Interaction or Conflict between the Position of the Expediency Council and the Legal and Criminal Laws of the Islamic Consultative Assembly of Iran

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Abstract

The Expediency Council plays a central role in strategizing criminal policy, but the issue that has challenged scientific circles and criminal courts is the extent to which it approves the laws of the Islamic Consultative Assembly which is the law of punishment. Islamic approved in2013is one of the most prominent of these laws.

Objective: Looking at the principles governing the criminal approvals of this institution in its legal life, the concept of "expediency" emerges a concept that is inherently temporary and fluid, and its realization is in the first place with the legislature but in there are two opposing views on how the Assembly's criminal decisions interact with the legislature.

Methods: The reasons Impossible and following the developments of criminal justice in the nineties including: Article45of the Anti-Narcotics Law of2010, the explicit copy of the resolutions of the Assembly in the Criminal Procedure Code adopted in2013with the amendments of 2015and the Law on Combating Commodity and Currency Smuggling.

Results: Finally, the theory of the representative of the Attorney General in the unanimous vote on the multiplicity of crimes and the communication of general legislative policies has little legal validity and emphasis on it prevents the implementation of criminal policy governing the Islamic Penal Code adopted in2013in the Assembly.

Keywords: criminal approvals; Diagnosis Assembly; criminal policy; Expediency; Criminal Justice.

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INTRODUCTION

After the deadlocks between the institutions of the parliament and the Guardian Council, following the request of the officials, the institution of the Assembly found legal life and in the constitutional amendments by defining specific duties to act as a leadership advisor (paragraph 1 of Article 110) or arbitration between the parliament. And the Guardian Council (Article 112) continued to operate, but with the emergence of socio-economic crises and the inefficiency of ordinary institutions in

defining the principle of legality of crimes and punishments, the field of entry and role of this institution in Legislative criminal policy was coordinated by the Islamic Consultative Assembly, which passed resolutions that often have a rigorous basis based on extraordinary consideration. Regardless of whether the entry of the Disciplinary Assembly into the criminal sphere is in accordance with the criteria and rules of the Constitution or not, the main discussion in this regard is related to the field of public law and thinkers in this field should address it, of course courts and judicial procedure. Doctrines active in the field of criminal law have accepted the presence of this institution as an objective fact. Because the resolutions of this assembly constitute the legal element of important crimes such as buying and selling and supplying and distributing narcotics, fraud, embezzlement, bribery and several other crimes, and if we deny it, we will face a legal vacuum, considering On this issue, what has caused controversy in academic circles and criminal courts and has caused controversy and conflict of opinions, is the manner of interaction and conflict between the approvals of the Expediency Council and the criminal laws of the Islamic Consultative Assembly. The culmination of this issue is related to the aftermath of the Islamic Penal Code adopted in 1992 and the serious changes in this law and the innovations that have been accepted by Argali institutions such as postponing the issuance of sentences (Article 40), semi-liberty system (Article 56), and punishments. Alternative to imprisonment (Article 64) and change of the old institutions of the public penal sector such as suspension of punishment (Articles 46 and 47), how to determine and apply punishments (Article 27) and how to determine the amount of punishment to start a crime (Article 122) has been updated. The reason for this conflict is related to the confrontation of the Argali legislative criminal policy of this law with the strict policy of the resolutions of the Assembly, which are often imposed to solve the problem by resorting to criminal means. Although there were contradictions before the law and even led to the issuance of a unanimous vote of different authorities and during the rule of the new law can still be cited, but the effects of this debate and conflicts in the new penal code appeared And is more relevant, and in explaining the relationship between the resolutions of the Assembly and the Assembly, they have lined up with two views with binding and instructive arguments against each other. The views of the Guardian Council, the ruling on the unity of procedure of the Supreme Court, the ruling on the unity of procedure of the Court of Administrative Justice, the advisory views of the Legal Department of the Judiciary, the principled issues related to inferring rulings They refer to the legal doctrine that has been formed in the light of binding and possibly instructive sources (p 274)[1], (p 210)[2]. Opponents, on the other hand, believe that the resolutions of the Assembly are not in line with the laws of the Islamic Consultative Assembly. Or even beyond that it was valid in the field of criminal law, it should be doubted and pondered. The arguments of this group, including the criminal laws passed after the Islamic Penal Code, which have explicitly copied the resolutions of the Assembly, specify the institution of the Assembly to recognize the non-superiority of its resolutions over the parliament and the appeal and its repeal to the legislature in some Its resolutions, the recent ruling of the Supreme Court on the multiplicity of drug crimes and the specification of the possibility of abrogating the resolutions of the Assembly by parliamentary laws in the negotiations, accurate inference from the views of the Guardian Council, which is incompletely cited Laws that, by making serious criticisms of the criminal laws of the Assembly and not equating these resolutions, consider the laws of the Islamic Consultative Assembly to be superior and governing.

In this article, with a descriptive-analytical method, we seek to analyze and critique the reasons for the view of the superiority of the resolutions of the Assembly, a view that despite dominating the

doctrine and judicial procedure is not in line with the criminal legislative policy of 92 BC. It is not supported by strong evidence and creates a gap between legislative policy and judicial and executive policy.

The Position of the Diagnostic Assembly in Criminal Legislation

In order to properly understand the discussion of how the interaction between the 92nd BC and the criminal approvals of the Expediency Council is necessary, it is necessary to raise the horizons of the issue a little beyond the framework of this discussion, in such a way that Recognizing the expediency of the system in the matter of criminal legislation, we should reconsider and reflect on it. The legislature, which is considered to be the essence of the chosen ones of the nation, shows us that by holding the guiding tools, the legitimacy and legitimacy of the views expressed in this field are revealed to us. It is worth mentioning among the thinkers. Criminal law there is no independent discussion about the status of the decisions of the Expediency Council, only some jurists, in order to explain the principle of legality of crimes and punishments, have made escapes to the weight and degree of criminal decisions of the Expediency Council, which are proportionate. We will refer to it in the discussion (p 19).[3]

The institution of the Expediency Discernment Council has two different periods in its portfolio. Short two years (1989-1991) in the field of criminal legislation is different from the official period in the 1989 constitution. Therefore, not all resolutions of the Assembly can be viewed and analyzed with a single eye. An important point in this regard is the validity of some criminal approvals of the first period of the Assembly, which have been reviewed many times by this institution. In the following, we will explain the principles and necessities of the Assembly's involvement in the legislative process in both periods.

