



Iran and England's Criminal Policy on Betting in Cyberspace

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Abstract

Like other human achievements, the expansion and development of cyberspace, along with its undeniable benefits, also creates problems and disadvantages, many of which have been criminalized as computer crimes in most countries. One of the inappropriate uses that disrupts public and economic order is online "betting" or "grouping." Gambling is one of the destructive and destructive games that, unfortunately, is covered up under the deceptive title of intellectual sports. Recently, topics such as gambling and betting have migrated to internet sites. Today, with a few simple clicks, one can participate in all kinds of bets such as football predictions, poker, casinos, and dozens of other games and entertainment. The amounts that users bet in each game that does not last more than a few minutes, and 2% of it is automatically deducted and deposited into the site admin's account. For this reason, examining it in law can be very important.

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Introduction

Gambling, betting and its types, meaning the use of human luck and intelligence to gain personal benefits from other people's property. Since the time when trade was commodity-for-commodity until coins and money became common, gambling has always been one of the most destructive moral behaviors of mankind in the family economy and society; while all divine religions have condemned and forbidden gambling. Today, gambling in cyberspace and social networks in the form of online gambling houses and betting sites has become extremely popular, with "a turnover of five thousand billion tomans per year and the outflow of more than one and a half billion dollars of foreign currency from the country." Staying home during the Corona period, economic desperation, and more liberal use of the Internet under the pretext of education (schools) have led to an increase in the number of victims of online gambling. Unlimited Internet advertising and the promotion of online gambling and betting by celebrities, athletes, and virtual horns can be considered the most important factor in people's trust in joining these sites and "the destruction of many respectable families, the loss of evil and dignity, and the cause of suicide of individuals." Division and enmity, anger and hatred, war and murder, moral decline, the acquisition of forbidden wealth, divorce, anxiety and worry, suicide, and nervous excitement are some of the harmful effects of gambling that can turn a person from a caliph of Allah into someone who commits all kinds of crimes, corruption, and prostitution. With regard to the issue of gambling and betting, we will examine Iran's criminal policy towards gambling and betting in Iran and compare this in Iran and the United Kingdom.

1. The concept of gambling

In the lexicon, the word gambling (gambling is correct in the case of the shortened form of qaf and is a wrong term that has been overcome due to frequent use) means a variety of games with special equipment that are often accompanied by wins and losses for both parties, and in which the person who loses is obliged to pay money or valuables to the winner. The word gambling has an Arabic root and was

introduced into Persian from Arabic due to its jurisprudential root. Gambling is based on the weight of the argument from the perspective of the verb and conveys the two-sidedness of the verb. It means something that sometimes decreases and sometimes increases; just as the moon is sometimes incomplete and sometimes complete. (Ibn Faris, 1404, 25). The author of Taj al-Aroos writes in the definition of taqamir: "Rahanehfaghalabah" taqamir means that his idol made a bet and bet, then he won over him. (Hasani Wasiti Zibadi, 1414, 413) The same concept is known in English as the word Gambling and is the commitment to give or receive money or anything of value in the event or non-occurrence of an event whose outcome is unknown and based on chance. As is clear from the definitions, the concept of gambling has always been associated with the concept of game and wherever the word game is mentioned, the discussion of gambling has necessarily been raised. (Black's Law Dictionary, 7th Edn. Bryan A. Garner: Books. p. 687.) The association of the word game with gambling, for example, turns it from a permitted and legitimate act into an illegal and illegitimate act called gambling. (VesaliNaseh, 2017: 2)

These days, there is no need to be in basements, coffee houses or special spaces to gamble, because this type of gambling game has entered the cyberspace and many people in different spectrums have been attracted to it. Gambling games are not considered a crime in some developed countries, and this has led to the widespread use of such activities. In Iran, such activities are considered criminal matters. According to the Islamic Penal Code, Articles (705 to 711) and Article 564 of the Civil Code, gambling and betting are crimes, and the organizers and participants in such competitions are considered criminals based on the aforementioned articles, because in addition to having money deducted from the accounts of users of these online gambling games, other problems such as addiction, depression, anger and separation from family and friends are mentioned. Unfortunately, these games overshadow the entire lives of players to the point where people even stop doing their other activities. On the other hand, according to the available information and relevant documents, people's bank accounts are defrauded through these gambling games, because the admins or operators of these sites can easily access the members' online bank accounts. Unfortunately, the prevalence of these games has reached such a level that it has become a kind of addiction among young people; those who lose start playing again to recover their lost money, and those who win are greedy and continue playing. Meanwhile, illegal gambling sites operate easily within the country, and because the operators of these sites make good profits from this, their number is increasing day by day. (Moghaddam, 2018: 3)

