

## A Method of Understanding Criminal Law Texts

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### **Abstract**

Understanding a legal text is very important, because, the correct interpretation of the law is the complementary part of criminal justice system. But how can one correctly understand the meaning of the law texts? Regrettably, in Iran's legal system, there are no general legal articles for the method of understanding all the criminal law texts. In this research, we try to suggest a method of understanding based on the legislator's intentions by constructing interpretative rules which combined of a set of general and special rules; the former is derived from the linguistic sciences and the latter from the legal principles. Therefore, these rules can be applied in all the legal systems, and as a sample, we study them in the Iranian criminal law. As a result, as the formal interpreters, the judges should give a meaning to a legal text that is adaptable to its author's intent, otherwise their understandings are outside the legal framework.

**Keywords:** intent, text, interpretation and judge.

### **Introduction**

Based on the article 73 of the Iranian Constitution 1979 (IC), interpretation of the legal texts and delivering the legal decisions on the criminal disputes are the judges' duties. In spite of the fact that interpreting the criminal law is regarded as one of the main factors for the difference of the courts' judgments, the legislator has not made clear the nature and the scope of interpretation in the principles of the Constitution and the Islamic penal code 2013. In this regard, some important questions may be propounded: Why has the legislator not defined criminal interpretive method yet? Is the very concept of criminal interpretative rules self-evident?

It can be replied that the legislator has not probably determined the mentioned rules, because most of them are linguistic ones by which all the people can understand the meanings of the texts and intents of their authors. As a result, the Iranian lawmaker considers interpretation as a regular method of understanding that all the people belonging to the language of their legal community do have enough information about interpretive methods and rules (Farahani, 2016), so interpretation is not necessary to be formally defined by the lawmaker.

But it seems that this answer may not be persuasive, since, the right of appeal against the judgments of courts and binding all the courts to follow the same judicial precedence of the Supreme Court prove that the criminal law has a set of interpretive criteria which have to be made clear by the general and special rules and principles. Therefore, if the mentioned rules and principles are logically valid, all the judges should carry out their legal duties of legal interpretation, and as a consequence, the numbers of the different judgments of the courts will be gradually reduced.

In recent years, many books and articles have been written by the jurists regarding the interpretation of law, which in most of them, a legal interpretation is defined as a way of understanding the legal text and the guidelines of a judge to give a proper meaning to a legal text.

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But at the same time, they have left the criminal interpretation on a theoretical level and have not explained a functional interpretive method and the roots of difference of the courts' judgments (Shams Nateri, 2014, p.20-21).

### **Methodology**

In this paper, according to a descriptive - analytical method, the researcher will try to suggest and explain a set of theoretical and practical interpretive rules that applied in all the legal system, but as an example, the mentioned rules will be studied regarding the Iranian criminal law.

#### ***The applied interpretative rules***

In all legal systems, a judge is always involved with this fundamental problem: how can he infer a proper meaning of a text? In response to this question, we will suggest an applied interpretive method of law to him and the community of law. According to this way, a judge should obtain the concept of the law text from these valid sources: the legislature as the author, the texts of the legal articles, the contexts of the articles, the very judge as the formal interpreter, and the other interpreter. So based on the interpretive sources, there are a set of practical interpretative rules for the judge and hence, he can derive the correct and suitable meaning from a statutory text. These rules can be divided in two parts: the first: the general interpretive rules; and the second: the special interpretive rules.

#### ***The general interpretive rules***

##### ***The first rule: to obey the lawmaker's intent***

In accordance with the pragmatics as a branch of linguistics, the meaning of a text is usually understood from the aim and intent of its author; so for understanding a legal text and ascertaining the type of a crime and its connected punishment which the text bears, first of all, the court should find out the meaning of the text as a semantic meaning from the outlook of its author as a pragmatic meaning; this means that a judge should give a meaning to a legal text which is appropriate to the legislator's intent (Malekian, 2006). So a semantic meaning in the light of its pragmatic meaning is regarded as a adequate concept; because the author may not want or be able to transfer all his intents by the means of text, as a result, in order to understand its meaning, the interpreter should seek the author's intent and purpose.