Principles and Necessities of Entering the Criminal Assembly into Criminal Legislation in the First Period

During the short activity of the Assembly in the period before the entry into the Constitution of 1989, this body independently participated in the criminal legislation and in important crimes such as drug dealing, severe punishments such as execution has done. One of the jurists of the Guardian Council, who was a member of the Assembly during the first term of the Assembly, states about the limits of the authority of this body: In some cases, they determined the difference between the Guardian Council and the parliament and formalized the meeting with nine people. Imam Khomeini added two things, one is that nine people are not necessary for the formalization of the meeting, seven people are enough, and the second is that the competence of the Expediency Council is not limited to the dispute between the Guardian Council and the parliament" (p 81).[4]

Due to this, this institution was given extensive powers to regulate affairs, and it is obvious that criminal legislation was also one of the tools of expediency at that time, the anti-narcotics law was It was recognized by the majority of the meeting, to be presented in the diagnostic assembly, and accordingly, the hands of the members were open, various issues and suggestions came from around and around, and the esteemed chairman of the assembly, in the proposed meeting, voted. Is it expedient to raise it? If it was approved, it would be raised. On this basis, for example, the Anti-Narcotics Law, in the manner in which it was promulgated and implemented, was approved by the Expediency Council, and of course, other matters were also approved by the Assembly" (p 81).[4]

There is no doubt that the power of independent legislature for the institution of the Assembly of Recognition at that time was also in conflict with the constitution, but the independent approvals of this institution have a number of justifications and legitimacy. The first reason is the authority of the Supreme Leader and the second is the state of emergency in times of crisis.

In connection with these two assumptions, several opinions have been expressed. And it turned out that in the following we will refer to parts of it and in relation to the critical situation of the country, it should be said that the prevailing atmosphere in society and liberation from tyranny and efforts to eliminate the effects of poverty on the one hand and the effects and consequences of war on the other On the other hand, it had caused some executive and government authorities to want to have rules and regulations in their hands sooner and easier, and not to be delayed in the maze of the long way to go and to examine the contradictions between the Guardian Council and the reform of the Islamic Consultative Assembly. They worked hard to get the approvals done quickly (p 89).[5] Considering the existing crises in the country such as war and financial and administrative abuses due to the disorder of affairs and the inability of the government to control the borders to prevent the transit of narcotics, the adoption of laws such as the fight against narcotics and bribery laws, Embezzlement and fraud are not out of the question to resolve the crisis, but the description that most jurists have given to the laws of this period of the Assembly is limited in time. Therefore, in approving the resolutions of the Assembly, it is necessary to mention the mentioned issue or to set a limited time on it and its validity after the expiration of the term is subject to its review and re-enactment (p 41).[6]

However, regarding the justification of the principle of Velayat-e-Faqih, it should be stated that in Imami jurisprudence, the authority to form an assembly and legislate independently in criminal matters is acceptable and defensible.

But it should be borne in mind that these powers are not absolute, so that the Imam entrusted these powers to the Assembly in that period with two conditions. The first condition for recognizing the issue (expediency) with the majority of the second representatives is stating that it is temporary (p 170).[7] However, the performance of the assembly was contrary to the two conditions mentioned above, and this violation of the conditions was expressed in the anti-narcotics resolution, and this institution acted in parallel with the Islamic Consultative Assembly. In this regard, attention to the following points shows the correctness of the above claim. The first is the letter of the delegates to the Imam and the objection to the independent legislation of the Assembly and finding a solution from the second Imam. The Assembly strengthens the consideration of the permanence of resolutions and compliance with the laws of the Assembly. Third Imam's order after a short period of activity of the Assembly and violation of the assigned powers, Imam (RA) stated in this order that what has been approved in the Assembly so far, remains valid and what it is in hand is approved by the Assembly itself. After that, only in cases where there is a dispute between the Parliament and the Guardian Council, the same should be done as stated in the by-laws approved by that assembly (p 61).[8]

In this way, Imam as the supreme jurist forbade the time of the assembly from the primitive legislation, and also mentioning the term "Madame al-Allah" in the words of Imam indicates two very important points. The first point is that the independent criminal laws of the Assembly, such as the Anti-Narcotics Law or the Law on Intensification of Punishment for Perpetrators of Bribery, Embezzlement and Fraud, are based on a specific time in this period that is expedient, and then the parliament decides . Second, the history of Imam Khomeini's order shows the country's transition

from economic and social crises, and relying on the critical situation of the country to justify the continuation of the rule of approvals in this period lacks legal validity. In addition to the above-mentioned cases, the sixth paragraph of the decree revising the constitution should also be considered, which stipulates: Include the Expediency Council to solve the problems of the system and consult the leadership, so that there is no power within other powers.

In the years of its legal activity, the Assembly, without observing the restrictions of "temporality" and "change of interests" and in the light of the views of the Guardian Council, the absolute adherence of lawyers and judicial procedure, permanent thinking and superiority of these resolutions over criminal laws of the legislature. To a common and indisputable belief. While it is not supported by strong argumentative principles, with the revision of the constitution, the institution of the Expediency Council underwent a legal transformation in terms of status and authority, and the validity of its approvals was based on new principles, which are discussed in the next article. We will deal with it.

The Position of Criminal Approvals of the Diagnosis Assembly in the Second Period

The position of the Assembly changed after entering the highest official document of the country in comparison with the previous period, so that the legitimacy and legal validity of the approvals of this institution no longer depends on the ruling of the Supreme Leader and the critical situation of the country. The validity of its criminal provisions should be sought in the context of the principles of the Constitution.

Although in this period of the Assembly's activity, some jurists try to justify the superiority of the Assembly's resolutions based on the authority of the Supreme Leader, but in this period of the Assembly's legal life, there are two points to consider and debate. The first point is that the Assembly does not have the right to enter into legislation, both criminal and non-criminal, due to the lack of permission in the Constitution. The previous practice has passed several criminal approvals, which has led to criticism from jurists and even jurists, who have defended the unity of the parliament and acknowledged the superiority of its criminal laws over the assembly. We will pay for these comments.

One of the jurists stated in this regard: The legislative duty is one of the special powers of the Islamic Consultative Assembly, this issue has been agreed upon by the members of the Constitutional Review Council that the Assembly is not within the powers of other powers and does not legislate (p 552).[9] Among the jurists, critics have also spoken out and are concerned about whether the dispute between the Guardian Council and the Islamic Consultative Assembly has not been resolved, whether the opinion of this assembly will be a formal law or temporary, this assembly will become another center for legislation. As a result, it confirms the invalidity of both the Guardian Council and its jurists and jurists, as well as the invalidity of the legislative power of the country, which has been elected from among the nation's elites, if the opinion of the said authority is temporary and The title of the necessity of eating dead meat to save from death, in this case, must specify the limits, time, place and amount of necessity.

It goes without saying that in the meantime, some thinkers, even in the second period of the legal life of the Assembly, try to justify the entry of this institution into the matter of criminal legislation and consider this institution competent to guarantee criminal execution even against the laws of the legislature (p 67)[4], (p 83)[10]. But the fact is that an examination of the history of this institution and its performance before entering the constitution indicates the prohibition of the governor from independent legislation, and the application and generality of any of the principles of the

constitution does not give this authority. As we said in the introduction, by accepting the entry of the Assembly into the criminal law, but about how these resolutions interact with the general developments of the criminal justice system such as the Q.A. 92 lawyers and courts in the face of the Assembly's resolutions And the new penal code, which puts at its heart the pious institutions and the policy of impunity, to the extent that they give credence to the resolutions of the Assembly, to consider these two institutions as wide, and the rules of precedence, latency, abrogation and abrogation over it. Apply? Or should they consider the institution of the Assembly superior to the legislature and believe in the superiority of its resolutions? Or apply the opposite situation and place it in an inferior position due to the description of "temporary" and the function of "expediency" of the resolutions of the assembly. The latter two theories have significantly raised tensions and frictions among the legal community, including jurists and the courts. The legislature has enjoyed more legal legitimacy in exercising its legal powers, but a detailed statement on this is possible by examining the legal reasons and logic of both views, which we will discuss below.

