

Improper behavior or negligence by individuals and institutions can sometimes lead to a complete denial of justice for victims, causing disillusionment with the criminal justice system. This disillusionment may spread, leading to widespread reluctance to cooperate with the legal system.

To analyze this offense comprehensively, its constituent elements must first be examined:

A) Legal Element

As mentioned, this crime is explicitly criminalized under Article 597 of the Ta'zirat section of the Islamic Penal Code. This article serves as an enforcement mechanism for Article 167 of the Constitution, which mandates that judges issue rulings in all cases, even in the absence of explicit legal provisions. However, this requirement conflicts with general legal principles, as no one can be punished for an act unless it is explicitly defined as a crime by law. Nonetheless, Article 597 insists on issuing judicial decisions, even if the law is silent on the matter.

B) Material Element

The material element of this crime, as defined in Article 597, consists of:

1. Refusal to accept or investigate a complaint, which constitutes criminal liability for omission.
2. Unjustified delay in issuing a ruling, contrary to legal requirements.
3. Acting in explicit contradiction to legal provisions.

C) Mental Element

The mental element of this crime is the judge's knowledge and intent in committing the offense. If a judge deliberately postpones hearings to delay a ruling, Article 597 applies. However, if the judge reschedules proceedings for non-malicious reasons, without specific criminal intent, the act may constitute a disciplinary violation rather than a criminal offense. Determining whether the conduct constitutes a criminal or disciplinary violation falls under the jurisdiction of the Judicial Disciplinary Court.

Legal Opinion No. 7/4086 (November 30, 2011) from the Judiciary's Legal Department confirms that Article 597 applies to both civil and criminal cases, covering prosecutors and judges in all courts of law.

Legal Opinion No. 7/4105 (December 3, 2011) states that before proceeding with criminal charges against a judge, the Judicial Disciplinary Court must first issue a suspension order, after which the competent judicial authority may proceed with prosecution.

6.4. Section Four: Failure to Hear Complaints of Unlawfully Detained Persons

The concept of freedom has multiple meanings, all generally pointing in the same direction. In Persian, Dehkhoda's Dictionary defines freedom as liberty, choice, and the power to act or abstain from action. The term "Azadeh" (free person) refers to an individual who is not enslaved.

From a legal perspective, freedom is defined as the ability to act in any manner that does not harm others. Thus, the limits of individual rights extend only to the point where they do not infringe upon the rights of others. These limitations are defined solely by law (Mehrpour, *Freedom and Its Limits in Individual Rights*, 1993).

Thomas Hobbes, one of the earliest social contract theorists, argued:

"People naturally pursue their own interests without concern for others. This leads to a state of 'war of all against all,' where no one is safe. However, people are rational enough to realize that such a state benefits no one. Therefore, they collectively agree to restrain their selfish impulses—provided that others do the same. To enforce this social contract, a governing authority is necessary."

Physical liberty, a subcategory of individual freedom, refers to a person's right to move freely, reside where they choose, travel, and not be unlawfully detained or restricted, except as permitted by law.

Deprivation of physical liberty occurs in two legal contexts:

1. As a judicial punishment after a formal trial, when an individual is convicted of violating criminal laws and sentenced to imprisonment.
2. As a preventive measure, such as pretrial detention, imposed to ensure public safety, maintain order, or protect the accused from potential harm.

In legal terminology, Jafari Langroudi defines detention as:

"The deprivation of a person's liberty or property, with the possibility of later release. If applied to a person, it constitutes 'detention'; if applied to property, it constitutes 'seizure.' In essence, waqf (endowment) is also a form of special detention."

Unlawful detention, as criminalized under Article 583 of the Islamic Penal Code, occurs in three forms:

1. Arbitrary detention.
2. Unlawful imprisonment.
3. Coerced concealment of a person.

The crime of unlawful detention is committed when an individual is deprived of liberty outside the framework of the law, without a judicial order, or without following legal procedures.

From a criminal law perspective, detention refers to physically restraining an individual, preventing their movement, and depriving them of freedom for a relatively short period (typically not exceeding 24 hours) (Pad, 1973, p. 224).

An unlawfully detained individual has the right to file a complaint, and according to Article 572 of the Islamic Penal Code (Ta'zirat section), law enforcement officials who refuse to hear such complaints are subject to punishment.

