

# Evaluation of the Jurisdiction of the Penal Court of the Province

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## Abstract

In the last decade, a new court called the penal court of the province was established in the legal system of Iran, which included the scope of jurisdiction, procedure, punishment and enforcement of its rulings on the basis of the provisions of the law on the reform of the law establishing the general and revolutionary courts approved in 2002 and the rules of procedure of public and revolutionary courts in Criminal law approved in 1999. This court has a high rank in the criminal justice system, since the most important proceedings with severe penalties are in the jurisdiction of this court, and in fact a primitive and public court with conditions of due process of limited legal constraints that will have some forms and ambiguities in doctrine and practice, and that is why and the reason the writer has chosen the jurisdiction of the court for review and research. The provincial penal court was established since 2002, and before the revolution it was called the criminal court of the province, but it was dissolved after the revolution. Excessive crimes punishable by self-stroke and retribution are executed, executed and imprisoned, as well as political and press offenses within the jurisdiction of the court.

**Keywords:** legal status, provincial criminal court, intrinsic qualification, local jurisdiction.

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## Introduction

The importance of qualification is due to the importance that division of labor has found in today's world. The division of labor is one of the natural laws, and its manifestations are observed even in the presence of animals. The issue of jurisdiction in courts is based on this philosophy. If a judge, for example, devotes his full time to work, it is obvious that he knows better than discovering the facts from the act of doing things, rather than spending time on different things. Employment of multiple jobs leads to a misunderstanding and prevents the person from finding the necessary expertise. In the last decade, a new court called the penal court of the province was established in the legal system of Iran that limited the scope of jurisdiction, procedure, penalties and enforcement of its rulings. The basis of the articles of the law on amending the law was the establishment of public and revolutionary courts, passed in 1381, and the law on the trial of public and revolutionary courts in criminal affairs, approved in 1378. This court has a high rank in the criminal justice system, since the most important proceedings with severe penalties are in the jurisdiction of this court, and in fact a primitive and public court with conditions of due process of limited legal constraints that will have some forms and ambiguities in doctrine and practice, and that is why The reason the writer has chosen the jurisdiction of the court for review.

### Chapter One - Concept of Competency

"Competence" in the word means competent and worthy. In the legal term, the competence is "the legal authority of an official to perform certain matters, such as the jurisdiction of the courts, and the authority of the government official to regulate the official document. "Or" the authority that the law has generally addressed to the authorities, if, in general, the law is open, the court shall be considered by the general court and, if appropriate, specially designated. "The jurisdiction has a variety of intrinsic, local, personal and extra that will be reviewed.

There are several definitions of qualifications that some of them refer to.

Criminal jurisdiction is a competent and voluntary mandate given to criminal authorities for the purpose of dealing with criminal matters.

2. Criminal jurisdiction can be interpreted as the ability and legal competence of the judiciary, as well as for the consideration of a criminal case.

3. Competence is an option given to a court that has jurisdiction to hear a lawsuit. This power is granted by law or by virtue of a special decree (in the case of special courts) or in accordance with a general ruling (in the case of public courts).

It should also be noted that the rules and regulations relating to the criminal jurisdiction of the laws are amenable and are subject to public order and the will and decision of individuals and authorities do not affect its system. Therefore, the first issue that criminal authorities must pay attention to is the issue of jurisdiction, and if they do not consider themselves competent, they are required to issue ineligibility. The issue of jurisdiction is a matter which can be answered at any stage of the investigation and, after the inability of the court to reach the court, the competent court is sent to the competent authority, since the actions and decisions of the competent authority do not lack the value and credibility of the judiciary except in cases where the legislature In order to avoid waste of time and redundancy, some of the measures taken by the unlicensed authorities have not been

revoked and the competent authority has determined that those actions and decisions are valid, or that in the unprofessional authority of escape or collusion or the destruction of works and reasons It is a crime that the non-reference authority will take action to send the case to the competent authority.

Now, after mentioning the qualifications, we will review the jurisdiction of the provincial penal court and the criteria for the jurisdiction of this authority. First of all, it should be noted that the post-revolutionary legislators for religious reasons eliminated the division of offenses based on the severity of the punishment, namely, crimes, offenses. Therefore, the legislator has used three criteria in determining the jurisdiction of the provincial criminal court due to the lack of division of the crime, which is contrary to the principles of legislation. Here are three criteria:

1-Legal punishment

2. Type of offense

3. The person committed the crime

1. The standard of punishment: This criterion is included in Annex 1 to Article 20 of the Law on the Amendments to the Law on the Establishment of Public and Revolutionary Courts and the Explanation of the Qualification Based on the Penal Law. The above-mentioned Note stipulates that: "To investigate crimes which their legal punishment is self-nemesis, Retaliation, execution, execution, rigor, or life imprisonment ..... "It is noted that in this way, the legislature has taken into account the legal punishment of committing the offense.

It should be noted, however, that the use of such a method is a problem, since on the one hand, there may be cases of misrepresentation or controversy in the calculation of penalties that have far more heavier effects than audits, as noted in paragraph 1 of Article 20 of the Law on Correction of such an event is. For example: along with the rectum, the member should be referred to the amputation ..... in some of the cases more heavier than the rectum, which has been neglected.