The Muslim scholars believe that this method was initiated by the prophet (Moghniyah, 1989, p.389), and based on the first legal source of Islamic jurisprudence, the Quran, they are obliged to take what the Messenger gives them, and to abstain from whatever he forbids (Al-Hashr, V.7). It means that if a person wants to understand the Quranic verses, he should follow the prophet's interpretation and also whom he introduced them as the real interpreters *i.e.* his household. By this reason, Emir of the believers, Ali has said: Take the meaning of the Quran from its interpreters - such as me (Hakimi, et al, 2017, p.284).

Avicenna and some other Islamic philosophers believed that reading the words and sentences does not cause a reader always be able to understand the meaning and attain the purpose of an author, but sometimes the best way of understanding the textual meaning is to ask the author himself (Avicenna, 2004, p. 156; Al-Baghdadi, 2011, p. 209). It is because of that the author knows his intent better than the others in regard with the text. Accordingly, God has sent the criminal texts, so He himself can interpret His revealed injunctions better than the others or introduce some divine personalities as the interpreters of the Revealed texts.

In any way, in order to understand a legal text, a judge may not directly search its semantic or literal meaning, but first of all, he should be aware of the proposed meanings of the legislator about the words of the text. According to the rule of following the lawmaker's intent, the judge can

obtain the cognitive ways of the legislator's subjective intent. These ways are the secondary rules as follows:

- 1- The Parliament's statute of interpretive rule
- 2- The Supreme Court's Judgment of interpretive rule

For example, regarding the meaning of *insult* in articles 513 - 514 of Islamic Penal Code 2013, the judge should interpret its meaning in the light of Interpretive Act 1999 as both explicit and implicit words and actions of insulting.

Similarly in accordance with the Iran's Constitution, article 161, and Criminal Procedure Code (CPC), art. 270, the legislator introduces the Supreme Court as an alternative authority for interpretation of a legal term or text and making the unified interpretive method as binding to all the courts.

So it is a legal obligation that binds a judge to obey the interpretation of the Parliament or the Supreme Court for understanding the meaning of the legal text.

*The second rule: the explicit text (or nass)*

Similarly, the rule of explicit meaning of a legal text refers to the author's subjective intent. If the judge is sure that there are no any interpretive statute or precedence, he has to follow the same path of the lawmaker, only backwards; the lawmaker begins with intent and ends with language which is resulted in legislation (legislative activity), but the judge begins with language and ends with mental intent's legislator which amounts to interpretation (interpretive activity).

The explicit text or nass in legislation is similar to the explicit Quranic verse, in the sense that nass in both of them has not any probable meaning to the contrary; as a consequence, if the author creates an explicit legal text or nass and intends a different meaning, he commits a logical contradiction (Tehrani Najafi, 1941, p.84; Sobhani, 2009, p. 246).

It should be noted that this such text shows that the author's intent may be replaced by the text. Therefore, according to the Islamic jurisprudence, all the legal orders and prohibits can be attributed to both of the sources of law and also to the authors.

On this view, the judge mostly sees the penal code as a reflection and mirror of the author's mind; of course, if the language of a statute is ambiguous, the judge may look beyond the words of statute in order to discover the lawmaker's mind. For example, he can look for other related legal texts or their proper sources and interpret the vague statute based on the related texts and sources, and in this way, he is able to change an ambiguous text to a plain meaning one or Nass. As a consequence, the judge can derive two secondary rules from the rule of Nass:

- The first rule: interpretation of text by text
- The second rule: interpretation of text by source

For example, the judge can interpret "the groups and organizations against the Islamic system of I.R.I" (Islamic discretionary punishments Code of 2013, art. 500), according to the Armed Forces' Crimes Code of 2003, art. 25, as "those who intend to overthrow in a military group or organization or rebel against the Islamic regime". Also he can interpret "the insult to the prophet" (I.P.C. of 2013, art. 262) on the basis of the valid legal sources as such: to insult (to the prophet) means to humiliate (his holy personality) whether with false accusation of unlawful intercourse or description by indecent qualities (Sobhani, 2004, p.476).