Since Iranian laws have always been influenced by Islamic teachings, the first prohibition against gambling can be found in the verses of the Quran. The Holy Quran has prohibited gambling in verses 90 and 91 of Surah Al-Ma'idah and 219 of Surah Al-Baqarah, stating that gambling and gambling cause enmity and hatred among people and distance them from remembering God and worshipping Him. For this reason, all Islamic sects agree that gambling is forbidden. Another reason for the prohibition of gambling could be its destructive effects on individual, social life, and the economic growth of a society. Despite the prohibition and invalidity of gambling, no definition of it has been provided in Iranian civil and criminal laws. Thus, in order to find the definition of gambling, one must refer to jurisprudential sources. Most jurists have referred to two important factors in expressing the concept of gambling: "playing with gambling machines" and "winning and losing." As Sheikh Ansari, referring to the definition of the lexicographers, defines gambling as "playing with one of the gambling machines on the condition of winning and losing." He has considered four cases for gambling, taking into account the factor of winning or losing, and also the factor of playing with special gambling equipment or not. (Ansari, 1420: 371)

- 1) Playing with special gambling equipment with betting and winning or losing
- 2) Playing with non-gambling equipment with betting and winning or losing
- 3) Playing with special gambling equipment without betting and winning or losing
- 4) Playing without gambling equipment and without betting and winning or losing

In the case of the first case, that is, playing with special gambling equipment with a win or lose condition, Shiite and lay jurists have unanimously ruled that it is forbidden. (Khoi, 1374: 368) There is no

disagreement about the prohibition of the second case, and even in this regard there is a consensus (Najafi, 1387: 368 and Khomeini, 1415: 109). This case has a more general meaning than the first case, because it also includes examples of the first case. In other words, when playing without special gambling equipment with the condition of winning or losing is gambling and forbidden, then playing with these equipment with the condition of winning or losing is gambling and forbidden. In fact, in this case, the condition of exchange (betting) has been considered as the basic element of realizing gambling. There is no consensus regarding the prohibition of the third case. Some jurists consider mere playing with special gambling equipment and without a win-lose condition to be subject to the ruling of gambling. (Muqaddas Ardebili, 1383: 123 and Shahid Thani, 1419: 41) Another group expressed doubts about considering this situation as gambling and considered win-lose to be a condition for fulfilling the concept of gambling and applying the ruling of that condition. Sheikh Ansari also expressed this opinion, finally citing narrations in which mere playing and playing is included in the ruling of prohibition, does not consider gambling as a condition for the prohibition of playing with gambling equipment. From this perspective, the mere act of playing with gambling equipment is considered to be legally prohibited due to the truthfulness of its title as a means of distraction and a distraction from the remembrance of God.

2. Legal definition of gambling

In Persian dictionaries, customary definitions of gambling have also been provided, including that gambling is "participation in games in which winning and losing are dependent on chance or skill, with the aim of acquiring money or any other valuable thing" (Musaheb, Encyclopedia, 2). It is also stated elsewhere that gambling includes "any game in which it is often stipulated that the winner will take something from the loser. (Dehkhoda, Dehkhoda Dictionary, 11). There have also been more or less attempts among jurists to provide a definition of this verb. In their opinion, the gambling referred to in Article 654 of the Civil Code is as follows: "Two people who are on opposite sides of the denial and proof of a matter, agree that if each person's guess or opinion is correct, he will receive a certain amount of money or property from the other." (Lengroudi, 1378: 4) According to another lawyer, gambling is a contract whereby each player is obligated to the others so that whoever achieves the desired result based on the specific rules of the game and is considered the winner of the game, receives a certain amount of money or property or has something done for him. (Katouzian, 1383: 161) In another definition, "Gambling is any game played between two or more people by any means possible with the aim of winning or losing." (Validi, 1380: 283) Another author has written that gambling and betting mean winning or losing by means of equipment that is specially made for this purpose and is used by mystics for this purpose. (Zeraat, 1382: 522) In the Islamic Penal Code of Iran approved in 1375, gambling is considered a crime and punishment has been determined for its perpetrators, but no definition has been provided. Therefore, it is necessary to make a precise definition of this crime based on the jurisprudential foundations of this act and the conditions stipulated in the law, so that the fundamental rule of the principle of legality of the crime and punishment is observed as much as possible. On this basis, considering that firstly, Article 705 of the Islamic Penal Code emphasizes that gambling is a game, and secondly, it specifies the possibility of committing it by any means. (Habibzadeh, Pourgholam, and Omrani, 2010: 61)