On the other hand, with regard to the philosophy of establishing a penal court in the province that investigate serious and severe crimes and respect for the rights of defendants of such offenses by resorting to the mechanisms envisaged by the law, they are subject to some serious and severe crimes such as kidnapping and armed robber at night not mentioned. Therefore, the legal system needs to be restored to re-classify crimes, sins, and offenses so as to prevent such problems.

2. The criterion of the type of offense committed: This criterion is also referred to in clause 1 of article 20, which is stated in its last section "... as well as the investigation of political and press offenses will be initially brought to the appeals court of the province, in which case the court the criminal court of the province is called ... "

3. The criterion for committing a crime: In fact, this criterion is a personal qualification. Qualification that takes into account the status of the accused, age, job in a social position for a reference. This type of qualification is mentioned in the recent paragraph of Article 4 of the law of amendment, and it is exclusively related to the criminal court of Tehran province. The above Note stipulates this

"... To handle all allegations of members of the Expediency Council, Guardians Council, MPs, Ministers and their deputies, Assistant Chiefs and Advisers to the Chief Judge of the Supreme Court of Computing, Judiciary Holders, Governors, General Officers of Military and Police Officers Gratitude and higher, and general administrators of provincial information are in the jurisdiction of the Tehran Provincial Criminal Court, except in cases that are in the jurisdiction of other judicial authorities. "

Chapter Two - Intrinsic Qualification of the Criminal Court 1

First topic - Intrinsic qualification

From the point of view of the theories of the criminal procedure, according to the opinion of some criminal law experts, the type of crime is the first and simplest criterion for determining the jurisdiction of criminal authorities, the Code of Criminal Procedure did not define the qualification and did not define the principles of its recognition, and the definition of the law of civil procedure is of intrinsic qualification "Whenever there is a difference between the general, revolutionary and military courts of jurisdiction, in cases where the courts, whether public or military, are competent to deny the authority of non-executive directors, or if they consider themselves competent to submit a case to the Supreme Court to resolve the dispute, Will be .... "Principles Lahyt inherent comparative criminal authorities are not complete.

However, many lawyers consider criminal inadequacy as inherent in the following.

One is the lack of competence of the specialized courts over matters that are within the jurisdiction of the public courts

Two - The inability of the public courts to bring any crimes within the jurisdiction of the specialized courts.

Three - the lack of competence of the substitute authorities towards the excellent authorities.

Four - the jurisdiction of courts of law in relation to criminal courts and vice versa.

First speech - Offenses subject to the jurisdiction of the Provincial Criminal Court

In Clause 4 of Article 4 of the Law on the reform of the formation of public and revolutionary courts, the jurisdiction of the penal court is stated.

Clause 4 of article 4 of the reform law states: "The prosecution of crimes whose legal punishment is retaliatory

or punitive, or executed or imprisoned, as well as the investigation of press and political crimes as set forth in the following cases . "

We will review the above mentioned offenses in below:

Clause 1 - Compelling Offenses:

Rajm(stoning) in the word means stoning and, in the term, a kind of punishment that condemns the defendant in a special pit and ends with throwing stones into the life of the convicted person.

The basis of this type of punishment is the fatwa(order and state) of the jurists based on the traditions narrated from the Prophet and the infallible Imams (AS). In a tradition narrated by Imam Sadiq (AS), "It is stated that" the rhyme is the limit of the Lord and the volume is his limit, so if the person of the mohzna(married) do zena (start sexual relation with another person when she is married), he will be stoned and the scourge will not be done on him. "

This punishment does not have a single case, and it is about committing the crime of adultery. Article 83 of the Islamic Penal Code stipulates: "The limit of adultery is in the following cases:

A: The zana of a man who has a permanent wife and have sex with her when she is his wife, and can have sex with her at any time.

B: the zana of a Mohzena woman ,mohzena woman is a woman who has a permanent husband, and the husband had sex with her when she was a wife woman, has been intimate with him and has the possibility of sex with the husband "

In Article 84 of the same law, the sentence of sentencing to the old man and the old woman of Mohsin has also been Rajm , with the difference that before Rajm them the volume of it will be defined.

The question arises in this regard is that if the provincial penal court is admitted to prosecution in the course of a criminal investigation that initially appears to be within the jurisdiction of the provincial penal court and has been prosecuted for the purpose of the alleged murder of the accused or the defendant, After conducting preliminary investigations or after the conclusion of the proceedings, it is concluded that the murder was not intentional and unintentional, or that the allegation was not arbitrary or non-existent, in which case its consideration would be in the jurisdiction of the county court of general criminal jurisdiction, In such a hypothesis, the jurisdiction of the Criminal Court of the province is and how should it decide whether to continue to process the matter and to cast an opinion or make it ineligible for the city's public criminal courts? The law of restitution of prosecutors did not specify the jurisdiction of the provincial criminal court in this assumption, and its executive code is silent in this regard.

However, if the provincial penal court ruled out the inadmissibility, the General Criminal Court did not adequately investigate and reopened the lengthy investigation that would lead to the prosecution, and therefore the General Criminal Court would not be competent to prosecute and inadmissible. Disagreement over competence. As in the penal court of the province, like the general criminal court, is a primitive tribunal and its opinion is not open to the general courts, although members of the provincial court of the Supreme Council of the Supreme Court (Provincial Court of Appeals) are formed.