The Concept of Expediency

Expediency in the word is derived from the root of "peace" and is used against the word corruptor and means benefit, correctness and health (Farahidi, 1409, p. 117; Ibn Manzoor, 1405 AH, p. 516; Johari 1407 AH, P. 383) in the terminology of jurists, the concept of expediency is closely related to its lexical meaning. In other similar definitions, "expediency" in the appropriate, appropriate, appropriate and worthy sense, is defined as what is in the interest of a person or a group. Some jurists have defined expediency as follows: what with Man's intentions in worldly or otherworldly affairs, or both, agree, and the result is to gain profit or repel loss.[11] Some thinkers have also seen their language as incapable of providing a definition.[12] Some thinkers, by stating that expediency is closely related to concepts such as necessity, have also considered them as meaning and have stated: necessity is an excuse according to which it is permissible to commit some of the forbidden things; Like a person who is hungry and on the verge of death, who can be deprived of other people's property without his permission (p 91).[13] Despite their differences, the common denominator on which "expediency" rests is profitability and the most comprehensive definition that can be given. Expediency is the measures taken by the Islamic government in order to observe the spiritual and material interests of the Islamic society and in line with the goals of the holy sharia (p 3).[14] The following points from the concept of expediency are significant. Expediency is a variable concept that is a function of time and place. Necessity "explicitly shows this element of the problem of expediency, because necessity occurs only in certain circumstances, and dealing with this unintended event causes temporary decisions to be made in order to overcome the imposed conditions. If the basis of something in the legislation or sharia is based on "expediency", the result of this issue cannot be a state of survival and permanence, so the criminal approvals of the Discernment Assembly, which have guaranteed criminal execution in terms of "expediency", then The passage of the country through the crisis in opposition to the will of the legislature must empty the arena. Because expediency based on national sovereignty is the responsibility of the Islamic Consultative Assembly as the Assembly of the political representatives of the nation, which, after expert examinations, determines what is good for the society through the enactment of law (p 547).[14] From this point of view, if we look at the issue, the determination of expediency belongs primarily to the legislature, but due to the conflict of expediency with the Shari'a, the Assembly enters into the issue as a secondary institution for determining and achieving expediency. From these discussions,

it can be concluded that first, if the transformation of the society requires another need some time after the implementation of the assembly resolution, the parliament can enact a new law or change and amend the previous law. The new law will be a repeal of the previous law, and secondly, in case of an implicit discrepancy between the approvals of the Assembly and the approvals of the Parliament, the criterion will be the date of approval of the two resolutions. This means that the subsequent law (approved by the parliament or assembly) abrogates the previous law (approved by the parliament or assembly) in cases of contradiction.[14] In another analysis, by examining the dimensions of expediency and how to achieve it in the constitution, evasion of the powers of the Assembly against the laws of the parliament has been stated and stated that in today's societies with the increasing growth of science and technology, it is necessary for a group of experts to determine expediency through consultation. It seems that this necessity in the Iranian legal system is the cause of forming the effective institution of the "Expediency Discernment Council", which as one of the ruling branches of the Supreme Leader addresses the problems of the system and explains the macro policies of the country and resolves the dispute between the parliament and the Guardian Council. Of course, it does not have the authority to legislate independently and is not subject to the parliament, but based on the expediency it deems, it can be considered as a government decree with the approval of the leadership, of course, in normal circumstances that sometimes the assembly legislates without any necessity. Has in fact acted contrary to its real and legal position (p 253).[15] In the above theory, by using constraints such as "normal conditions" and "non-width" of the resolutions of the Assembly and the Assembly, it has clearly shown the position of the Assembly and the value of expediency. Another valuable conclusion to consider is the emphasis on "expediency" over all resolutions of the Assembly, even those based on a government decree. Therefore, the term "Madame al-Mallah" along with the developments of BC 92 must continue to survive and be effective in order to tolerate resistance against the will of the nation.

In conclusion, it should be noted that the basis and legitimacy of the criminal decisions of the Assembly in the first period of its activity was based on two pillars. The first pillar was the ruling of the Supreme Leader and the second was the critical situation of the country. In the previous articles, it was stated that the official of Velayat-e-Faqih later withdrew from his permission and took the authority of independent legislation from the assembly. Adopting a strict criminal policy is not legally and logically negligible.

The basis for the approvals of the second term of the Assembly, despite the fact that the Constitution does not allow it to enter the field of criminal law, is to rely on the term "expediency", which was also discussed in this regard. It is considered expedient and the entry of the Assembly as a secondary institution is considered after the tension between the two institutions of the Parliament and the Guardian Council The background of the constitution before the amendments and the entry of the Assembly into it clearly shows the fact that at that time the parliament was the only center of expediency in the country and was created due to the various deadlocks of the Assembly.

Confrontation of the Islamic Penal Code Adopted in 2013 with the Approvals of the Expediency Council

In this talk, we will discuss the importance of the issue and the challenges of the penal system in the face of two opposing views (those who believe in the superiority of parliamentary resolutions) against (those who believe in the superiority of parliamentary laws) and the reasons for both groups and their preferences.

