

## The reasons for the principles of analysis in general law and criminal law

**Anahita Roohnikan**  
**Master of criminal law and criminology**

### **Abstract**

Interpreting the law is primarily one of the prerogatives of the judge at the stage of issuing a sentence. The main purpose of this research is to investigate the manner and conditions of interpretation in general law and criminal law. The research method in this project is descriptive-analytical. The findings of this research showed that, in civil matters, according to Article 3 of the Law of Procedure of Public Courts and the Revolution in Civil Affairs, judges are allowed if the relevant laws of the country are not complete or clear, or are contradictory, or in principle there is no law in the case at hand. agree to the spirit and provisions of the relevant laws and the established customs and habits of the case. Therefore, the interpretation of the law is of little importance, but in criminal matters, the interpretation of the laws is more important, the same causes and directions that cause the difference between criminal law and its goals with other fields of law, cause big differences between the interpretation of criminal laws and other laws. would have existed.

**Keywords:** Interpretation, criminal law, general law, laws

## Introduction

The law of order is incomplete and not all solutions can be found in it, in other words, a static order is compared to a dynamic society. Because the law is a human work and subject to circumstances, and human wisdom cannot predict situations that it has not been able to think about. Disputes are resolved in courts based on the law, the scope of the law must be clear so that the judge can correctly identify and implement the applicable law, when the law is determined, it is implemented without the need for interpretation; But when the law is indeterminate and its ruling is not clear, it will be difficult to recognize the applicable law, in this case it is necessary to understand the law and interpret it. Therefore, if there is no certain standard for the interpretation of the laws, it will cause the interpretation of the judges regarding the different law and on the same issues to lead to the issuance of different opinions in the courts. According to Article 73 of the Constitution, judges are allowed to interpret the laws in the capacity of upholding the right, but the legislator did not mention interpretation in other laws and only stipulated in Article 3 of the Civil Procedure Law that if the laws are ambiguous Whether there is a law or not, the judges are obliged to issue a verdict based on Islamic sources, fatwas and legal principles. Even the legislator has not distinguished between ambiguous law and lack of law, and from the appearance of this law, it can be deduced that if the law was ambiguous, the judge should set aside the ambiguous law and issue a verdict based on other sources [1].

Legal principles are unwritten; This has caused the judges to pay less attention to the legal principles and in some cases they simply refer to them as "general legal principles" and not to the provisions of a legal principle, while the goal of the legislator in bringing the legal principles is to present a It has been the internal legal criterion for the interpretation of laws, because the legal principles reflect the existing values in a society, based on which the laws are formed; Therefore, the legal principles that underlie the laws are considered part of the law and their implementation is actually the application of the law [2].

In other words, legislation is a movement within the framework of legal principles, and when a law is approved, the legislator declares his adherence to the principle that is the basis of the law. In cases where the law is uncertain, judges must interpret the law and find out the principles behind the law. Therefore, the judge's judgment should be about the truly inherent values of the law, and the law should be interpreted based on its underlying values. The need to respect legal principles is to agree with values, including justice [3].

## Interpretation of the rules

The interpretation of laws is one of the terms of legal science and it means the interpretation of the inference of the ruling of the law in relation to the cases that are included in its scope. The events and legal affairs of the people in the society are so diverse that even the most complete law cannot express the verdict of each case, so it is necessary to use the means of interpretation to be able to adapt the law to the cases. Interpreting the law is primarily one of the prerogatives of the judge at the stage of issuing a sentence. The interpretation of the law is divided into legal interpretation and judicial interpretation according to the interpreting authority, and in another general and general division, interpretation and mostly judicial interpretation is divided into two broad and narrow types.

Interpretation in the word means expressing and discovering the speaker's intention. Interpretation in legal terms is to determine the meaning and scope of ambiguous or general law articles, according to the intention of the legislator in the framework of the principles and foundations of the society's legal system [4].