There were disagreements about this, some people believe that according to note 1 of Article 7 of the Law on the Establishment of 1/2 Courts of Criminal Procedure, in view of the fact that they did not conflict with the following laws, in the following laws, the law was not expressly reprinted, but merely The enactment of the Law on the Establishment of Public and Revolutionary Courts in the year 73, this law violated its executive capacity in terms of the division of the courts into a degree, which by the enactment of the law on the restoration of prosecutors and the re-division of criminal courts into the general criminal court of the county and the penal court of the province, In cases of non-compliance Affected by the law of law, he was in such a determination, and the most important court was obliged to continue the proceedings and vote. But in the law known as the Revival of the Prosecutor's Office and its executive code, it has not been mentioned.

On the other hand, others believe that if the legal title of the crime changed, the court would lose its jurisdiction and change the jurisdiction of the court, and the grant of new jurisdiction would require a letter and, therefore, the competent authority should be filed with the competent of a proper criminal court.

To these disagreements, the Verdict endorsed the unanimous order No. 709-87 / 11/1 to the effect that, if a victim is punished in accordance with Article 4 of the Law on the reform of the law, the establishment of public and revolutionary courts in the penal court of the province would be punishable in accordance with the terms of the sentence, and the court After the hearing, it determines that the act is committing another criminal offense, the consideration of which is within the jurisdiction of the General Court of Criminal Justice, this will not invalidate the jurisdiction of the court, and should issue this conviction and order accordingly, therefore, it is assumed to be inadmissible and The criminal offense is the same as the criminal court It will issue an appropriate order.

The second part - the punishable offenses of the retribution of the soul and the member

Retribution in the word means following the criminal act and doing what he has done.

And in the term is a punishable should be done that should be equal to his crime (Article 14 of the Islamic Penal

Code). Qesas(do something as the person did ) is one of the most common punishments of all types of life-threatening sentences in Iran's rights, which were forcibly murdered in Iranian law The Qur'anic verses confirm that.

Verse 179 of Surah Al-Baqarah, Volkim al-Qasas-e Hiva or Oli al-'AbabLalekm-taqun, "as well as verse 178 of the Surah al-Baqareh, and verse 45 of the Surah al-Ma'idah, regarding Qesas of the soul.

The retribution is a punishment which is not a single instance and is only imposed for the commission of the crime of murder and there are several definitions of murder that the following definition seems to be comprehensive and impede.

The deliberate murder is "deliberate deprivation of life from the other without legal authority"

In accordance with Article 206 of the Islamic Penal Code, in cases where the killer intends to kill someone by doing something, whether it is typically deadly, but actually causing the murder, and also that the killer deliberately does something that is not typically deadly, but against the guilty person Due to illness or aging or disability, or childhood, or similar, they are typically lethal, a deliberate murder and a killer, if requested by the parent, is given to a retribution.

Article 205 of the Islamic Penal Code stipulates: "The murder deliberately causes retaliation, and the parent may retaliate with the permission of the killer, subject to the conditions set forth in the next chapter."

The question that arises in this regard is that if a person acts that is typically fatal, causes another life to die, or deliberately leads to another life being lost, and during a hearing it is determined that the father is the victim or the murderer is insane. How should the indictment be issued?

In this regard, in accordance with Note 1, Article 20 stipulates that "the investigation of crimes whose legal punishment is self-stinging ..." shall be investigated in the penal court of the province, considering that in article 220 of the Islamic Penal Code, if a father or ancestor of a child killed his own child nemesis and sentenced to death of the Diya's (amount of money as a compensate because of injure or kil somebody)killing to the victim's heir and ta'zir, as the legal punishment is not an act of committing Qisas(nemesis), but the payment of Diyat and Ta'zir is condemned; therefore, the indictment should be issued to the county criminal court.

Regarding the insane person, the 306th article of the Islamic Penal Code, which deliberately and pseudo-intentional immorality, is considered to be an absolute error.

Therefore, in this regard, the punishment for the payment of Diyat's payment is also a matter of rigor and the indictment should be issued for the general criminal court of the county where the offense was committed, in terms of the type of punishment.

Another question is that if a case under the name of murder was deliberately instituted in the penal court of the province and that the court determined the act of committing an unintentional murder, what decision should the court make? The answer to this question is expressed in the previous section with the arguments and the procedural unanimity vote, and it is avoided to avoid repeating the article.

The term "member" or "party" has been used in the Islamic Penal Code, but no definition has been provided. A member in the lexical meaning is a part of the body such as the hand, foot, head, organ, set of tissues of the body of a living cellular entity that assumes the common responsibility of the lips, lungs, stomachs, each of which is made up of several tissues. This definition also applies to humans. In the Islamic Penal Code, the member is in front of the soul (Chapter 1 of the Second and Third Book) and includes the following:

First: A member in a specific sense that includes parts of body tissues such as hands, feet, nails and .....

Second: The senses of the organ include vision, hearing, smell and taste.

Third: the benefits of a member such as ejaculation, reproductive power and ..