Because unlawful detention is classified as a continuing offense, its criminal liability persists as long as the victim remains deprived of liberty. Mere detention, without prolonged deprivation of liberty, does not constitute unlawful detention.

To analyze this crime further, it is necessary to first define law enforcement officials and their duties in this context.

6.4.1. Judiciary Officers (Law Enforcement Officers in the Justice System)

The term "Zabet" originates from Arabic and is derived from the root "zabt", meaning to preserve or maintain. In Persian, it carries various meanings, including protector, administrator, and governor. In modern legal terminology, it is often equated with "police". Linguistically, it refers to one who safeguards or maintains order {Amid, 2003 #153455}.

In legal terminology, "Zabet" historically referred to an official who oversaw local administrative divisions within a larger jurisdiction. Each district was governed by an appointed official called "Zabet", who was responsible for maintaining security, order, and public welfare. The term was also used in Islamic jurisprudence to describe a narrator of Hadith who possessed strong memorization skills, ensuring the accurate preservation of transmitted religious texts {Jafari Langroudi, 1988 #153447}.

The legal definition of law enforcement officers in Iranian legislation has evolved through multiple legal revisions. Article 19 of the 1911 Code of Criminal Procedure defined judiciary officers as officials responsible for investigating and detecting crimes (infractions, misdemeanors, and felonies) and preventing suspects from escaping or going into hiding, in accordance with legal provisions.

Under Article 15 of the 1999 Code of Criminal Procedure, judiciary officers were defined as officers acting under the supervision and instructions of judicial authorities, responsible for investigating crimes, conducting preliminary interrogations, preserving evidence, preventing suspects from escaping or hiding, serving legal documents, and executing judicial orders in accordance with the law.

The 2014 Code of Criminal Procedure, under Article 28, further refined this definition:

"Judiciary officers are officials who operate under the supervision and instructions of the Public Prosecutor, responsible for detecting crimes, preserving evidence, collecting proof of criminal acts, identifying suspects, preventing their escape or concealment, conducting preliminary investigations, serving legal documents, and enforcing judicial decisions in accordance with the law."

In Article 29 of the 2014 Code of Criminal Procedure, judiciary officers are classified into two categories:

1. General Judiciary Officers: These include commanders, officers, and non-commissioned officers of the Law Enforcement Force of the Islamic Republic of Iran who have received the necessary training.
2. Special Judiciary Officers: These include officials designated under specific laws for particular duties, such as:
 - Prison officials (wardens, deputies, and officers) concerning matters related to prisoners.
 - Officers of the Ministry of Intelligence.
 - Officers of the Basij Resistance Force of the Islamic Revolutionary Guard Corps (IRGC).
 - Other military forces, when assigned judiciary functions under specific laws.

A legal note clarifies that conscripted personnel are not considered judiciary officers; however, they perform duties under the supervision of judiciary officers, and the supervising officers bear full responsibility for their actions. This does not exempt conscripted personnel from personal legal accountability.

Since the criminal justice process begins with judiciary officers, and significant procedural actions occur during their interactions with suspects, a lack of awareness of citizens' and suspects' rights can cause severe and sometimes irreparable harm to the justice system. Therefore, judiciary officers require continuous training and oversight.

Like any other institution, judiciary officers should undergo structured training programs, which typically include:

1. Identifying training needs.
2. Setting educational objectives and developing human resources.

The judiciary must align itself with these general training principles to ensure professional competency among officers. This involves assessing training requirements, defining educational goals, and implementing structured development programs. The Code of Criminal Procedure has established procedural safeguards to protect personal freedoms.

6.5. Section Five: The Law on Failure to Assist the Injured

From the earliest days of human society, people have sought mechanisms to manage social interactions and obligations. Providing assistance to others has both legal and ethical dimensions. Helping others—especially in life-threatening situations—is not only a moral obligation but also a legal duty.

This responsibility becomes more critical in societies where social values are deeply rooted in religious and ethical principles. Rendering aid in emergencies is one of the most fundamental human responsibilities, recognized across all cultures and religions.

However, social misconduct has weakened this moral and legal obligation. One notable example is recording and sharing videos of road accidents or street altercations on social media instead of providing assistance.