The Importance of the Issue and the Challenges of the Penal System

Developments in criminal law after the victory of the Islamic Revolution have two main features in mind. The first is to be fundamental and the second is to be experimental. These two features reflect the fact that the legislature is reluctant to adopt a single and permanent criminal policy, and the description of "temporary" overshadows most criminal laws, including "the legislative criminal policy of the first layer and the superficial criminal policy of a country." Constitutes (p 9).[16] In this regard, after the victory of the Islamic Revolution, the legislator has fundamentally changed the substantive criminal laws in three stages and seeks to achieve an ideal and desirable model in which to include the latest developments and customary institutions along with jurisprudential standards. To create two links, the last legislative attempt to achieve this legislative criminal policy goes back to the Islamic Penal Code of 2013. In addition to this substantive law, with the approval of the Code of Criminal Procedure approved in 2013 and the amendments of 2015, shortly after the law, a new criminal order has been formed and the purpose of the legislature is to change the penal system. But in the meantime, by providing interpretations, it is not possible to extend these developments to the criminal approvals of the Assembly. There is a deep gap between legislative, executive and judicial criminal policy in this regard. So that it is not possible for the defendants of crimes subject to the approvals of the Assembly to benefit from the benevolent institutions of the new laws, including the Islamic Penal Code. The criminal policy of imprisonment based on the policy of zero tolerance, which is seen in most of the criminal decisions of the Assembly, causes conflicts in the courts, for example, in the "criminal policy of drug crimes, which is based on the policy of repression and punishment. In terms of the existence of special and restrictive criminal proceedings and at the same time detrimental to the rights of the accused of these crimes, the procedure of differential proceedings has been assigned to them. Of course, such a method of trial cannot be useful and supported by thinkers and scholars of criminal policy. Because in differential criminal law or differential proceedings or in general, differential criminal policy is not favored by criminologists and jurists as long as it does not have aspects of usefulness or protection or initiative. In particular, today's criminal policy, in its broadest sense, is moving away from purely criminal policy under the influence of the findings and teachings of criminology and human rights.[16] A noteworthy point in this regard is the prevailing doctrine and jurisprudence in order to support the impossibility of abrogation or revision of the criminal decisions of the Assembly by the criminal laws of the legislature. A view that over the past few decades has made the resolutions of the Assembly like deserted islands separated from the path of the criminal justice system and prevented the compatibility and conformity between these resolutions with the process of transformation and adaptation between legislative, executive and judicial criminal policy. Many judges are reluctant to carry out harsh punishments, such as the death penalty for crimes under the law, which happen to be high-crime offenses, and try to provide interpretations that are consistent with the principles of criminal law and justice. For example, in reducing the punishment of perpetrators of fraud, many courts rely on Note 1 of Article 1 of the Law on Intensification of Punishment of Perpetrators of Bribery, Embezzlement and Fraud They refuse. However, some judges have resisted this practice and criticized it, believing that regardless of the attitude that has been adopted by the judiciary and criminal society so far, in the opinion of this court, according to Article 20 of the Constitution of the Islamic Republic, which stipulates Note: All members of the nation are equally protected by law and enjoy all human, political, economic, social and cultural rights in accordance with Islamic principles. Depriving a criminal convict of his legal and inalienable right on the pretext of that attitude and

making an exception despite the general provision of Article 277 of the Code of Criminal Procedure (Article 483 of the Code of Criminal Procedure 2013) is against the principle, and in this opinion the court From the point of view of unity, the mentioned procedure is contrary to its logic and meaning; Because the unanimous decision of procedure No. 628 is in the position of expressing the minimum amount of imprisonment and in determining the punishment in the initial stage and the judge and issuing a verdict on those accused of fraud and not those who have been convicted of fraud, according to The verdict of unity of the mentioned procedure applies to the detriment of the accused to the same extent and not in the later stages.[17] The ruling is an example of the challenges faced by the criminal courts in this regard, which intensified during the rule of the Islamic Penal Code in 2013 and its extensive changes, and the judiciary, including the Legal Department of the Judiciary, the Court. The Supreme Court has involved the courts of first instance and appeals and many other institutions, and finally, by stating that the criminal laws of the Islamic Consultative Assembly, which is the center and essence of the nation's benevolent thinking, have a temporary description and will change after a while. They find that those who believe in the superiority of the resolutions of the Diagnostic Assembly, most of whose members are appointed and elected by the people, rely on which source to describe the permanence and immutability of these resolutions, which often include severe punishments in their hearts. They stand against the will of the legislature, which pursues the implementation of the development plans and general policies of the system, which are prepared by the Expediency Council and announced by the order of the Supreme Leader.

Evaluating and Analyzing the Reasons for the View of the Superiority of the Assembly Resolutions over the Laws of the Legislature

In this speech, the reasons have been analyzed and analyzed (the view of those who believe in the superiority of the resolutions of the Assembly over the Islamic Consultative Assembly) and (the view of those who believe in the superiority of the criminal laws of the Islamic Consultative Assembly over the Assembly).

Interpretive Views of the Guardian Council

The constitution, as the highest legal document of the country, has a high value. Determining the powers of the legislature and its relationship with the executive and the judiciary is constitutional. For this reason, the ordinary legislature does not have the right to repeal and revise it, and in any case it must follow its supreme rules .Therefore, the interpretation of this law, like its original text, is valid and must be followed. Because most jurists use the text of this theory to prove their point of view and the jurisprudence in a dominant sense tends to move in the direction of interpreting the doctrine of this theory, in this section the text of the questions of the Presidency and the answers of the Council The guard is reviewed.

In the Letter Sent to the Guardian Council, It is Stipulated that According to the Principles of the Constitution Regarding the Expediency Council, Please Express the Opinion of that Esteemed Council on the Following Issues

1 -Can the Assembly reconsider it after its approval and notification?

2- If there is any ambiguity in the meaning of the resolutions, removing the ambiguity and interpreting the resolution is with the Assembly itself, or the interpretation authority of the Islamic Consultative Assembly or the interpretations need to be referred again by the Supreme Leader.

3- In principle, are the resolutions of the Assembly of Law and all the features of ordinary laws must be observed about them, including interpretation.
4- What is the duty if there is a conflict between the resolutions of the Assembly and the ordinary and basic laws and other official regulations of the country?
5- Can the Islamic Consultative Assembly and other centers that have the right to determine the rules, regulations and laws somehow reject, violate or annul the resolutions of the Assembly (Guardian Council Research Institute, 2001, 165, and 2002).

Contemplation on the questions raised by the highest official of the Board of Trustees provides the means of reflection in the mind, and in this regard, the following points are noteworthy. First, there is a serious doubt about the application of the title of the law to the approvals of this assembly, and at least this hesitation and doubt can be seen in question number 3. This doubt has also spread to the functions of law (interpretation and revision). Second, in Question 4, the Assembly has taken a step forward and assumed that its resolutions are legal, and has spoken of its conflict with ordinary laws or even the Constitution. Third, the use of the terms "rejection, violation, termination, annulment" in question 5 indicates that the institution of the Assembly is not independent. Because these terms are usually used in administrative law and are used in the approving supervision of regulatory bodies such as the Court of Administrative Justice and the Guardian Council. If the Assembly believed in the legitimacy of its resolutions, it used the common term "abrogation". Took advantage. Fourth, from all the questions raised, it can be inferred that the parliament may have the authority to "reject, violate, terminate or annul" the resolutions of the Assembly, which cast doubt on the legitimacy of the resolutions of the Assembly.

In response to the questions raised, the Guardian Council initially answered the first three questions in such a way that the Assembly is in a lower position than the Islamic Consultative Assembly and the powers of this body in the field of criminal legislation have been narrowly interpreted. In response, the Guardian Council stated: First, the Expediency Council cannot independently review the legal provisions of its resolution. The second is the interpretation of the legal material adopted by the Assembly within the scope of explaining the materials of the Assembly, but if the Assembly is in a position to develop and narrow its resolution, it cannot act independently. Third, according to Article 4 of the Constitution, the approvals of the Expediency Council cannot be contrary to the norms of Sharia and in conflict with the principle of the Constitution regarding the Islamic Consultative Assembly and the Guardian Council (subject to Article 112) and other laws and regulations of the country. The decision of the Expediency Council is the ruling system (Guardian Council Research Institute, ibid, 245).