## Necessity of research

Unlike poets, writers and orators who, depending on the mood of the listeners, turn away from using clear words and phrases and the will of their true meaning and turn to permissiveness, exaggeration, allusion, simile, and ambiguity; Legislators, whose job is to ensure public order and security and guarantee individual rights and freedoms, are bound to use clear, comprehensive and non-contradictory words and expressions and avoid defects, ambiguity and abstractions [5].

Despite the claims of the drafters of the text of the law and their satisfaction and infatuation with the greatness, comprehensiveness and clarity of the work they created, the existence of ambiguity, brevity, defects, silence and conflict in the law is inevitable. In no way can it be claimed that the drafters of the text of the law have created a work that does not require interpretation and explanation and have already answered all the questions that arise in practice for the judges.

In addition to not covering the legislator on all issues, which leads to his silence in many cases; The general nature of the law has also caused ambiguity, brevity and conflict in the law. To solve such a problem, legal scholars and judges interpret the law. Therefore, the interpretation of the law is the manifestation of the highest legal knowledge of judges and jurists and the result of their long practice in the difficult task of understanding the law, and it is natural that achieving such an important task, first of all, requires a strong and legal method [6].

### Law interpretation cases

If the verdict of a legal event or action is clear in legal texts and there is no room for disagreement, it is mandatory to follow it; But when the law has not clearly stated the ruling on an issue, interpretation is raised. The most basic cases of interpretation of the law are: [7]

#### 1) Deficiency of the law

The defect is if the legislator did not mention all the required issues in the law.

#### 2) Abbreviation and ambiguity

Abbreviation and complexity of the law may be related to the subject of the case, its sentence or both of them. Abbreviations and lack of clarity in the law have various causes, including the use of common words.

#### 3) Conflict of laws

When a part of the law has a difference and conflict with another part so that both of them cannot be acted upon at the same time and harmony and compromise can not be created between them.

#### 4) Lack of law

Sometimes there is no law in a legal matter and problem, which is rooted in the lack of precision or inaccuracy of the legislator or his weakness in predicting certain situations. (For example, if the husband submits a petition to the court requesting the annulment of the marriage due to the fact that the wife is a non-biblical unbeliever, there is no article in the civil law contrary to the clear text of the Qur'an and the consensus of the jurists.) [8].

### Legal interpretation

Sometimes the wording of the law may be vague or incomplete so that it cannot be extended to all cases related to a matter; In such cases, if the legislator tries to remove the ambiguity or defect of the law, the interpretation is called legal.

The value and validity of this type of interpretation is the same as the law itself and it is binding for all people and courts because the legislator tried to express his meaning from the previous law and did not try to enact a new law [9]. For this reason, this interpretation, compared to the actions that took place before its interpretation, becomes a precedent for us and becomes enforceable.

According to Article 73 of the Constitution, the legal interpretation of "ordinary laws" is the responsibility of the Islamic Council, and the interpretation of the principles of the "Constitutional Law" is under the jurisdiction of the Guardian Council according to Article 98 of the Constitution [10].

Legal interpretation is preferred over other types of interpretation because the legislator is more aware of the purpose of the law than any other authority, and only he can determine the correct meaning of the law, while this interpretation is more compatible with the principle of the separation of three powers [11].

### Judicial interpretation

It is an interpretation of the law that the courts provide when settling a certain lawsuit. This interpretation is the judge's right, and he is obliged to interpret complete or incomplete laws in order to end the lawsuit brought before him. Of course, the scope of such interpretations is limited to the same lawsuit, and the judge is not obliged to follow his previous interpretation or the interpretation of other courts in other similar lawsuits that are referred to him in the future. This method of interpretation is more flexible in non-criminal matters [12].

### Research method

The research method in this project is descriptive-analytical. which describes and explains the reasons for how and why the state of the problem and its dimensions. To explain and justify the reasons, a strong argumentative support is needed. This support is provided through searching in the literature and theoretical topics of research and compiling existing propositions and theorems about it, which are usually related to the records and theoretical topics of research. From a logical point of view, he relates the details related to his research problem with the related general propositions and draws conclusions. Considering that description and analysis are important in this research, the research method in this research is descriptive-analytical and according to the available documentation, the research method is also argumentative.