Article (705) of the Islamic Penal Code stipulates in this regard: "Gambling with gambling equipment or devices by any means is prohibited, and its perpetrators are sentenced to one to six months in prison or up to 74 lashes, and if they are found to be openly gambling, they are sentenced to both punishments." As can be seen, the condition for gambling to be considered gambling and, as a result, criminalization of the game is "Gambling with gambling equipment or devices by any means is prohibited." The legislator has only mentioned "gambling" in these articles because the winning and losing that are required to be considered gambling are inherent in gambling. In addition, gambling and betting are also recognized as illegal in the Civil Code. According to Article (654) of the Civil Code, "gambling and betting are void and claims regarding them will not be heard." This means that gambling and betting are included in the category of illegal transactions and therefore, not only claims regarding them are not heard; but any type of transaction or payment in this field is also void. In the mentioned laws, gambling is generally declared

illegitimate and illegal and there is no mention of a specific type or form of gambling (for example, online or internet gambling). This indicates that there is no difference in this respect between gambling with traditional methods (in the real world) and gambling in the technological age via computers and the Internet (in cyberspace); Therefore, if any of the virtual games are played with gambling devices or betting, they are subject to the aforementioned regulations. (Mousavi and Chegini, 2019: 340). The main issue is that, according to various legal principles such as the principle of legality of crime and punishment, the narrow interpretation of criminal laws, and some jurisprudential rules such as the ugliness of the eagle of the sky, until the legislator explicitly criminalizes a behavior and determines a punishment for it, that behavior is not punishable; therefore, if a behavior is an example of gambling or the establishment of a virtual casino, for the same reasons that physical gambling is criminalized, it must be criminalized by the legislator and punishment should be considered for its perpetrators. Accordingly, Article (705 of the Criminal Code) cannot be generalized to cyberspace, because this article only considers traditional gambling with gambling devices as a crime and, according to the principle of legality of crime, it cannot be used in cyberspace. The question may come to mind that when the legislator has criminalized (physical) gambling, we no longer need new legislation and criminalization (gambling in cyberspace or establishing virtual casinos). We understand the answer to this question by considering the same jurisprudential and legal principles and rules in question. If we accept this argument, we will encounter dual behavior of the legislator, because in many cases where a behavior in the real space was a crime, the legislator has criminalized many of the same titles in cyberspace separately in the Computer Crimes Punishment Law, and in some cases the legislator has even gone further in cyberspace than in the real space and criminalized behaviors in cyberspace that were not criminalized in the real space, such as aiding and abetting suicide (Mousavi and Chegini, previous: 345). It seems that Iranian legal laws, such as Articles (705 to 711 of the Criminal Code), cannot be generalized to online gambling, and the need to formulate independent laws in this regard seems essential. 3. "Game" and "Gambling" in the Process of Digital Transformation

Today, in the era of information technology, the gaming and entertainment industry, like other human fields affected by information technology and digital technology, has moved towards "digitalization". A process that is referred to by titles such as "digital change", "digital revolution" or "digital transformation". The terms "digital game" and "digital gambling" are the output of this process, which need to be defined and identified before addressing their jurisprudential and legal rulings.

The increasing growth of gambling and betting websites in cyberspace is one of the challenges that many countries have faced in recent years. Easy and low-cost use of cyberspace platforms has allowed criminals to make huge profits in this field by using this opportunity and setting up a gambling site, and in return, many people in society lose their capital in this way. (Danaeifar, 2010: 6).

Today, gambling and betting in cyberspace have replaced gambling in real space and are no different in terms of form and essence.

4. Digital gambling

Gambling is an Arabic word that is used in the meaning of "placing money or finances while playing" or "playing with special devices in which it is stipulated that they will give something to the winner" (Ibn Manzoor, 1419: 36). In Persian, gambling is also an act based on a bet, according to which one of the parties is obliged to pay a certain amount of money or perform a specific action for the winner (Dehkhoda, 2018). The same concept is known in English as the word Gambling and is the commitment to give or receive money or anything of value in the event or non-occurrence of an event whose outcome is unknown and based on chance (Black's Law Dictionary, 2017: 441). As is clear from the definitions, the concept of "gambling" has always been associated with the concept of "game" and whenever the word "game" is mentioned, the discussion of gambling is usually also raised. The presence of the word "game" alongside "gambling" transforms it from a permitted and legitimate act into an illegal and illegitimate act called "gambling". Nowadays, in the age of information technology, the term "gambling" has also been combined with the word "digital" and has led to the emergence of a new term called "digital gambling".