The following points are noteworthy about the Guardian Council's responses. First, the institution of the Assembly of Recognition in the field of interpretation and revision of its resolutions, along with the Islamic Consultative Assembly, has authority and license, and in the light of the principles of the Constitution, it has no independent dignity to define legislative criminal policy. Second, the Assembly has the position of arbitration and arbitration between the Assembly and the Guardian Council, and if Article 112 of the Constitution is observed, its approvals will be governed by laws and regulations. It does not have the first three questions and is unaware of it and relies on the last part of the answer. There is a serious doubt in its survival, which we will discuss in the following.

In response to the last part of the questions, the Guardian Council stated that none of the legislatures has the right to reject, annul, violate or terminate the decision of the Expediency Council. However, if the decision of the Expediency Council is related to the disagreement between the Guardian

Council and the Islamic Consultative Assembly. After the expiration of the expedient expediency, the parliament has the right to propose and pass a law that is contrary to it. The plan is in the Islamic Consultative Assembly (Collection of Laws, 478, 1993). The Sadr section that stipulates: None of the legislative authorities has the right to It does not have the right to annul, violate or terminate the resolution of the Expediency Council. As the strongest arguments of the proponents, the view of the superiority of the resolutions of the Assembly over the criminal laws of the Parliament has been invoked by the doctrine and judicial procedure, but less explanation and analysis has been made about the separation and restrictions under the theory and its survival or annulment.

The distinction between the two groups of the resolutions of the Assembly and the explanation of the manner of revision in it show that the criminal resolutions in any case bear the description of variability and the application of a permanent title to it is incorrect and lacks legal status. The basis of the resolution was that if the criminal resolution of the assembly is related to the dispute between the parliament and the Guardian Council, by achieving a "valid term" and "change of expediency", the parliament can enter the issue and abrogate the resolution of the assembly. References as problems of the system, it is enough to obtain the permission of the Supreme Leader to reconsider, and some of these powers can also be expressed and cited, in general, to properly understand the theory of the Guardian Council in response to questions from the Assembly, the following points It matters. First, the powers of the Assembly regarding the interpretation or revision of its resolutions (both criminal and non-criminal) are drawn as a function, complementary and narrow. Second, the silence and passivity of the Islamic Consultative Assembly in not specifying the abrogation of criminal decrees does not imply the impossibility of their abrogation. It is a great pleasure to set the norms and determine the correct patterns of criminal policy using expert opinions. Thirdly, in this theory, no comment is made on the criminal approvals of the first round of the life of the Recognition Assembly, and according to the background of the Supreme Leader's order and the phrase "Madame Al-Mallah", we must judge its superiority over the laws of the Islamic Consultative Assembly. Fourth, the approval of the penal laws of the Islamic Consultative Assembly, in which the resolutions of the Assembly were explicitly abrogated, indicates that if at one point in time the Guardian Council's theory could be interpreted as superior to the resolutions of the Assembly, it would not be considered in the current criminal order. And it means to deviate from the previous theory and the interpretation of the law should be based on the requirements of time and place. He did in the seventies. Fifth, in many resolutions passed by the Expediency Council and approved by the Supreme Leader, the need to standardize and revise the laws is mentioned. Appropriate work to approximate votes, amend and revise laws, and fill legal loopholes in the Judiciary and the Sixth Development Plan recently announced in Law and Judiciary Sections 64 and 65: Review criminal law to reduce imprisonment; and Transform it into other punishments and tailor punishments to crimes to improve the situation in prisons and detention centers.

Given that the Assembly's criminal legislation, such as the Anti-Narcotics Law and the Law on Intensification of Punishment for Perpetrators of Bribery, Embezzlement and Fraud, have mainly used imprisonment and have adopted a strict criminal policy with disproportionate punishment, there is no doubt that these paragraphs Gives the necessary authority to the Islamic Consultative Assembly to review the resolutions of the Assembly in the form of explicit and implicit copies, and its application leaves no room for doubt.

Unanimous Opinions (Supreme Court and Court of Administrative Justice)

Disagreements between the judiciary and the administrative courts led to the issuance of two unanimous votes, which apparently indicates the superiority of the Assembly's resolutions. But with a little reflection, this thought is removed. The inviolability of the resolutions of the Assembly has been issued by the Assembly, the following part of the unanimous vote of the procedure which stipulates: It clearly confirms the correctness of the above argument. There is no doubt that the judges of the Supreme Court were influenced by the theory of the Guardian Council and the doctrine of the supremacy of the criminal decisions of the Assembly when resolving the dispute on the issue. The predicate is on the interpretive theory No. 4575 of the Guardian Council and it cannot be interpreted any more.

A few months after the ruling on the unification of the mentioned procedure, following the disputes of administrative courts, including the Governmental Penitentiary Organization, a unanimous ruling was issued by the Court of Administrative Justice and it was decided: Sometimes the laws approved by the Expediency Council and not allowed to copy or restrict their scope in accordance with the laws of the Islamic Consultative Assembly and also the ability to extend paragraph one of Article 11 of the Islamic Penal Code (former law) to violations subject to government penalties. , Which is contrary to the absolute authority of that assembly in determining the validity period of the relevant laws as provided in Article 112 of the Constitution of the Islamic Republic of Iran and also outside the legal authority of the said rights administration ... The verdict is revoked. The unanimous opinion of the said procedure was in the position of resolving the dispute between the legal department of the State Penitentiary Organization and the branches of administrative courts, and finally the theory of this department that did not accept the supremacy of the Assembly's criminal approvals and narrowly interpreted its authority Has refuted and ostensibly reinforced the view of superiority. However, reflection on the following points challenges this perception: First, the implication of the said opinion is more based on the lack of legal authority of the Legal Department of the Penitentiary Organization to determine the task within the time frame of the Assembly resolutions and in resolving the conflict between the Assembly and Parliament resolutions. No, because the final sentence of the vote that it prescribes: is beyond the legal authority of the said rights administration. It well conveys the notion that the purpose of the said vote was not to determine the task of superiority between the resolution of the Assembly and the Assembly, and that this vote does not support such an interpretation. Second, Article 112 of the Constitution refers to the vote. The institution has been handed over. Third, the purpose of the ruling is to prevent violations of the law by regulations, and the final section refers to the invalidation of the theory of legal administration. This task has been assigned to the Court of Administrative Justice according to Articles 170 and 173 of the Constitution. Article 10 of the Law on the Organization and Procedure of the Court of Administrative Justice does not provide for the authority to determine the ratio of the interaction between the resolutions of the Assembly and the Assembly for this institution. This is an interpretation that is contrary to legal principles. The main task of determining the status of the criminal approvals of the Assembly is with the institution of the Guardian Council, which we have already discussed in the theory of interpretation and its critique.