According to Article 269 of the Islamic Penal Code, which states: "Amputation or its atrocities, if intentional, causes retaliation and may be reprimanded in accordance with the case lawfully against the permission of the perpetrator, but the reprimand will be sentenced to retaliation by the circumstances specified. A deliberate crime on a member causes retaliation, according to the aforementioned article, it is clear that the multiplication of a crime is a member, but even in its intentional case, it is not punishable because it involves the exclusion of a member. The concept of amputation is clear, but it is invoked to say that the tissues of the body are scattered and often accompanied by bleeding, such as scab, scratching, rupture and superficial and deep cuts with skin damage (thin scissors on the bone or with fractures, or Slight or severe visceral injury or brain injury).

Article 271 of the Islamic Penal Code also provides for amputation or intentional intent.

"Amputation or bullying is intentional in the following cases:

1. When Johnny intends to do an amputation or has an intention to do so, whether this is typically caused or disrupted.
2. When Johnny deliberately does something that typically causes a member to be terminated or threatened, he or she has no intention of interrupting or harassing him.
3. When a person does not intend to have an amputation or an offense and his action is not typically discontinued, but he is usually aware of the illness or aging or disability or childhood, and the like. "

And in Article 272 of the Islamic Penal Code, the conditions for the execution of a member of the

Qesas(nemesis) have been stated that, in addition to the general nature of the crime, it is necessary: In the retribution of a person, in addition to the conditions of the retribution, the following conditions must be observed:

1. Member's equality in being healthy
- 2-Draw in the original members
3. Draw in injured or harmed member
4. The retaliation does not result in the death of a person or a member of another
5. Do not commit suicide

Therefore, it should be noted that if a person deliberately or when under the terms of Article 271 of the Islamic Penal Code causes an amputation or other act, in addition to the requirements for retaliation, having the conditions of Article 272 of the Islamic Penal Code, the cause of retaliation is a member.

Regarding the question posed in the previous cases, if the case referred to as a member of the qesas is filed in the penal court of the province, it is unconditional and requires payment of the Diyah, with the same reasoning it makes a decision to make a decision.

Third Clause - Extreme Excessive Crimes

The rigid word means to hang on the cross and in the sense of the kind of punishment that is condemned to the gallows (which is similar to the cross), with its legs off the ground, and it is abandoned for three days without water and food. If, within these three days, the convicted person dies, the cross is pulled down and buried, and if he fails, he leaves him and the sentence is executed.

The basis for this punishment is the 33 verses of Ma'ida Surah regarding the crime of moharebeh. According to this verse, one of the punishments imposed on the perpetrators of moharebeh is rigorous, which has not yet been enforced, and the courts have not used this punishment for committing the crime of moharebeh.

Article 190 of the Islamic Penal Code stipulates:

The limit of moharebeh and corruption is one of four things: 1-killing 2-hanging with 3-the first cut of the right hand and then the left foot 4-negation.

To hang on the same thing is to crucify. The term "crucifixion of corruptors and mohareb" has been used in the article 195 of this law, instead of hanging it.

The examples of Moharebeh's crime in Iranian law are:

Asghar Ahmadi Movahed, former, p. 55.

- (1) Relative incest (clause A of Article 82)
2. Adultery with the father-in-law, who causes the murder of a woman (clause B, Article 82)
3. Non-Muslim women with Muslim women who are murdered (Article 82 of the Covenant)
- (4) Abuse and cruelty that causes murder (paragraph 82 of the Criminal Code)
- 5- Sodomy (Article 110 CE)
- 6- Armed robbery and landing so as to disrupt the security of people or the road and cause fear and horror. Article 185. (a)
7. Repetition of adultery at the fourth time (Article 90)
8. Repetition of the trickery at the fourth time (Article 122 of the Criminal Code)
9. Repetition of the Mosaheq in the fourth time (Article 131)
- 10 qasb(taking somebody's property) repeats in the fourth time (Article 175)
11. Repetition of Khmer's Drinking (alcohol drinking)in Third Order (Article 179)
- 12 Repeat theft in the fourth time (Article 201)

Examples of the death penalty in punitive and deterrent punishment

1. Anti-narcotics law: Article 4, Article 2, Article 4, Article 4, Article 4, Article 5, Article 5, and Article 6, Article 5, and Note 1: Products Article 8, Article 9 and Article 10.
2. The law of aggravating the punishment of perpetrators of bribery, embezzlement and fraud. Adopted in 1367/9/15.
3. The Law on the Accelerated Penalties of Counterfeiters and Importers, Distributors and Consumers of Modest Bills approved in 1368/1/29.
4. The Penal Code of the Armed Forces Crimes approved in 1382/10/9 (17), (20), (paragraph A.21), (para. 21, 22), (para. 24), (34), (para. A, M, 51, (78), (92), (Note 1, 93), (94).
5. The Penal Code of the Disrupters in the Economic System of the country, adopted in 1369
1. The abolition of liberty and security of people through the use of weapons (Article 183 of the Criminal Code)
- 2-Robbers and Sector-of-War (Article 185 of the Criminal Code)
3. Armed insurrection against the Islamic state (Article 186 AD)
4. The nomination of one of the most important posts of the coup in the plan to overthrow the government (Article 188 BC)

In all of the above, in accordance with Article 191 of the Islamic Penal Code, the judge may rule on rigorous punishment.

#### Clause 4 - Execution offenses

Execution in the word is not a matter of the meaning of the word and the opposite of the existence that has been taken into account in the acts and the concept is understood from it. Therefore, execution is not in the word, and it means destruction and in the term is the most severe type of punishment imposed by the legislator, and consequently the life of the offender is generally abandoned and survives. In Iran's law, some types of execution are based on legal texts.