"Digital gambling", also known by titles such as "online gambling" or "internet gambling", is actually considered an online version of traditional gambling. In other words, the description of digital does not carry a new and different concept and nature for gambling, but rather indicates a change in the form, method, and context of gambling. (Chegni and Mousavi, 2019: 336) 4-1- Legal review of the crime of betting on online games

In the criminal laws of the Islamic Republic of Iran, betting on online games is one of those violations that is not considered a criminal offense and offenders are dealt with according to the Gambling Crime Law. For this reason, the relevant legal articles for dealing with the crime of gambling and betting on the results of sports competitions and online games include Articles 705, 707, and 711. Currently, Article 705 of the Criminal Code constitutes the legal element of the crime of gambling in Iranian law. In this article, only the word "gambling by any means" is mentioned and no precise legal definition is provided, and this has caused confusion among the audience of criminal law in determining their behavioral red lines. Accordingly, according to Article 167 of the Constitution and due to the silence of criminal and non-criminal regulations, before and after the Islamic Revolution, the only possible reference for defining gambling is reliable Islamic sources or reliable fatwas. (Habibzadeh, 2010: 62). In the crime of gambling and betting, as in most crimes, intent is necessary to commit a criminal act, so there is no doubt about the requirement of general malice. On this basis, it is necessary for the perpetrator to have intention in determining the reward and participating in the gambling game and to be aware of the nature of the act. Regarding the requirement of specific malice in the commission of the crime, it seems that the intention to win the reward from gambling is necessary as the specific intention of the perpetrator. In this crime, in addition to the fact that the perpetrator must be intentional in carrying out his actions, it is also necessary for him to have the intention to win the agreed reward. The result is that it seems that if one of the parties did not intend to win a prize and only participated in the game without receiving or paying a prize, it will not be subject to the ruling of gambling. Because in gambling, it is a condition that the parties play to win a prize - by any means - and playing with specific devices without a prize condition, although it is permissible according to Sharia, does not qualify as gambling. Now, if the perpetrator participates in gambling with the intention of spending the prize obtained on charitable matters, it seems that there is a specific criminal intention and its only effect is to apply a discount due to an honorable motive, within the scope of paragraph 3 of Article 22 of the Criminal Procedure Code. (Ibid.: 65) It may be said that Internet betting is a type of Internet fraud, and its legal element is Article (13) of the Computer Crimes Law, which stipulates: "Anyone who illegally obtains money, property, benefits, services, or financial privileges for himself or another from computer or telecommunications devices by committing acts such as entering, changing, deleting, creating, or stopping data or disrupting the system, shall be sentenced to imprisonment for one to five years or a fine of twenty to one hundred million rials, or both, in addition to returning the property to its owner." As can be seen, the material element of the crime (unauthorized acquisition of property through a computer system), or the so-called Internet fraud, is the unauthorized entry, alteration, deletion, creation, stopping, or disrupting of a computer or telecommunications system, as a result of which property, benefits, services, or financial privileges are obtained; But these criminal behaviors are also not very consistent with what we see on betting sites, because such sites mainly receive funds from users without committing the above acts, simply by creating a website, for example, with the topic of guessing the results of a certain sports competition, and then pay the winner or the person whose guess is correct. Internet betting is not an example of illegally acquiring money through a computer system, because, as mentioned, the material element contained in this article does not correspond to the operation of such sites. The hypothesis that we consider Internet betting to be an example of traditional fraud is also unacceptable, in the sense that a person or persons receive large amounts of money from users by creating a website and making false promises such as paying a prize to the winner. There is no doubt that if money is stolen in the course of a fraudulent behavior such as that mentioned in Article (1) of the Law on Enhancing Punishment for Perpetrators of Bribery, Embezzlement and Fraud, the crime of fraud has been committed; but the issue is when a website is created in the cyber environment and, without committing the above fraudulent behaviors, receives funds in exchange for guessing and predicting the outcome of a certain sports game and then awards prizes to the winners as