Emphasis on the Rules of the Principles of Jurisprudence (Issues Related to the Period between Copying and Allocation)

The science of the principles of jurisprudence is one of the most valuable tools in deriving legal rulings and is one of the essential tools for interpreting laws and regulations. Special forms can be assumed in this regard, but the important point of the prevailing view of the doctrine in this regard is that in order to induce the view of superiority and superiority of the resolutions of the Assembly to the specificity of the criminal approvals of the Assembly over general laws such as the Islamic Penal Code 2013 points out. For example, in the case of suspensions, they believe that the conditions for granting suspensions in Articles 45 and 46 regarding the suspension mentioned in the note to Article 5 of the Law on Intensification of Punishment for Perpetrators of Bribery, Embezzlement and Fraud are not applicable because the law is specific. The law of punishment is to allocate so the Islamic Penal Code cannot repeal the law of aggravation.[2] In this regard, the advisory theory issued at the time of the previous law is also significant, which states: According to Article 22 of the Islamic Penal Code adopted in 1991 (Article 37 of the current law), the above-mentioned imprisonment sentences were converted into fines.

In this regard, the following points are significant and thought-provoking. The first point is a difference among the fundamentalists of the mentioned issue, in general, there are three views in this field, and great jurists such as Sheikh Tusi and Seyyed Morteza have considered abrogation.[11] In contrast to the popular view, they have been assigned and the third promise is to stop and refer to the preferences[18], so in the face of the majority view, if we consider the other two views, we should consider superiority Criminal law of the Islamic Consultative Assembly, it seems that when the Assembly explicitly copies the resolutions of the Assembly, the view of those who believe in the possibility of abrogation is free of problems, on the other hand, many preferences, including the priority of the Islamic Consultative Assembly on determining criminal policy Legislation and the spirit of Articles 36 and 58 of the Constitution incline the scales towards the application of parliamentary laws in the event of conflict. Second, in legislating or interpreting laws and regulations, there is no obligation for the legislature or those involved in criminal justice to act in a popular manner, but in this regard, the interests of criminal law practitioners, who are often accused, take precedence over the interpretation of criminal law. The ultimate interpretation is that "the judge achieves what the legislature seeks to achieve. Find effective enforcement for the law. And its powers are wide.[3] Third, the principles of the principles of jurisprudence work in a place where the opinion of the legislature is hidden. Compared to the previous laws and the general policies of the system in the field of judicial issues and the application of Article 728 of the said law, there is no doubt that the legislator is not willing to exclude the criminal approvals of the Assembly from the coordinated cycle of criminal policy based on mercy.

Advisory Opinions of the Legal Department of the Judiciary

Advisory opinions are considered as sources of guidance in the classification of sources of criminal law. Therefore, it only plays a role in enforcing the most desirable legislative criminal policy. Of course, these theories can have this function when they are issued in line with the goals of the legislature, otherwise it causes a gap between the criminal and judicial legislative policy. Unfortunately, after the implementation of the Islamic Penal Code in 2013, the views of this department, contrary to the aspirations of this law and moving towards the convergence of criminal policy in the body of criminal laws and regulations, tried to differentiate the resolutions of the

Assembly, some of which are mentioned below. However, due to its non-binding nature and most of them relying on the necessary sources such as the Guardian Council's interpretive theory and the rules and opinions of unity of procedure that we discussed in the previous discussions, we refrain from criticizing it.

Advisory Theory No. 7/800 Following this question, considering that Article 30 of the Law on Amending the Anti-Narcotics Law states that the amount of imprisonment in exchange for a fine in crimes related to each day is a maximum of 50,000 Rials, and Article 27 Islamic Penal Code 300 thousand Rials regarding drug crimes Which article is the criterion for action? In response, the department stated: Article 31 of the Law on Amending the Anti-Narcotics Law on how to calculate the fine for the convicts of this law is a special sentence and approved by the Expediency Council and according to the opinion of the Guardian Council, it is not abrogated by ordinary laws. Be. *In another question, whether Article 38 of the Anti-Narcotics Law is still valid for the application of discounts on drug crimes, or is this article invalid with the approval of Article 37 of the Islamic Penal Code?* The above-mentioned department, in the form of an advisory theory of 7.800, has stated without any argument: in determining the amount of mitigation of punishment in such crimes, if there are mitigating circumstances, the provisions of Article 38 of the Law on Records should be cited and criteria. Regarding the application of mitigating qualities (Article 37) and this time regarding the application of this article to the crimes of the Law on Intensification of Punishment for Perpetrators of Bribery, Embezzlement and Fraud in 1988, an advisory opinion has been issued by this office, which is significant. Although the application of mitigation in crimes subject to the "Law on Intensification of Punishment for Perpetrators of Bribery, Embezzlement and Fraud" should be done after the adoption of the Islamic Penal Code in 2013, in accordance with the provisions of this law, There is no general agreement to repeal the provisions of the law on aggravation of punishment for perpetrators of bribery, and Note 1 of Article 1 of the aforementioned law remains in force.

In this theory, the necessity of following the legislative criminal policy of the Islamic Penal Code of 2013 is mentioned, but in the end, for reasons such as the special criminal approvals of the Assembly, its application in the theory has been avoided and the criminal justice policy has been directed in a direction contrary to the said law.

Finally, as a summary of advisory opinions, it should be stated that the general tendency in this regard is the impossibility of generalizing the criminal policy of the Islamic Penal Code of 2013 to the approvals of the Assembly, while the effectiveness of strict criminal policy with severe penalties governing the approvals. The Assembly is seriously questioned, as controversy has erupted over the execution of drug offenders and its deterrent effect in academia and decision-making centers. Which directs the criminal policy of combating that assembly and the parliament has no involvement in it, occupies serious doubts in the minds of lawyers and public opinion and raises the need to revise or extend the provisions of the Islamic Penal Code of 2013.

Legal Doctrine

Legal doctrine, as another source of guidance, plays an important role in guiding the criminal policy in the desired direction. In this regard, some jurists believe in the superiority of the Assembly's resolutions and are mainly influenced by the Guardian Council's interpretive theory or principles Islamists have tended to this approach. In the following, we will deal with some of these theories, and in the next section, we will also discuss the doctrine that is inclined to the view of the parliament.