*The third rule: the implicit text (Zahir)*

The rule of the implicit meaning of a text shows the legislator's objective intent. If the judge could not change the probable meaning of a legal text into a plain meaning text, he should interpret words and phrases of the text according to the legislator's objective intent; so for instance, in accordance with the literal presumptions of Usule Fiqh ( Science of principles of jurisprudence), he

can give the text a objective meaning as all the people including the legislator himself confer the same meaning on the text; these presumptions consist of literal principles such as generality of the words, phrases and sentences, and also their absoluteness, and so on (Ansari, 2008, v.1, p.229).

For example, because the legal term of "highway robbers" is a plural noun and it has a general concept in I.P.C of 2014, art. 272, both the judge and every interpreter will interpret its meaning as every highway robber not some of them. The implicit meaning of a text is called by Islamic Jurists as literal evidence or *Zahir* (Tabrizi, 2008, v.4, p.323).

*The fourth rule: the interpretive precedent*

The rule of the interpretive precedent also shows the legislator's objective intent. With reference to the judges' interpretive precedent, the courts can sometimes realize an ambiguous text and infer the author's objective intent from the precedent. Of course, this rule is not a formal method, but usually the law community such as the lawyers, jurists, authors and so on may gradually submit to such this informal interpretation. However, in IRI's criminal justice system, the only judicial precedence of the Supreme Court must formally obeyed by all the judges and its interpretive judgments is binding upon all the courts (C. of 1997, Art. 161; C.P.C of 2013, art. 270).

*The fifth rule: The judge's intent*

If the judge cannot understand the meaning of a statute from the literal evidences or the judges' interpretive precedent, he can propose himself as the legislator, in the sense that were he in position of the legislator, how he could interpret the language of the statutory text.

The legislature always attempts to take the social interest and desires into account such as social safety and security, and on the basis of them, he creates the legal texts. Therefore, he should use the proper texts with the understandable words and phrases by which the courts are able to realize easily the meaning of the texts (Farabi, 1995, p.112).

Nevertheless, sometimes the texts have no any plain meaning and the existence of the vague texts is inevitable as it is accepted by the law (IC. of 1979, art.167; C.P.C of 2013, art. 214). The following are the examples of ambiguous words and phrases: night or overnight (I.P.C. of 2014, arts.513, 651, 654, 656, 695), corruption (art.286), committing forbidden action (art. 638.), risk (art. 227) and so on.

In these situations, in order to give a proper meaning to the text, the judge should attempt to put his objective intent instead of the legislator's subjective intent by taking two factors into account:

- The legislature's context
- The judge's context

The legislator's context is a collection of social interest, values and needs that makes every criminal system to design its own legal plan and step properly in direction of social desires. The legislator's intents and goals are his context by which he creates the text in order to resolve different social and individual problems.

The judge's context is the very these desires of society; as a result, the main purpose and philosophy of all the legislations are to arrive at the goals and desires of the legislator, legal system or political regime respectively that the judge has the duty to interpret them according the very philosophy and purpose of them. So the attempt of the judge should be in direction of consideration and discovering the legislator's subjective or objective intent; if he can understand the text, in fact, he can discover all the intents of the legislator and vice versa; but when the judge cannot be successful to understand them, he should understand the legislature's objective intent, goals of the criminal system, and finally the aims of the Islamic political system.

Certainly all the above goals and aims are regarded as the Islamic values that are derived from the principles of Constitution, the principal legal sources like the Quran, Sunnah, Ijma` (consensus of all the Muslim scholars at the time of interpretation) and reason (including like the custom). So the judge is able to gain all his connected information from these constitutional documents. In the other words, these sources of law form the contexts of both the legislator and the judge.