Such as the death penalty for committing the crime of moharebeh and corruption in the land, as well as rape and other crimes committed under religious law, committing the death penalty or murder. Such executions are but limited and do not discourage or suspend.

Here are some examples of life imprisonment:

1. The provisions of the Anti-Narcotics Act, adopted in 8/8/1367, with the subsequent amendments to the Expediency Council
2. The punishment for murder of dislike in the case of minor minority is non-verifiable (Article 211 of the Criminal Code)
3. Third-degree stealing for the third time (Section C of Article 201)

#### Article Six - Political and Press Offenses

As already stated, the handling of press and political crimes is within the jurisdiction of the Penal Courts of the Province, which will examine the following crimes below:

##### Section A - Press Offenses

In the context of defining the crime and determining its implications, there are wide disagreements between jurists and communications science experts. The scope of these disagreements is from the belief in the negation of such a concept until the presentation of the narrow and expansive definitions of the press offense is significant. Some experts, while denying the title of the press offense, have not seen the need to invent such a title, they believe that "it is not possible to publish any publication that is outside the existing or future boundaries of ordinary crimes." Therefore, if a crime occurs by means of the press, in fact the publication is a crime, not its agent ... and for the crime of being in no place in the world and at any time did not have a special law to write it "

Some press offenses are used in the most meaningful sense and include any offense committed by the press in this view. "These crimes are often not of a special nature, and only the commission of the press is an important feature of these crimes ... and the publication of an important feature All press offenses are "so a press offense" is a crime committed by an article or an image in a journal and is not an independent crime, but a general crime that may actually be caused by the inclusion of material in the journal. "According to this definition, the offense A press in its most immediate sense, is an act contrary to the criminal law which the press is being implemented. And they consider the press offense to be a subset of political crime, and they consider the difference between press and political crime only as a crime and believe that "the crime of a press in a row of political crimes has a share in the definition of political crime"

In various press laws, the definition of mass crime refers to some of them. After the Islamic Revolution, Article 168 of the Constitution did not define the press offense, despite the safeguarding of specific safeguards in dealing with press offenses. In the bill on the press (adopted on August 20, 1978), there is a contradiction in the definition of press offense. On the other hand, Article 30 of this law stipulates that "crimes committed by the press shall be dealt with in a criminal court and in the presence of a panel of judges". This definition refers to the concept of a press offense. On the other hand, Article 38 of this law stipulates that "for the purpose of investigating the crimes set forth in this bill, the criminal court or the participation of the boss and two judges shall be formed in the presence of the judiciary." Therefore, contrary to the wording of Article 30 of the press offense in article 38, the press offense is limited to the offenses referred to In this legal bill (Articles 18 to 29).

The press law passed in 12/1364 also preserves the ambiguity of the 1978 legislative bill in defining a press offense. On the other hand, pursuant to article 34 of this law, "the crimes committed by the press are considered by the competent court in the presence of the panel of judges". On the other hand, the existence of the sixth chapter of this law, titled "Offenses" and "Exemptions" in nine offenses, has caused ambiguity as to whether the application of Article 34 in the definition the press offense or nine-seater offenses are subject to Chapter 6 of this law or not?

The press community as well as the executive branch tended to accept a comprehensive definition of press offenses and, in contrast to the judiciary, tended to monopolize press offenses and, in particular, withdrawal of crimes against security from this territory. The approach to the two Toshi newspapers (September 1998) and the women's newspaper (April 1999) and the intervention of the Islamic Revolutionary Tribunal in the seizure of these two journals (without the decision of the jury) show the judiciary's willingness to exclude crimes against security as a form of press offenses. It seems that the consistent perception of press offenses against the reality of the community in the current development is more consistent with the legal and judicial security of the press, especially with regard to the party and political pressures of the present. In addition, this perception does not

obscure the views of others. Adoption of such a concept of press offense is also consistent with Article 168 of the Constitution because it refers to the offenses referred to in the above principle and the closest definition to the mind in this regard is the definition of mass press offenses, on the other hand at the end of Article 168 of the Constitution, after mentioning The fact that the investigation of public crimes is carried out in the presence of the judiciary .... "The manner of choosing the terms and conditions of the panel of judges and the definition of political crime is determined by the law on the basis of Islamic standards." The failure to mention the press offenses along with political offense and lack of duty I think of the ordinary legislation that defines the crime of the press Younger Obviously, the mass media (as opposed to political offenses) and the opinion of the legislator and to apply it to any offense by the press. Thus, the removal of a few crimes committed by the press from the use of press offenses has undermined Article 168 of the Constitution. Additionally, the narrow perception of the press offense is inconsistent with Article 34 of the press law of 22/12/1364, which states that "crimes committed by the press are dealt with by the competent court in the presence of a panel of judges". Therefore, the legislator's purpose from the explanation of chapter 6 and the prediction of a particular case in that testimony is not the application of article 34 of the press law, but is aimed at emphasizing the most common forms of press offenses.

Thus, committing any crime specified in the Islamic Penal Code and other current regulations, provided that the press acts as an instrument for the realization of its material element (as defined in article 1 of the press law of 1364). Therefore, if the responsible manager is committing offenses from his own content, for example, to bribe a clerk for breaking news and secret news (without publishing that serial news in his magazine), or that he leaves another illegal sheet of paper in his own book, His offense is not a press and he can not enjoy press freedom privileges.