Regarding the possibility of applying mitigating circumstances after the issuance of a final verdict in the crime of fraud, one of the jurists believes that a significant number of judges consider the application of Article 277 to be flawless in these cases, which of course the accused is compatible. However, in opposition to it, it can be said that Article 277 provides for a reduction "within the limits of the law" and, therefore, the restriction mentioned in Note 1 of Article 1 must be observed so that the legislative purpose is not violated.[1] It seems more appropriate to apply the title "within the law" to the approvals of the Islamic Consultative Assembly to the criminal approvals of the Assembly on which the application of the title of the law is based on tolerance, this lawyer in a similar view Also, by stating the specificity of the resolutions of the Assembly and referring to the application of the interpretive theory of the Guardian Council, he has supported the impossibility of extending the mentioned article to the accused of the crime of fraud.[1] In line with this view, one of the authors in the position of explaining the rule of the rule contained in Article 122 of the Islamic Penal Code 2013 (commencement of crime) to commence crimes in special laws (other than those in the resolutions of the Assembly) with the following reasons " Establishing a special order for the punishment of committing a crime, paying attention to the need to standardize the way of dealing with judicial affairs, which is emphasized in paragraph 7 of the macro-policies of the Supreme Leader, the application of Article 728 regarding the repeal of all laws and regulations contrary to this law. Existence of differences, severity and weakness in the amount of punishment and its disproportion in case of non-abrogation of special cases contained in the penal laws regarding the determination of punishment for committing a crime.[2] Contained in special laws. However, regarding the interaction between the mentioned article and the criminal approvals of the Assembly, it has taken a differential approach and believes that in this case, the approvals of the Expediency Council should be considered to be binding. Because according to the interpretive theory No. 5318-24 / 7/1993 of the Guardian Council, none of the legislative authorities has the right to reject, annul, violate or terminate the decision of the Expediency Council. Therefore, in cases such as committing fraud (Note 2 of the aggravation law), committing bribery (Note 3 of the aggravation law), committing embezzlement (Article 6 of the aggravation law), invoking Article 122 of the Islamic Penal Code of 2013 lacks legal validity.[2] This dichotomy is extremely difficult in this view. The legal logic that dictates the need to integrate the rules governing criminal law throughout the criminal law, but behind the criminal decisions of the Assembly loses the ability to move and change and stops moving, a process that leads to the mutilation of criminal decisions from the body As our country's criminal policy has evolved, unfortunately, most of the doctrine and judicial practice also encourage this process.

Finally, contrary to the dominance and reputation of the view of the superiority of the Assembly's criminal approvals over the criminal laws of the Islamic Consultative Assembly, the arguments beyond it do not have the necessary strength. Today, with the rule of the Islamic Penal Code of 2013, the survival of principles such as *"expediency",* which was considered the savior of the system three decades ago and whose helm was in the hands of the Expediency Council, must be reconsidered.

Analysis of the Reasons for the View of the Superiority of the Laws of the Legislature over the Criminal Approvals of the Expediency Council

In this speech, we will discuss the most important reasons for those who believe in the superiority of the criminal laws of the Islamic Consultative Assembly over the resolutions of the Assembly.

Specification on the Possibility of Reviewing the Criminal Resolutions of the Assembly by the Islamic Consultative Assembly

The Expediency Council in the amendments made to the Anti-Narcotics Law in 2010, by adding Articles 4, 8 and 45, emphasized the possibility of the Islamic Consultative Assembly reviewing this resolution. Obviously, there is no special feature in drug crimes so that the mentioned regulation is specific to this decree and other criminal approvals of this institution are also included. Clarification of this fact after more than two decades of the life of the Expediency Council is considered a flip for the Islamic Consultative Assembly to realize its true position, which is to define and guide a balanced and proportionate criminal policy in all areas.

The doctrine has also expressed satisfaction with the analysis of Article 45 and believes that the good and positive aspect of this paragraph of the amendment is the possibility of applying a legislative criminal policy on drug crimes, which was previously monopolized by the Expediency Council. It has given legislation to the official authority, that is, the Islamic Consultative Assembly can, through the correct legislative process, which is representative of public opinion and influenced by social realities about drug crimes, through its expertise and expertise. In addition, the possibility of controlling the legislative criminal policy of narcotics crimes has also been provided by the supervisory authority, the Guardian Council, in terms of non-contradiction with the Shari'a.[16]

Explicit Copy of the Criminal Approvals of the Expediency Council by the Laws of the Islamic Consultative Assembly

After more than two decades of absolute activity of the Assembly in the criminal field in defining crime and the quality of punishment in some criminal titles, the Islamic Consultative Assembly used its inalienable Authority in defining the norms of criminality and punishment and explicitly used some of the Assembly's resolutions. It was considered an obstacle to the evolution of the legislative goals, he abrogated. In this regard, the following points should be considered. The first point is that Guardian Council Theory No. 4575, which was the strongest reason for the superior view, has been implicitly abrogated by the issuing entity and cannot be invoked. Because this institution, by approving laws from the Islamic Consultative Assembly that explicitly indicate the approvals on the copying of the criminal approvals of the Assembly, does not grant any privileges to them and considers the Islamic Consultative Assembly competent and superior in guiding criminal legislative policy. Accepts an institution from its previous point of view based on the requirements of time and place. And secondly, it is obvious that by accepting the explicit abrogation of the resolutions, if there is a conflict between the resolutions and the laws of the parliament, including the Islamic Penal Code of 2013, there is a possibility of implicit abrogation in the first way.

Emergence of New Tendencies in Judicial Procedure

Judicial practice during the three decades of the Expediency Council in the position of resolving the conflict between the criminal approvals of the Assembly in opposition to the changes in the laws of the Islamic Consultative Assembly has clearly supported the Assembly and based on the interpretive theory of the Guardian Council And the rules of principle have tried to resolve the dispute in favor of the Assembly. It goes without saying that a minority of judges who did not see the high procedure as consistent with the indisputable principles of criminal law, such as interpretation in favor of the accused, took a stand against this procedure and presented a minimal interpretation of the restrictions and obstacles to the criminal law. And we, as an explanation of the challenge in this field,

pointed to an example of it, but the mentioned process had fallen among the courts, with the rule of the Islamic Penal Code adopted in 2013 Resolves the resolutions of the Assembly and tends to move in line with the criminal legislative policies of the Islamic Consultative Assembly, for example, the verdict and the severity of procedure No. 738, which follows the dispute of courts over the application of Article 134 of the Islamic Penal Code adopted in 2013 in drug crimes Was issued. Meanwhile, a group of courts considered the application of the provisions of this article in the multiplicity of drug crimes, and in contrast, some courts insisted on the application of Articles 4, 5 and 8 of the Amendment to the Anti-Narcotics Law. Finally, the ruling clarified the rule of Article 134 on the above-mentioned crimes: Considering that the Law on Amending the Anti-Narcotics Law (adopted in 1997) and its amendment (adopted in 2010) did not impose a specific sentence on multiple crimes, therefore Article 134 The Islamic Penal Code (adopted in 2013), due to its authoritarian nature, also applies to drug crimes, and in determining the punishment for perpetrators of such crimes, it is necessary to observe in case of multiple crimes.