Consequently, when the judge seeks to infer the meaning of the corruption in IPC, art.286, he can search its concept respectively from Constitution, and the four legal sources. For example, according to Constitution of 1979, principle 3, the government of IRI has the duty to create a favorable environment for the growth of moral virtues based on faith and piety and to struggle against all forms of vice and corruption; and also the Quran says: they strive to make mischief on the Earth (Al-Maedah, V. 64). These sources form the same context for interpreting the law by legislator and the judge and so the judge can interpret corruption as all the actions against human virtues like usury, fornication etc (Tabarsi, 1993, v.1, p. 84).

*The special interpretive principles*

In addition to the above general rules, there are two important interpretive principles that are particular to the criminal law; they are as follows:

- 1- Principle of separation of powers
- 2- Principle of legality of crime and punishment

For understanding the criminal statutes, the courts have to carry out both of the general and special interpretive rules. The general interpretive rules are derived from the linguistic sciences: syntax, semantics and pragmatics (Malekian, Ibid). But the interpretive criminal rules are created by the Islamic criminal system. So it is according to the interpretive linguistic and criminal rules that the judge can infer the meaning of the explicit text or give a meaning to the implicit one.

*The first principle: separation of powers*

According to the principle of separation of powers, the government's powers are independent and the legislature cannot delegate the power of legislation to the others (IRI's Constitution of 1979, principles of 57 and 85). The judge is also bound to interpret the text and deliver a suitable judgment for any case on the basis of the codified law; so the interpretation of ordinary laws falls within the competence of the courts (IRI's C. of 1979, P. 73 and P. 167).

By this reason, the interpretation of the judge is not a type of legislation, and the judge should not intervene in the task of the legislature at the time of interpretation, and after he understands the text, only he has to settle the criminal disputes; so it is not for him to create a new crime or punishment in the course of criminal proceedings and trial.

*The second principle: Legality of crime and punishment*

In fact, the principle of legality is a fruit and product of the previous principle; since the creation of crime and punishment is the task of the legislature, the judge's linguistic interpretation is limited by the statutory text and the principle of legality. So no crime and no punishment is except in accordance with the law (IC of 1979, arts.36 and 166; IPC of 2013, art. 2).

Therefore, the court should not give to a word a semantic meaning that the text does not bear; for example, the judge cannot interpret a forbidden looking at a woman as eye fornication and so convict him to one hundred floggings. This is an illegal criminalization and intervention in the legislative affairs.

Additionally, four criminal interpretive rules are derived from the principle of legality:

- 1- The statutes must be interpreted strictly and that they not be applied by analogical extension.



2- If the meaning of criminal statute is ambiguous, it is often given a narrow interpretation favorable to the accused.

3- The principle of legality forbids the application of the law retroactively; then the criminal law is not retroactive.

4- The language of criminal statutes must be as clear as possible in order to provide fair warning to the potential lawbreaker (the IC 1979, arts. 36, 37, 159, 166 & 169).

### Conclusion

One of the anxieties of the jurists is the proper interpretive process of criminal law; since the words of the statute are usually general, there is a reasonable risk that the judges cannot properly specify the natures of the criminal acts and their related punishments in every day cases. Accordingly, it is necessary that Islamic criminal justice system of Iran tries to create a fair system of interpretive rules and make it available to the Judges in order to prevent the courts from the difference of judgments, and direct them to a fair and proper understanding and interpretation of law texts.

In this paper, we tried to provide six rules on the basis of Islamic legal sources for understanding the law. These rules are usually applied to all criminal systems of the world, although the judge may not pay attention to them. It is notable that rules of criminal interpretation have to be drafted by, at least, a group of the linguists, lawyers and criminologists and finally, as the interpretive rules Act be created by the Parliament and be ratified by the Assembly of Guardian Council; these so called "applied interpretive rules" can be useful both in theory and practice.

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