Secondly, in the material element of this crime, the publication (distribution of the publication to the sales centers and the knowledge of more than two of its provisions) is a condition. Therefore, if a newspaper is not distributed for any reason and does not go out of print, and consequently does not reach the people, the principle of the crime will not be realized until the discussion of the judiciary has committed it.

#### Article B - Political Crime

In Article 168 of the Constitution, the status of a political crime is mentioned in the penal system of the province. In this principle, following the presentation of the investigation of political crimes, the jurisprudence should be present at the presence of the panel of judges. The definition of political crime is based on Islamic law in the ordinary law. The amendment to the Constitution of Constitutional Law also referred to Article 79 for political misconduct but did not provide a definition. Therefore, when it comes to the definition of political crime in law, it is the definitions given by the jurists of the Orient to follow them. Here are some of these definitions:

- 1- "Political crime refers to the actions of the perpetrators, in which they were motivated by the overthrow of the political and social system and the disruption of political management and damage to the country's sovereignty, or any criminal act that resulted in the overthrow of the political and social system and the damage to the political authorities of the country"
- 2- "Political crime refers to the practice of criminals whose purpose is to overthrow the political and social system and to disrupt the order and security of the country."
3. "The offense of political thought or from an institution and political apparatus is a political offense."
- 4- "Political crime is a crime to harm social organization."
- "5. The political offense is a crime that harms the political sources of government or political rights."

Among the definitions given, the first definition of the rest is more complete. In terms of jurisprudence, it is important in crime, it is the intention and the motive of the offender who distinguishes him from other offenders. Perhaps the closest concept to political crime is the concept of Yaghi which in the word means oppression and aggression and disobedience and in term representing the uprising against the Imam and the government Islamic, which is referred to below to some of the sacraments.

- 1- "Practical political crime" means a group of Muslims who have gained a strong and powerful organization and with the will of the Muslim authorities, in the cause of the uncertainties that they have arisen. Whether it is a practice of corruption through the earth and moharebeh, or through espionage for abusive governments or armed conflict with Islamic state or other affairs, and political offenders are a group that has the traits mentioned in this definition. "
- 2- "Gardens are a group who, by virtue of the incorrect beliefs, express the corruption that they regard as religiously on his Imam or his deputy and have power and shakati"
- "3. Yaghi in the word means rape, oppression and disobedience. In the term of political jurisprudence, a garden is said to be a Muslim who is opposed to the Islamic State and opposes disobedience and opposes the imam"

As we go through, we find that the views of jurists, or more clearly, on Islamic law and Islamic law, are very shaky in the definition of political crime, and in many cases they also have defects. It is here that there must be a comprehensive definition of obstacles that have both these defects and the confession of that decadence.

However, considering the aspects of political crime, could be described as follows.

"Political crime refers to a practice that is prescribed in the law for that punishment and is intended to oppose the legitimate political system and cause damage to such a system."

In terms of Iran's current laws, a bill defining a political crime has not yet been approved by the Islamic Consultative Assembly. However, there are two drafts in this regard, which have been prepared by one of the NGOs and the other by the Ministry of Justice. In Article 1, the text provided by the NGO (Islamic Human Rights Commission) is a political offense as defined below.

"The current verdict or termination which is punishable according to the laws of the state, when committed with political motive against the established political system and the rule of the state and the political management of the country and the interests of the Islamic Republic, or the political, social and cultural rights of citizens and the freedoms of their law, Provided that it is not intended to commit a personal interest. "

The text provided by the Ministry of Justice constitutes a political offense in Article 1 as follows: "The actions of criminals who, without the use of violence, by individuals who are politically motivated or by political groups against the established political system and the sovereignty of the Islamic Republic of Iran, or the political and social rights Citizens, provided that the incentive to commit them is not personal interests "

#### Topic II - Local Qualifications

When it is determined by the type of criminal jurisdiction of the intrinsic jurisdiction of the criminal court, the question arises as to which of the various courts having intrinsic qualifications have a special merit to investigate the offense of committing an offense. This type of merit is called local or relative qualification. For example, when it turned out that the death penalty was punishable by the competent provincial penal courts, Saleh is being prosecuted.

This jurisdiction can be determined according to various criteria, such as the location of the crime, the crime, the location of the defendant's detention, the location of the defendant's detention or his residence. Each of the five factors mentioned above may be awarded concessions in local jurisdiction. Against Article 51 of the Code of Conduct for Public and Revolutionary Courts in Criminal Matters: 1999

"Courts have jurisdiction only in the area of justice and, if there are any legal aspects, begin to investigate and investigate:

A: There is a crime in that judicial area

B: The crime has taken place in another jurisdiction, but in the judiciary , it has been arrested by the discovery or accused court in that area.