According to Islamic teachings, assisting others is a fundamental principle. The Qur'an (Surah Al-Ma'idah, 5:32) equates saving one life with saving all of humanity:

"Whoever saves a life, it is as if they have saved all of humanity."

This verse emphasizes that any act of life-saving assistance holds immense ethical and spiritual significance.

6.5.1. Elements of the Crime of Failure to Assist the Injured

A) Legal Element

The 1975 Law on the Punishment for Failing to Assist the Injured or Preventing Life-Threatening Hazards states:

"Anyone who witnesses a person in life-threatening danger and can prevent harm or worsening of the situation through immediate action, seeking help, or notifying authorities, without posing a risk to themselves or others, yet refuses to do so, shall be sentenced to up to one year of imprisonment or a fine ranging from fifty to one thousand rials."

Additional penalties apply in specific circumstances:

1. Medical professionals (doctors, nurses, paramedics) who, by virtue of their profession, could have provided effective assistance are subject to three months to two years of imprisonment or a fine between 10,000 and 100,000 rials.
2. Public or private healthcare institutions that refuse to admit or treat injured persons are subject to the maximum prescribed penalty. The funding for emergency treatment of such patients and related matters are regulated by executive orders approved by the Council of Ministers.
3. Individuals legally obligated to assist the injured (e.g., emergency responders, law enforcement personnel) who refuse to provide aid are subject to six months to three years of imprisonment.
4. Government authorities must establish emergency medical centers and transportation services in cities and along highways to ensure immediate access to urgent medical care.
5. Police officers are prohibited from obstructing civilians who transport injured persons to medical centers.

The Law on the Punishment for Failing to Assist the Injured was enacted in 1975, but its executive regulations were only approved in 1985, following a fatal incident where a patient died outside a hospital in Tehran due to being denied admission.

Additionally, the Military Crimes Act (Article 53, Section C) extends this law to military personnel. Any service member who, during duty, fails to assist an injured person or someone in life-threatening danger—when such assistance falls within their duties—shall be sentenced to six months to three years of imprisonment.

A supplementary note states that if the offense also constitutes murder or injury, or if property was unlawfully seized, the perpetrator shall be subject to further penalties such as qisas (retribution), diya (blood money), or restitution of stolen property.

Finally, Article 295 of the 2013 Islamic Penal Code states:

"If an individual, despite having accepted a duty or being legally obligated, neglects their duty, and as a result, a crime occurs, they shall bear legal responsibility, provided they had the ability to act. Depending on the circumstances, the offense may be classified as intentional, quasi-intentional, or due to pure negligence. For example, if a mother or wet nurse fails to feed an infant, or if a doctor or nurse neglects their professional duty, they will be held accountable."

This provision underscores that failure to act in situations where action is legally required can constitute criminal liability.

B) Material Element

The material element of this crime is the failure to assist the injured, which occurs through an omission. The failure to assist requires an understanding of what constitutes assistance. The legislator has defined two forms of assistance in the aforementioned law:

1. Immediate intervention by the individual.
2. Seeking help from others.

It appears that direct intervention by the individual takes precedence. In other words, the default rule is direct intervention, but if direct action is not possible or unlikely to succeed, the next step is to seek help from others.

Intervention—whether direct or indirect—does not necessarily require physical action. It can also be verbal, such as consoling a suicidal person or testifying in favor of a defendant sentenced to death. Similarly, seeking help from others may involve asking a passerby for assistance or informing the authorities.

However, assistance must have a tangible and perceptible effect. For example, praying or invoking supernatural forces to prevent harm to an endangered person is not considered sufficient assistance under customary standards {Pradel, 1994 #153457}.

6.5.2. The Legal Duty to Act

Crimes of omission are generally based on the existence of a legal duty to act. However, this legal duty is not limited to criminal law; it also encompasses other binding legal provisions.

For instance, under Article 1186 of the Iranian Civil Code, parents have both the right and duty to care for their children. Similarly, Article 1176 states that while a mother is not obligated to breastfeed her child, she is legally required to do so if the child cannot be nourished otherwise.

Furthermore, when the government or private individuals and entities enter into contracts that impose specific duties on professionals such as doctors, nurses, train conductors, prison guards, or lifeguards, these individuals are legally obligated to perform their contractual duties under Article 10 of the Civil Code. Failure to fulfill these obligations results in legal liability.