promised. In simpler terms, if an internet site, without committing the acts mentioned in Article (13) of the Computer Crimes Law and also in Article (1) of the Law on Enhancing Punishment for Perpetrators of Bribery, Embezzlement and Fraud, receives funds from users only in exchange for predicting the outcome of sports competitions and finally awards the amounts to the winners, has it still committed a criminal act? The only remaining option is to invoke Article (2) of the Law on Enhancing Punishment for Perpetrators of Embezzlement, Bribery, and Fraud, i.e., acquiring property through illegitimate means; however, considering the principles and objectives of criminalization, observing the principle of legality of crime and punishment, the rule of the ugliness of the eagle without expression, and the fact that one of the benefits of criminalization is to declare the anti-value aspect of a behavior, respecting citizenship rights also requires that citizens know the examples of illegal and punishable behaviors. Different views have been expressed by lawyers regarding the scope of acquiring property through illegitimate means. According to the first view, the acquisition of wealth through illegitimate means should be analyzed within the framework of Article (2) of the Code of Criminal Procedure. According to this view, the legislator sought to cover the instances at the beginning of the article and, with this title, closed the way for those who abuse privileges and agreements in principle, etc. According to the second view, the legislator sought to cover specific instances that are close to bribery, embezzlement, and fraud, but they cannot be considered subject to one of these three crimes, and with this style of criminalization, the way will be associated with this category of criminals; but the third view, unlike the previous two views, considers the crime of acquiring wealth through illegitimate means to be much more general than the previous two cases. With this description, as mentioned, acquiring wealth through illegitimate means any type of intentional acquisition of another's wealth through illegal means that lacks the guarantee of criminal enforcement in other regulations. Among these three views, the third view has been accepted in judicial procedures. This view considers acquiring wealth through illegitimate means a crime. It is known and can be argued that receiving money through computer gambling is acquiring wealth through illegitimate means, but in the material element of the crime of gambling it is stated that "it is not necessary that the act of gambling results in a result and that just playing is sufficient to commit this crime"; that is, to commit gambling, it is sufficient to commit the material behavior along with the perpetrator's malicious intent, whether the person wins or loses, because gambling is an absolute crime in which the realization or non-realization of the intended result of the perpetrator has no effect on its occurrence. The opinion accepted in the judicial practice in the interpretation of Article (2) of the T. M. M. A. K. Law is a logical opinion and in accordance with legal principles, but considering what has been mentioned, this article cannot be documented with Article (2) of the Law on the Aggravation of Punishment of Perpetrators of Embezzlement, Bribery and Fraud in the absolute case of the crime of gambling, because the basis for citing this article is the intentional commission of an illegal behavior along with the malicious intent, which, while resembling some criminal titles, is similar to None of the crimes in the applicable laws are consistent, but the result of this behavior is the intentional acquisition of wealth through illegitimate means. (Chegni and Mousavi, 2019: 351) The distinguishing feature of the issue of internet betting in some instances can be close to gambling, and in other instances it is in accordance with some Islamic rulings, and some jurists have also provided solutions to prevent betting and predicting the results of competitions from becoming gambling, which has led to a fundamental and profound difference in the subject that has been presented in sports. As long as these behaviors are not criminalized, the income from these behaviors cannot be considered as the acquisition of wealth through illegitimate means. Of course, if internet betting is criminalized, if the legislator determines the duty of the income from it, such as what is stipulated in Article (709) of the 1996 Penal Code regarding traditional gambling: "All equipment and money belonging to gambling, as the case may be, shall be confiscated or confiscated as a fine." It is no longer necessary to refer to Article (2) of the Criminal Code of Iran

4-2- Elements constituting the crime of Internet gambling in Iran In this part of the article, the elements of the crime of Internet gambling, .

4-2-1- Legal element

Article 705 of the Islamic Penal Code, the Penal Code section, approved in 1375, which was approved with subsequent amendments and additions on November 19, 1401. The text of the aforementioned article is included above. As was also mentioned in the discussion of legal precedent, Article 705 of the Criminal Code currently constitutes the legal element of the crime of gambling in Iranian law. In this article, only the term "gambling by any means" is mentioned and no precise legal definition is provided, and this issue has caused confusion among the audience of criminal law in determining their behavioral red lines. Accordingly, according to Article 167 of the Constitution and due to the silence of criminal and non-criminal regulations, before and after the Islamic Revolution, the only possible reference for defining gambling is reliable Islamic sources or reliable fatwas, based on which the definition of gambling was presented in the previous discussion and it was suggested that the legislative body or the setter of uniform procedure present the following definition: "Gambling is a game with any means in which a bet is made that the winner receives compensation from the loser." In the meantime, it is necessary to mention a few points: First, with regard to lottery tickets, despite the fact that renowned jurists agree on their religious sanctity, due to the ambiguity in the validity of the title of the game, it is difficult to issue a sentence of punishment to both parties. Another point that should be mentioned is that although there is disagreement among contemporary jurists about the validity of the title of gambling instrument for some devices. (Habibzadeh, Omrani, Pour Gholam, 2010: 63)

In fact, although there is disagreement about the methods and devices of gambling, its legal element is based on winning and losing.

4-2-2- Material element

In the crime of gambling, the material element, that is, committing the crime of gambling in any form, whether it is common games or internet games, is necessary for the crime of gambling to be realized, or in betting in any form, such as betting on horse racing or sports games, it is a condition for the realization of the bet.