C: The crime is in another court area, but the accused or suspected of committing a crime is in the jurisdiction of that court. "Therefore, in our country, the criminal authorities of the place where the crime was discovered, the place where the crime was discovered, the residence and the location of the defendant's arrest, with the preference of the place where the jurisdiction was instituted They are investigating and investigating because, in accordance with Article 54 of the Act, "the defendant is tried in a court of law in which the crime was committed ..." and in accordance with article 52 of the same law "in cases where the crime was outside the jurisdiction of the court but it was discovered or committed in the area. The area has been arrested, as well as in cases where the court of the place where the offense is held is not competent to investigate. The court will institute appropriate investigations and file the case with the defendant in the competent court. "If a crime has been discovered and the location of the incident is unclear, it will continue to investigate until the investigation of the termination of the crime or where the crime occurred, and if the place the crime is not determined, the court proceeds to proceed and decides to issue a ruling. Local jurisdiction in our country is subject to the old method, the principle of the defendant's trial in the court of the place where the crime took place. Although the followers of this theory impose their theory in the form of laws or judicial procedures in the criminal law of the countries of the proprietor's country and, consequently, of other countries, by arguing that at the place where the crime occurred, the causes and reasons for the crime were collected better and more positively, and their positive value was higher. However, exceptions to the principle of the jurisdiction of the court of the place where the crime took place and, more importantly, the practical considerations, have shown that this principle has lost its absolute value and credibility. However, the court of the place of crime has advantages in terms of collecting evidence and restoring the order of the society where the offense It is there but always and everywhere It can be seen best from the competent authority. Hence, the court of residence, or the arrest of the accused or the complainant, will sooner and easier to prosecute the prosecution and avoid prosecution. Regarding the local jurisdiction of the provincial criminal court, it should be separated from the offenses brought to the court by indictment and the offenses that are being investigated without indictment.

In the case of the offenses filed with the indictment before the competent court, the jurisdiction of the prosecutor is the location of the crime in accordance with the local jurisdiction, because the prosecutor is competent for the crime, and after conducting preliminary investigations, he will issue an indictment and then file a case for investigation. The provincial capital's provincial penal code is being handed down, however, according to the jurisdiction of the offender, should be tried in a court where the crime was committed. Therefore, the provincial criminal court in the process of prosecution of crimes requires the issuance of



indictments in non-provincial cities of exception to local jurisdiction.

In the case of crimes initially and without indictment in the provincial penal court (the crime of adultery is punishable by murder), the local jurisdiction of the provincial criminal court has been ruled out of the local jurisdiction of the prosecutor's office and the court of the place of the crime, since the case was initially brought in a court other than the city of the place the crime is being investigated and Chai does not remain the subject of criminal investigations and prosecutions in the courts and the city court other than the provincial capital.

It should be noted, however, that the criminal court of the Central District (Tehran) also investigates the crimes of individuals referred to in Article 4 of the Law on the reform of the formation of public and revolutionary courts, and the exception is based on the principle of local jurisdiction of the place of crime.

#### Third Issues - Personal Qualifications

Occasionally, according to the social status of the crime and his specific situation (age and occupation), the authority of the criminal authorities is determined. That the Children's Court, the State Staff Court, the Special Court for the Clergy and the Military Tribunals are courts that deal with individual crimes.

#### Chapter Four - Additional Qualifications

Compliance with the principle of speed in criminal proceedings and the prevention of issuing different opinions on a person who has committed multiple offenses or committed a crime with others has led the legislator, as an exception to the general rules of jurisdiction, to a court that is essentially an intrinsic or local jurisdiction do not have the file allowed to handle. In this case, if the prosecution of all charges is beyond the scope of the jurisdiction of the court or tribunal, the jurisdiction of the court of appeal shall be construed as additional jurisdiction.

Therefore, extra jurisdiction is exceptionally based on the general rules of criminal jurisdiction and suggests that a criminal authority may, in certain circumstances, also deal with a crime that is basically beyond its jurisdiction, extra jurisdiction cases are prescribed by law, and courts have the right to create or revoke qualifications No extra. Additional jurisdiction can be explained as follows:

Unity of charge and plurality of accused - Whenever several people make a crime together, they must be charged with all of them in a court: because of this, the collected evidence can be used against all of them, and they are wasting their time and money. Preventing them against any one. In addition, contradictory votes are thereby avoided.

Consequently, several individuals are required to commit a firm or vice president, and it is necessary to prosecute prosecution partners and deputies who have jurisdiction to prosecute the accused.

Article 56 of the Code of Judicial Procedure for the General and Revolutionary Courts of the Supreme Court of the Islamic Republic of Iran in September 2000 stipulates: "Prosecution partners and deputies are tried in a court that has jurisdiction to prosecute the perpetrator." However, regarding this matter, Refer to Note 4.

Considering that all the charges against the abovementioned persons are being investigated in the abovementioned matter in the Tehran penal court, now if one of these officials assumes the offense of committing a crime with a normal person (the main accused), in spite of the explicit provision of Article 56 of the Code of Civil Procedure of the Public and Revolutionary Courts Criminal matters that should be tried with the main defendant in the general court of the location of the offense. Here, exceptionally, the Tehran Provincial Criminal Court is independently dealt with the victim of the deputy's office.

In the case of other persons, for example, if someone has committed a deliberate murder and someone else has been involved in the offense, considering that the prosecution of the offender is in the jurisdiction of the provincial criminal court, is the court competent to investigate the offense of the deputy in the crime?