However, under Iranian law, individuals who have no legal or contractual duty—such as roommates or sports teammates—are not held liable for death or bodily harm resulting from their failure to act. This contrasts with English law, where liability may be imposed in certain situations.

By broadening the definition of legal duty, one could argue that preventing harm to others and mitigating the consequences of one's own actions fall within an individual's legal responsibilities. Failure to fulfill these responsibilities can result in legal liability {Mir Mohammad Sadeqi, 1998 #153452; Mir Mohammad Sadeqi, 2004 #153453}.

Therefore, for an omission to constitute a crime, it must involve the failure to fulfill a legal duty. The offender must have been legally or socially obligated (through law, contract, or custom) to perform a specific act and failed to do so.

The legal duty to assist is an obligation of means, not results. This means that if the individual attempts to assist within their ability, they cannot be held accountable, even if the outcome does not change. This principle is a fundamental requirement of the legal duty to assist.

6.5.3. *The Victim Must Be in Life-Threatening Danger*

To analyze this requirement, the concepts of "person" and "danger" must be defined. The term "person" typically refers to a living human being, covering the period from birth to death.

Thus, failing to assist a deceased body that is at risk of further harm does not fall under this legal provision, as the law explicitly uses the term "person" for the victim. A dead body is not legally considered a "person," so this crime does not apply to the deceased.

However, can this law be extended to a fetus?

- If failure to assist a fetus is interpreted as failure to assist the mother, then there is no debate about its criminal nature.
- The issue arises when the mother is deceased, but the fetus remains alive, or when the fetus survives outside the womb.

French judicial precedent has held that a doctor who refused to perform a cesarean section on a deceased mother was criminally liable {Pradel, 1994 #153457}.

However, in Iranian criminal law, legal protections for a fetus are based on the presence of a soul. The Islamic Penal Code considers the blood money (diyah) for killing a fetus with a soul equivalent to that of a fully formed human. Therefore, a fetus with a soul is considered a legal person and can be the subject of this crime.

Regarding the concept of danger, Article 1 of the Executive Regulations of the Law on the Punishment for Failing to Assist the Injured provides guidance:

"Emergency medical cases refer to medical conditions requiring immediate treatment. If urgent action is not taken, these conditions may result in death, permanent disability, or severe, irreparable harm."

Thus, the law defines "danger" as including both fatal and non-fatal threats to health.

Even if failure to assist does not directly cause death, it can still constitute a crime if it results in other serious harm, such as permanent disability or irreversible injuries.

Similarly, military criminal law includes "injured persons" alongside "life-threatening danger", suggesting that the definition of "danger" encompasses all types of bodily harm {Yazdian Jafari, 2014 #153458}.

The source of the danger is irrelevant. It does not matter whether the threat arises from:

- A disease.
- An accident.
- A natural disaster.
- A third party's criminal act.
- Even the victim's own mistake {Pradel, 1994 #153457}.

However, the offender must not have contributed to the danger.

Under Iranian criminal law, the assumption in this law is that the offender had no role in placing the victim in danger.

For instance, if Person A stabs Person B multiple times, putting them in life-threatening danger, and then refuses to assist them, they will not be charged under this law. Instead, they will be punished solely for assault or murder, depending on the outcome.

The legislator's use of the phrases "witnesses the danger" and "fails to assist" supports this interpretation {Mir Mohammad Sadeqi, 2004 #153453}.

6.5.4. *No Danger to the Rescuer or Others*

Another condition is that providing assistance must not pose a risk to the rescuer or others.

However, the law's wording suggests that only significant risks—such as life-threatening danger—excuse failure to assist.

- Lesser risks, such as financial loss, do not exempt an individual from their duty to assist.
- Some legal scholars argue that the law covers any substantial risk, including financial and reputational harm, as long as it is "significant" {Hasani Ranjbar, 2001 #153446}.

If the rescuer's negligence causes additional harm to the victim or a third party, they may be held liable.

Article 510 of the 2013 Islamic Penal Code states that individuals who intervene must comply with safety standards and legal regulations to avoid liability.