The subject of this article is simply participating in gambling, betting or lottery. It is not necessary that the act of gambling results in a result, and simply playing is sufficient to realize this crime. The condition of supervision, the condition for the realization of the crime of gambling, is that the perpetrator participates in the gambling operation. (Hojati, Seyyed Mahdi, 1351-1352)

Due to the ambiguities in the definition of gambling, its material element also has a complex characteristic that needs to be separated. A) Criminal behavior: According to the definition of Mukhtar in this article, for gambling to occur, it is necessary that, first, an agreement be made "in any way" regarding conditional payment in any form, and second, "gambling operations" be carried out. With this description, the crime of gambling is one of the crimes considered to be committed through agreement and play. Also, according to Article 705 of the Criminal Code, playing with any means, if accompanied by betting and betting, is an example of the crime of gambling, and it is sufficient that, from the perspective of custom, the committed behavior is considered a type of game - a set of physical or mental behaviors for the purpose of entertainment and recreation. The personality of the perpetrator of a crime has no effect on the commission of the criminal act, but the specific state of the perpetrator while committing it may aggravate his punishment, and that is the openness of gambling. Openness is a specific state on the part of the perpetrator that he does not hesitate to make his criminal behavior public and, while not respecting the law, tries to make it public. (Tarihi, Majma' al-Bahrain, 3:253) While in the Islamic Penal Code of 1362 and the General Penal Code of 1304, the public commission of gambling was considered an aggravating characteristic of the crime. From the perspective of the aforementioned laws, gambling had to be carried out in public places, including streets, alleys, parks, etc., in order to be subject to increased punishment, and in practice, the legislator had determined an objective criterion; However, the Islamic Penal Code approved in 1996 has shifted from an objective standard to a subjective standard and has taken into account the specific mental state of the perpetrator, which can be ascertained from external evidence and circumstantial evidence. Accordingly, it is not necessary for the perpetrator to gamble in public places

and in public, but even in a closed and private environment where a group is present, the above-mentioned aggravated quality can be realized. (Habibzadeh, Omrani and Pourgholam, 2010: 64)

B) Subject of the crime: Although this crime may be considered under crimes against public order for some reasons (Walidi, Specific Criminal Law), it seems that due to the existence of numerous evidences, this crime is among the crimes against property; because firstly, the Imamiyyah jurists have examined the religious prohibition of gambling under the book of commerce and forbidden profits; secondly, in the legal doctrine of Western countries, legal writers have examined it under crimes against property and ownership when examining this crime legally. Thirdly, gambling, firstly and in essence, causes damage to the property of the parties to the game and throws them into the trap of addiction to it and ultimately affects the macro-economy of society.

Fourthly, although gamblers may bet on rewards other than financial rewards, the prevailing custom is based on financial rewards. Given the above evidence, it seems that there is a logical justification for including this crime under property crimes.

c) Criminal means: In this crime, considering the phrase “by any means” in Article 705 of the Criminal Code, the means are irrelevant and gambling without any means can also be considered punishable. However, some authors, despite the clarity of the article, have provided an interpretation contrary to the text and stated that specific tools are the criterion and gambling with other than the aforementioned tools cannot be considered under the general heading of gambling, because custom and the general public do not accept it.

d) Criminal result: For gambling to be committed, it is not necessary that the consideration or condition be transferred or made by the loser to the winner. Once the agreement on the reward has been reached and the game has been completed and the winner has been determined, the crime of gambling has been committed and its perpetrators are entitled to the punishment mentioned in Article 705 of the Criminal Code. With this introduction, if we consider the acquisition of property as the result of the crime of gambling, this crime is one of the absolute crimes in which the achievement of a result has not been stipulated by the legislator.

4-2-3- The spiritual (mental) element

In gambling and betting, in addition to the physical act, which is gambling or betting, the intention to commit it is also very important, which is called the spiritual element of the crime of gambling.

It is not enough to simply pretend to be gambling, but the perpetrators must actually be gambling to be subject to the provisions of this article. General malice means the intention and intent to commit a criminal act, and specific malice means the intention to acquire or take property or funds of the party or parties to the gambling act, which is the condition for the realization of this crime. (Ibid.: 1351 – 1352).

In the crime of gambling, as in most crimes, intent is necessary in committing a criminal act, so there is no doubt about the requirement of general malice. On this basis, it is necessary for the perpetrator to have been intentional about determining the reward and participating in the gambling game and to be aware of the nature of the act. Regarding the requirement of specific malice in the commission of the crime, it seems that the intention to win the reward from gambling is necessary as the specific intention of the perpetrator. In this crime, in addition to the fact that the perpetrator must be intentional in carrying out his actions, it is also necessary for him to have the intention to win the agreed reward. The result is that it seems that if neither of the parties had the intention to win the reward and only acted with the intention of participating in the game without receiving or paying the reward, he will not be subject to the gambling ruling. Because in gambling, the condition is that the parties try to play by any means to win a prize, and playing with specialized machines without a prize condition, although it is legally permissible, does not qualify as gambling. (Habibzadeh, Omrani and Pourgholam, 2010: 65)