However, regardless of the above-mentioned opinion, which implicitly refers to the rule of legislative criminal policy of the Islamic Penal Code adopted in 2013, the statements of the prosecutor's representative played an irreplaceable role in taking this position and convinced the Supreme Court to adopt this view. The prosecutor's representative stated: First, according to Article 134 of the Islamic Penal Code of 2013, its scope includes all cases of ta'zir. Secondly, the Islamic Penal Code of 2013 in several cases has referred to and assigned tasks related to drugs, including the issue of suspension and parole and the passage of time. Therefore, there is no doubt in the inclusion of Article 134. Thirdly, according to Article 45 (annex to the Anti-Narcotics Law approved in 2010), the Islamic Consultative Assembly has been allowed to amend the said law, which has been approved by the Expediency Council. Therefore, the suspicion that the Islamic Consultative Assembly cannot pass a law contrary to the law of the Expediency Council is eliminated. In the above theory, the following points are significant. The first point is the serious determination of the judiciary to implement the legislative criminal policy of the Islamic Consultative Assembly and, contrary to the previous judicial practice, citing the interpretive theory of the Guardian Council, willing to obey the resolutions of the Assembly and reject the changes in the laws of the Assembly It is not Islamic, the reflection of this approach was reflected in the highest levels of the judiciary (Supreme Court and Attorney General) in this vote. Second, the convergence of the Islamic Consultative Assembly in the explicit copying of the resolutions, along with the approval of the Guardian Council, which is the guardian of the Constitution, and the efforts of judicial institutions to implement the penal laws of the Islamic Consultative Assembly in cases of conflict with the resolutions of the Assembly. It is a fact that the institution of the Assembly in leading the legislative criminal policy in the past years has not left a positive and acceptable record and has added to the problems in this area.

General Policies of the Legislative System of the Islamic Republic of Iran

In the implementation of paragraph 1 of Article 110 of the Constitution, the general policies of the legislative system The text of the general policies of the legislative system approved by the Supreme Leader, which has been stated after consultation with the Expediency Council. Paragraph three of these general policies of the legislative system emphasizes the determination of an appropriate mechanism for non-contradiction of regulations with the constitution. Therefore, by elaborating on Article 71 of the Constitution, the Islamic Consultative Assembly has stated that the only authority to legislate in general matters. Therefore, the implementation of these general policies of the

legislative system is necessary to prevent the law from being enacted in other institutions, including the Expediency Council. On the other hand, in paragraph 5 of these general policies, determining the limits of authority and competence of law-making authorities is possible only from the parliament. Paragraph 9 of these general legislative policies emphasizes the observance of legislative principles, one of which is the enactment of laws through parliament, not other institutions. Clause 12 also emphasizes the need for regularity of referring the law to resolve disputes between the parliament and the Guardian Council to the Expediency Council. Therefore, the scope of the Expediency Council's entry into the legislation is contrary to the constitution and the general policies of the legislature, and the only preference for resolving the conflict in the event of a dispute between the parliament and the Guardian Council is to regulate it by determining a high quorum. Paragraph 13 emphasizes the need to review the approvals that have been approved by the Expediency Council based on expediency.

CONCLUSIONS

The Expediency Discernment Council has had two periods of legal life in the field of criminal law since its inception. The phrase "Permanently prescribed the permission to preserve previous resolutions. At the heart of this ruling is the inference of the critical conditions of the country. Because Vali-e-Faqih is also in charge of running the country and the issuance of the order coincides with the end of the imposed war, this is confirmed. The arbitrator was elected and entered the field of criminal law under the title of solving the problems of the system, but the shadow of expediency still weighs heavily on the approvals of this institution, because the expediency whose primary institution is the Islamic Consultative Assembly is temporary and transient in nature. However, despite the interaction between the approvals of this institution and the criminal legislative policy of the Islamic Consultative Assembly, there were obvious conflicts. With the rule of the Islamic Penal Code adopted in 2013, these challenges reached their peak. Because the legislative criminal policy governing this law is the use of numerous and varied measures that provide the opportunity to face the strict approvals of the Assembly, in the meantime, the prevailing view by expressing reasons such as the interpretive theory of the Guardian Council, the ruling of the Supreme Court And the Court of Administrative Justice, the doctrinal opinion and the advisory opinions of the legal administration believe in the superiority of the resolutions of the Assembly. But the reasons given in this regard do not have the necessary strength and can be damaged in all of them. On the other hand, the Islamic Consultative Assembly's move to exercise its powers in the recent criminal law, which has been explicitly copied by the Assembly and approved by the Guardian Council, explicitly acknowledges the Assembly's superiority in incorporating Article 45 into the Anti-Article Law. Narcotics in the 2010 amendment, the implicit implication of vote No. 738 and the statements of the prosecutor's representative in the said vote, indicate the fact that those who believe in the superiority of the Assembly's resolutions do not have the necessary legal status and prevent the implementation of legislative criminal policies. A legislature that has moved in the light of the country's macro-policies. On the other hand, general legislative policies emphasize the need for a single legislative preference to solve the country's legal problems.

REFERENCES

[1]. Mir Mohammad Sadeghi H. Exclusive Criminal Law. Vol. 2. Tehran: Mizan Publishing; 2013.

[2]. Shams Natri ME. Penal Code in the current legal system. Tehran: Mizan Publishing; 2013.
[3]. Ardabili MA. General Criminal Law. Vol. 3. Tehran: Mizan Publishing; 2014.
[4]. Ahmadi A. Expediency Discernment Council. Tehran: Islamic Revolution Publications; 2004.
[5]. Musazadeh E. The concept of expediency of the system and its recognition authority in the legislative system of the Islamic Republic of Iran. J Islam Govern. 2009; 14(1):58-98.
[6]. Mohseni F, Najafi-Asfad M. Legal Review of the Expediency Council of the Islamic Republic of Iran. J Leg Perspect. 2002; (21, 22):88-113.
[7]. Rahmani M. Jurisprudential and Principles of the Expediency Council. J Islam Govern. 2011; 16(1):170-190.
[8]. Mousavi Khomeini R. Imam Sahifa. Tehran: Center for organizing and publishing the works of Imam Khomeini; 1999.
[9]. Hashemi M. Constitutional Law of the Islamic Republic of Iran. Vol. 2. Tehran: Mizan Publishing; 2007.
[10]. Arista MJ. Recognizing the Expediency of the System from a Jurisprudential-Legal Perspective. Tehran: Publication of the Youth Thought Center; 2008.
[11]. Mohaghegh Hali SJ. Ascension of Principles. Qom: Al-Bayt Institute; 1991.
[12]. Ziba Kalam S, Haghgoo J. The formation of the expediency discernment council and imam khomeini's rationalism approach in politics. J Politics, J Faculty Law Politic Sci. 2011;41(2):143-160.
[13]. Hakim MB. General Principles for Comparative Jurisprudence. Qom: Al-Bayt Institute; 1991.
[14]. Hashemi SH. Expediency Discernment Council. Qom: Cultural Studies and Research Center of Qom Seminary; 2002.
[15]. Darini A. Expediency and its jurisprudential position. Strategy Mag. 2001; (19):248-264.
[16]. Akbari AA. Study and Critique of the Criminal Policy Governing Drug Crimes with Emphasis on the 2010 Amendment to the Anti-Narcotics Law. J Crim Law. 2014; 4(2):34-37.
[17]. Zandi MR. One Vote, One Experience. Tehran: Eternal Forest Publishing; 2010.
[18]. Mohammadi A. Principles of Inference of Islamic Rulings. Tehran: University of Tehran Press; 2013.
[19]. Guardian Council Research Institute, 2001, 165, and 1380.
[20]. Farahidi, 1409, p. 117; Ibn Manzoor, 1405 AH, p. 516; Johari 1407 AH, P. 383..