6.5.5. *The Offender's Ability to Perform the Required Act*

A fundamental and preliminary condition for liability is the ability to provide assistance. The legislator, in the relevant law, explicitly uses the term "can", indicating that a person is only obligated to assist if they are capable of doing so. If an individual is unable to provide assistance, they bear no legal responsibility {Mansouri, 2002 #153451}.

The standard for determining ability is based on the capabilities of an ordinary person in society. For example, if a general physician witnesses their patient in a critical condition but is unable to save them due to a lack of medical resources or expertise, and no one is available for them to request assistance, they are not liable. This principle aligns with rational principles and the Qur'anic verse:

"Allah does not burden a soul beyond its capacity" (Al-Baqarah: 286).

However, if ordinary individuals lack the ability to provide assistance, but the defendant possesses special skills that enable them to intervene, they will be criminally liable if they fail to act.

6.5.6. *Causal Relationship*

According to Article 295 of the 2013 Islamic Penal Code, an ommitter is liable only if their failure to act results in a criminal outcome, in addition to their legal duty to act. In other words, there must be a causal relationship between the omission and the criminal result.

For liability to be established, the ommitter's inaction must be more influential than the direct cause (i.e., the omission must be legally superior to the direct cause of the harm). The ommitter is considered an indirect perpetrator but still bears responsibility.

From an evidentiary standpoint, proving that the ommitter's failure to act was intentional rather than mere negligence is extremely challenging. Establishing that the omission was committed with the specific intent of causing harm is especially difficult, and the burden of proof falls on the victim or their legal representatives.

Due to this evidentiary difficulty, some Islamic jurists have ruled that if a doctor refuses to treat or operate on a critical patient, resulting in the patient's death, the doctor is considered sinful and deserving of discretionary punishment (Ta'zir) but is not liable for blood money (Diyah).

The reasoning behind this ruling is that merely refraining from treatment does not necessarily establish direct causation between the doctor's omission and the patient's death. However, if it can be demonstrated that the patient's death is directly attributable to the doctor's omission, medical professionals would be held fully liable.

Consequently, some Islamic jurists have ruled that if a physician was present and had a duty to save a life, they are complicit in the crime, alongside the perpetrator of the initial injury. As Ayatollah Bahjat (2007) states:

"If a doctor is present, saving lives becomes an obligation, even for a fee. Therefore, the doctor shares liability with the assailant, whether the crime is intentional, unintentional, or mixed."

6.5.7. Mental Element (Mens Rea)

For a crime to be established, in addition to the legal and material elements, the mental element must also be present. The mental element consists of two components:

1. The will to commit the act (or omission).
2. Criminal intent.

According to Article 295 of the 2013 Islamic Penal Code, an omission can be classified as either intentional or unintentional:

- Intentional Omission: The offender deliberately refrains from performing the life-saving act and intends the criminal result. For example, if a doctor intentionally refuses to save a dying patient with the intent to cause their death, this constitutes an intentional omission.
- Unintentional Omission: If the omission occurs without the intent to cause harm, it is classified as negligence or recklessness.

The key condition for an intentional omission is that the failure to act must be the offender's deliberate choice. The terms "criminal intent," "malice," and "willful neglect" in various sections of criminal law all refer to the same concept: the intentional commission or omission of an act prohibited or required by law.

In criminal law, intent is defined as:

"The direction of human will toward an objective that the legislator has either prohibited or mandated."

The mental element of a crime refers to the psychological relationship between the offender and the criminal act.

- If this relationship is accompanied by intent, the crime is classified as intentional.
- If it is based on recklessness or negligence, the crime is considered unintentional.

6.6. Section Six: Military Crimes

Criminal omissions can be categorized into two types:

1. Positive Omissions (failure to act combined with a positive action).
2. Pure Omissions (failure to act without any corresponding action).

Within military law, there are cases where criminal omissions involve an accompanying action, as specified in Articles 35, 36, 37, and 41 of the Military Penal Code.

For example, Article 35 states:

"Any military commander or official who, after receiving an order to cease military operations, continues the operation, shall, if their actions disrupt the national security, lead to the collapse of the state, or cause the defeat of the Islamic front, be subject to the punishment of a "Mohareb" (enemy of God). Otherwise, they shall be sentenced to imprisonment ranging from two to ten years."