5- The situation of gambling and betting in England

In England, gambling activities are dominated by private companies rather than being under the control of the government and are based on the principles of free competition. In this country, there are no restrictions on individuals (whether foreigners or British citizens) from obtaining a license to operate in the field of gambling and betting. In fact, a license to establish and operate is issued subject to compliance with legal regulations and approval by the supervisory authority, and there will be no other obstacles for applicants. The only exception to free competition in gambling is the national lottery. As another, only this type of activity is under the supervision and control of the government. The beginning of this type of activity dates back to 1993. This type of gambling has its own special rules. People who receive a license to operate in the National Lottery have the right to benefit from the benefits of holding it for 14 years. Considering the monopoly of competition and government support of this type of activity, it has given a distinctive position to the holders of this license compared to lotteries held by private companies.

5-1- Existing laws and institutions in gambling and betting in England

In England, the most important law governing gambling is the Gambling Act of 2005 with amendments in 2014, and the law governing the lottery is the National Lottery Act of 1993. Regarding the annual income tax on gambling and betting, the governing law is the Income Tax Law of 1983 with subsequent amendments.

Currently, there are more than 70 sub-laws related to gambling and betting, some of the most important of which are:

- 1- Horse Racing Betting Tax Law, 2007
- 2- 2- Law on Advertising Gambling Games Abroad, 2007
- Law on Gaming Clubs, 2007
- 3- 4- Gaming Machines Law, 2007
- 4- Similarities and Differences of Internet Gambling and Betting in Iran and England
- 5- In general, the views of both countries on gambling and betting are fundamentally very different, because the prevailing attitude in the English legal system regarding gambling and betting, and in particular the emerging phenomenon of Internet gambling and betting, is the lack of criminalization of this behavior in society. In other words, gambling and betting in general are recognized in this country and are criminalized only in some cases, such as gambling by people under 18 years of age or providing gambling services to these people. (Roshler, 2017: 31)
- 6- In Iranian law, which is based on Imami jurisprudence, gambling is considered a forbidden act and is therefore a crime in law, but in English law, based on common law, gambling is considered a crime in some cases.
- 7- On the other hand, in the Iranian legal system, considering the legislator's attitude towards criminalization and dealing with the crime of gambling and related crimes at the national level, it can be said that in general, none of the types of gambling and betting are legally recognized in the law of our country, and in other words, committing such games has been prohibited. (Aghaei, 2019: 125)
- 8- On this basis, perhaps, in terms of the principles of legislation, crimes committed in the field of gambling and online betting cannot be effectively evaluated and legally analyzed in both legal systems. Because in the English legal system, gambling and betting are not generally considered a crime, while in the legal system of Iran, this criminal phenomenon is considered a crime. However, in general, regarding the way this country deals with gambling and online betting, how to control and prevent crimes resulting from such games in the English legal system, there are some notable points that can be found that may be an effective step in preventing the spread of this crime and the incidence of individuals and families in this phenomenon in our country.

5-2- Differences

A- In general, in the English legal system, gambling and betting, whether in traditional or cyberspace, is not considered a crime, but in the Iranian legal system, based on religious and legal rules, gambling, whether in traditional or cyberspace, is considered a crime and its perpetrators will be prosecuted and punished.

B- Given the importance of gambling and betting in the UK from an economic perspective and the dependence of part of the country's budget on tax revenues from such activities, the legislator has specifically passed a special and independent law called the Gambling Act of 2005 with subsequent amendments in this regard, in which a part of the articles is specifically dedicated to the issue of gambling and internet betting. However, in our country, a law has not been specifically passed on gambling and betting, only a part of the Islamic Penal Code (Articles 705 to 711) is dedicated solely to the issue of gambling and related crimes and no statement has been made about gambling or internet betting.

C- Another difference that can be mentioned in this regard is the issue of determining taxes for gambling and betting. In the English legal system, due to the income generated by many private companies from gambling and betting, significant taxes have been legally imposed, while in our country, due to the illegitimacy of income from such activities, there is no law to levy taxes on individuals in this area.

5-3- Similarities

A- In terms of the definition and examples of online gambling and betting, significant commonalities can be observed in the legal systems of both countries. For example, in the definition of gambling in both legal systems, the existence of property as collateral and pledge is a condition. Also, the game of individuals is based on probabilities and undetermined events, which is accepted in both legal systems. In both legal systems, gambling and betting can also be realized through digital means of communication, and in this respect, there is no difference between the two legal systems.

B- In terms of protecting vulnerable individuals and individuals under the age of 18 from gambling and betting and criminalizing the provision of services to these individuals, the English legal system can perhaps be considered in line with the legal system of our country from a legal perspective, because in our country, although gambling is generally a crime and prohibited, the legislator's attention to the commission of this crime by individuals under the age of 18 and the determination of a special legal system regarding the method of punishment and treatment of children and adolescents who commit these crimes have led to the two systems sharing the same goal of protecting offenders and victims. As an example, the criminalization of hiring children to work in casinos in the legal systems of both countries can be mentioned.