There is a controversy in answering this question. Some people believe that according to Article 56 of the Code of Criminal Procedure, partners and deputies are prosecuted in a court that has jurisdiction to prosecute the offender, since the deputy has various instances, as referred to in Article 3, paragraph 3, of the amending law of preliminary investigations and the investigation of the deputy's charge is in the premise of the question with the penal court of the province, and some also believe that, in light of the explicit mention of article 20 of the reform law, which in a particular and precise manner specifies the jurisdiction of the provincial penal court, and only the offenses that are excluded and specified in the jurisdiction of the court Therefore, if a person makes a deputy in a crime that is within the jurisdiction of the provincial penal court, the prosecution of the offense is not within the jurisdiction of the provincial court.

The unity of the accused and the numerous charges. When one person commits several crimes, all charges against him are heard in a court. Article 54 of the Code of Judicial Procedure for the Public and Revolutionary Courts provides: "The defendant is tried in a court where the crime has occurred and If a person commits several crimes in different places, he will be tried in a court where the most serious offense is in the area and if the offenses are punishable in a degree, the court conducting the offense in the area arrested and if the accused has been convicted in different jurisdictions Be Matt Not arrested, the court that initially began to pursue the matter has jurisdiction to deal with all of these crimes. "

It should be noted, however, that the application of the principle of additional jurisdiction is governed by



- Second Edition, .1381
- 33 Mohammadzadeh, Shahram, Applied Look to Competence in Criminal Matters, Tehran, Farkasazan Publications, 2005
- 34 Civil, SeyyedJalaluddin, Criminal Procedural Law 2, and 1 Tehran, Paydar Publications, 1380
- Civil society, SeyyedJalaluddin, Islamic Republic of Iran Basic Law, Volume 6, Soroush Publishing., 1399
- 36 Deputy Judicial Training Department, Bureau of Public Prosecutions, Tehran, Qaza Publications, 1383
- 37 Moein, Mohammad, Farsi Moayedh Culture, Vol. II, Amir Kabir Publications, .1371
- 38 Mohajeri, Ali, Court of Appeals in Public Prosecutor's Office, Volume 3, Tehran, Mobasakan Publications, 1383
- 39 Mehpour, Hossein, President and Responsible for the implementation of the Constitution, Tehran, Information Publishing House, .1380
- 40 Mir Mohammad Sadeghi, Hussein, Exclusive Excise Laws, 3 Crimes Against Security and Comfort, Tehran, Sabaret Publishing, Second Edition, .1381
- 41 Mir Mohammad Sadeqi, Hussein, International Criminal Law (Collection of Articles), First Edition, Publishing Sari, Autumn, .377
- 42 Nowruz, Kambiz, The Journal of Ethics to Rights, Collections of Articles of the Second Seminar of the Press, Volume I, Tehran, Media Studies and Research Center, 1997
- 43 Hashemi, Seyyed Mohammad, The Analysis of Press and Political Crimes, The Journal of Legal Research, Shahid Beheshti University, No.10, Spring and Summer, .1371
- 46 Hashemi, Seyyed Mohammad, Basic Law of the Islamic Republic of Iran, Volume I, Qom, Qom High-Tech Publication, .1382
- 45 Hashemi, Seyyed Mohammad, Basic Law of the Islamic Republic of Iran, Volume II, Qom, Qom High-Tech Publications, 1997
- Second - articles
1. Mr. Babaei Nia, Ismail, The position of the jury in the law of Iran, Journal of the University of Mashhad, no., August-August. 1382
2. Aghaei Nia, Hossein, Special Procedural Rights, 1 Bachelor of Science Faculty of Judicial Sciences and Administrative Services, Tehran, 2003
- 3 Rezvani Ali, Review of the Law on Resurrection of Courts, Education Message, No. 10, October and November.
- 4 Shamloo, Baqir, Introduction and Review in the Position of the Board of Directors in the Legal System of Iran, Legal Perspectives Quarterly, Faculty of Judicial Sciences and Administrative Services, Tehran, No.3, Autumn. 1375
- 5 Mohseni, Morteza, the Board of Directors in its organization in France, Journal of Law of Justice, 20th Year, No. 3.
- 6 Marashi, Seyyed Hasan, Baghi, or political offense from Islam, Judicial Magazine of Justice, Tehran, No.3, Oct. 1351
- Third - Legislation and Settlements
1. The Rules of Procedure of the Public and Revolutionary Courts of the Supreme Court in the affairs of criminal law
2. The Constitution of the Islamic Republic of Iran.
3. Constitutional Constitution.
4. The Law on Correction of Criminal Proceedings and the Code of Criminal Procedure, approved by the 1290 Sun.
5. The Law of Principles of the Judiciary and the Petitioners and Peace Corps approved in 1289 solar.
6. The Law on the Establishment of Public and Revolutionary Courts, adopted in 1994 and its amendments of 1381 and its Rules of Procedure.
7. The Law on the Extension of the Punishment of Banknotes and Importers, Distributors and Consumers of the Banknotes Adopted .1368
8. The law of aggravating the punishment of perpetrators of bribery, embezzlement and fraud
9. The Counter Narcotics Act of 1367 and its subsequent amendments.
- 10 The Penal Code of Disrupters in the Economic System of the Country, adopted in 1369
11. Islamic Penal Code Approved .1375
12. The Penal Code of the Armed Forces approved .1382
13. The press law adopted in 1364 and its subsequent amendments.
14. The law of the board of directors is approved. 1382
15. The Bill of Principles of the Judiciary approved in 1307 solar.