This article represents a "positive omission", as the military official not only fails to stop operations but also continues engaging in combat.

However, if the commander or military officer receives an order to halt operations but delays the execution based on a tactical decision, they do not fall under this article. The law does not require an immediate halt but mandates that operations cease as soon as conditions allow.

Similarly, Article 37 states:

"Any military personnel who nullifies the orders of their commander or superior shall be punished as follows:"

This constitutes a criminal omission, as the failure to follow orders is a serious military offense.

- Military law treats disobeying direct orders as a crime specific to the armed forces.
- Civilians who refuse to follow instructions are generally not subject to criminal liability, except in exceptional cases.

Clause A of Article 37 states:

"If a military officer refuses to proceed against the enemy, insurgents, or corrupt elements, and this refusal indicates collaboration with the enemy, disrupts national security, or leads to the defeat of the Islamic front, they shall be subject to the punishment of a "Mohareb" (enemy of God). Otherwise, they shall face imprisonment ranging from three to fifteen years."

In this case, the material element of the crime is an omission, as it consists of the failure to act (refusal to follow orders) {Malmir, 2004 #153450}.

7. Conclusion

The criminal liability arising from omissions in Iranian law is a complex and nuanced subject that requires careful legal analysis. The foundation of criminal omissions is the legal obligation to act, which may be derived from statutory duties, contractual obligations, or social expectations. Unlike commission-based crimes, which involve active engagement in a prohibited act, omission-based crimes criminalize inaction when an individual has a legal duty to intervene. This legal principle ensures that society functions on the basis of mutual responsibility and protection of vulnerable individuals.

One of the key elements of omission-based crimes is the material element, which refers to the failure to fulfill a legally mandated duty. The law places a burden on individuals to assist those in imminent danger, but only when they are capable of doing so without endangering themselves or others. The legal framework for criminal omissions is shaped by both Islamic jurisprudence and modern legal principles, which emphasize the importance of preserving human life and maintaining public order. The requirement of ability to act ensures that liability is not imposed unfairly on individuals who are physically or situationally incapable of rendering aid.

The causal relationship between omission and harm is another crucial factor in determining criminal liability. For an individual to be held legally accountable for failing to act, their omission must be directly linked to the resulting harm. The challenge lies in proving that the failure to act was the primary cause of the harm rather than mere negligence. This issue has led to divergent interpretations in both legal and religious jurisprudence, particularly in cases where medical professionals or caregivers fail to provide necessary treatment. Some Islamic jurists argue that a physician who refuses treatment is morally culpable but not financially liable for the victim's death, while others hold that if causation can be firmly established, the physician should share liability with the initial perpetrator of harm. This debate underscores the intricate nature of omission-based liability in legal doctrine.

The mental element (*mens rea*) of omission-based crimes is equally significant. For an omission to be considered criminal, it must be intentional, meaning that the individual deliberately chose not to act despite being aware of their legal duty to intervene. In cases where the omission results from negligence or recklessness rather than deliberate intent, the crime may be classified as unintentional. However, proving intent in omission-based offenses is inherently difficult, as it requires demonstrating that the individual not only failed to act but did so with the specific purpose of causing harm.

The application of omission-based criminal liability in military law presents additional complexities. In the context of armed forces, failure to act can have far-reaching consequences, including compromising national security or causing battlefield losses. The Iranian Military Penal Code imposes strict penalties on commanders and officers who fail to comply with direct orders, particularly in combat situations. These provisions reflect the heightened duty of responsibility imposed on military personnel, where discipline and adherence to orders are crucial to maintaining order and security.

In conclusion, the criminalization of omissions serves as a mechanism to enforce societal obligations and ensure public safety. However, balancing individual autonomy with legal duties remains a challenging legal issue. While some legal systems adopt a broader approach, holding individuals accountable for any failure to prevent harm, Iranian law maintains a more restrictive approach, limiting liability to cases where a clear legal obligation exists. The challenges of proving causation and intent in omission-based crimes necessitate careful judicial interpretation. As society evolves, legal frameworks must continue to adapt to new ethical and practical concerns, ensuring that criminal omission laws align with contemporary principles of justice and human rights.

Ethical Considerations

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

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Conflict of Interest

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