Conclusion

With the development of new technologies such as computers, mobile phones, the Internet and the like and their prevalence in the world, the context of many crimes has also changed, so that in many cases these tools themselves cause changes in the nature, conditions and circumstances of crimes. Gambling in its traditional form has been a criminal behavior in many countries, which has been criminalized in various criminal laws, establishing, managing, serving in gambling houses, encouraging attendance at these places and gambling using gambling machines. In the Islamic Penal Code, the section on punishments approved in 1375, criminal behaviors related to gambling have been addressed,

What was shown in this research is that the aforementioned articles cannot be generalized to Internet gambling, betting that is expanding in cyberspace and behaviors related to predicting sports competitions for reasons such as the principle of legality of crime and punishment and the lack of broad interpretation of criminal laws. In some countries such as Egypt and Germany; Online gambling (Internet) and lotteries (online lotteries) are prohibited, but horse racing predictions are an exception and individuals can participate in these cases through authorized sites.

As can be seen, in the United States of America, Internet gambling is permitted only in a few limited states, and in other states, these behaviors are a crime and punishable. In some other countries, holding online gambling is only permitted in the exclusive domain of some legal entities that are required to comply with the laws and regulations of gambling and betting games. Also, in order to prevent the misuse of information of participants in these sites, such as bank account information or other identity secrets of participants, only using authorized gambling sites is not a crime. Also, given the necessity of having two conditions for winning and losing and the use of gambling devices for games to be gambling, these materials cannot be used for sports prediction sites, because none of the conditions for the occurrence of gambling in these sites allow the game to be considered gambling; While the behavior itself and its result can be considered gambling. It was also determined that online betting on sports competitions cannot be considered gambling based on the material element of the crime of gambling and, if the legislator sees fit, it should be criminalized under an independent title. Regarding the property resulting from these behaviors, given the lack of a legal text indicating the criminality of this type of behavior, the possibility of citing Article (2) of the Law on Aggravation of Punishment for Perpetrators of Bribery, Embezzlement and Fraud also conflicts with the principle of legality of the crime and punishment and the principle of innocence and is not applicable. Of course, in the case of criminalizing online gambling and other related behaviors such as predicting the results of sports competitions or online betting, if the legislator is silent about the property resulting from these crimes; Article (2) of the Law on the Prevention of Gambling and Gambling, can be cited, although it is appropriate for the legislator to specify the obligation of the property resulting from them by confiscating them as a fine, while criminalizing these behaviors. What is considered as physical behavior in these crimes is the very participation of individuals in them, and it does not matter whether the participant wins or loses, but rather the mere participation in online gambling or online betting should be considered. Also, the conditions and circumstances of the material element of these crimes are the illegality of the behavior, which the legislator emphasizes, and the permitted instances of betting or predicting the outcome of some sports competitions are excluded from the scope of these crimes. The mental element of these crimes is intent. Since this crime is an absolute crime, mere general malice (knowledge of the subject and intent in committing physical behavior) is sufficient to complete the mental element, and the intention to win or not does not interfere in the realization of this crime; therefore, it can be concluded that the existing laws in the field of gambling in the country cannot be generalized to online gambling, predicting the results of sports competitions, and betting in cyberspace.

The proposal to amend Articles 705 to 711 of the Islamic Penal Code regarding gambling is an effective and important step taken by some members of parliament, and its implementation by approving the revised articles can play a significant role in controlling the criminal behavior of individuals in this area. However, despite the positive benefits, there are also serious shortcomings and deficiencies that should be addressed and corrected in the final stage of approving the law, which can increase its comprehensiveness and maximum deterrence. It is worth noting that, although gambling is not absolutely criminalized in English criminal law, unlike Iranian criminal law, gambling is not absolutely criminalized, and the only prohibition and criminalization in this area is gambling with persons under 18 years of age and providing services without obtaining legal permits. However, what can be understood by comparing these two legal systems is that in the current era, this view (as in many countries) requires special attention and attention, and it is necessary to formulate a special regulation to monitor and deal with gamblers and gambling service providers. Therefore, following the example of the English Gambling Act passed in 2005 with subsequent amendments in the field of defining gambling and online betting and its types and the method of monitoring and controlling the behavior of individuals in this field will be very effective and helpful in legislation. Also, considering that the provision of these services is in the context of cyberspace and the Internet, and its facilities and technology have entered the country from the Western system, naturally, understanding the rulings and how to manage this platform requires the localization of knowledge and technology related to it within the country.

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