### Research background

Firouz (2023), analysis of jurisprudential-legal foundations of narrow interpretation in criminal law

Relying on all kinds of interpretations in the position of explaining the intention of the lawmaker and the legislator due to the lack of a clear and authoritative text, has always been one of the main ways to get out of doubt in identifying the legal and Shariah rulings and obligations. In the meantime, the narrow interpretation is more important and emphasized than other interpretations in order to align with the rights of individuals on the one hand and to comply with multiple jurisprudential foundations on the other hand. The purpose of this article is to answer the question that what are the jurisprudential and legal bases of the narrow interpretation in the criminal system of the Islamic Republic of Iran? Therefore, its most important principles including justice, tolerance and tolerance in Islam, the prohibition of

expanding boundaries, the need to protect individual and general rights and freedoms, and the separation of powers have been taken into account in a descriptive-analytical manner [9].

Esmaili et al. (2018), the ruling or subject of interpretation in Iranian and French law

Ruling in matters of substance is to impose a certain ruling on the issue at hand, after discovering its nature. Subject matter 5 also includes what really happened in the outside world. The interpretation of the contract in its own meaning only includes works and results. But in a general sense, it also includes description, completion and adjustment. There is no definition of contract interpretation in French law. According to articles 1134 and 1156 of this law, the fairest interpretation of the contract can be provided only by understanding the intentions of the parties. The main question of our research is whether the interpretation is judgmental or subjective. In order to answer this question, it must be said; Description means matching the example with the legal provisions in Iranian law and in French law, it is a decisive matter. Interpretation in the direction of description is a matter of subject matter. Interpretation in a special sense is also an issue in the laws of both countries. There are two ways to complete the contract; First, the cases that have the ability to invoke common intention, the resolution of ambiguity is considered a subjective matter, and second, the cases that refer to external factors such as custom, habit, or law to resolve the ambiguity, and the resolution of these issues depends on The subject of that custom or external factor can be a ruling or a matter. Modifying the contract also means adopting a new solution in the way of implementing the contract, in Iranian and French law, as a matter of fact [2].

Parvesh et al. (2018), analysis of Ayatollah Seyyed Mohammad Hosseini Beheshti's opinions and thoughts in the field of public law and its impact on the formation and interpretation of the Constitution of the Islamic Republic of Iran.

The constitution symbolizes the thinking of a society and is rooted in the views of elites accepted by society. This means that people who are informed and influential in public opinion propose methods and bring them to the approval of the public so that certain relationships and rules prevail in the society. Shahid Beheshti has been one of the elite accepted by his academic and theoretical supporters and opponents, both during his lifetime and even after. Therefore, it has had a lot of influence in the formulation of the principles of the basic laws. On the other hand, his logic and reasoning in the face of disputed topics has caused him to have a positive effect on the legislative process based on humane and Islamic principles. Therefore, he was one of the fathers of the constitution of the Islamic Republic of Iran. In this article, the debate on the type of influence and legal challenges raised in the approval of the principles of the Islamic Republic of Iran's Constitution, with an emphasis on the role of Martyr Beheshti, has been discussed [13].

Aghaei Touq (2017), the necessity and place of interpretation in constitutional rights

Various opinions have been presented about the question of what cases we need interpretation. These theories can be divided into two categories: according to the first category, interpretation is done when we face problems in reading the text. But another group of theorists consider any understanding through a kind of interpretation. Lawyers are often among the first group of theoreticians, and for this reason, they consider the legal text to be in need of interpretation when there is a problem in understanding it. Accordingly, in the field of public law, it is said that the need to interpret the constitution is generally due to the problems that arise in understanding the constitution. The factors that cause these problems can be summarized in five main factors: the generality of the principles of the Constitution, the silence of the Constitution, ambiguity and ambiguity in some concepts and principles, conflict in the principles of the Constitution, and finally fluidity and conceptual developments in the Constitution [5].

Yavari and Mehraram (2017), judicial interpretation in public law

Public law has unique features that distinguish it from other branches of law. The existence of such a distinction raises the question whether this branch of law has its own unique method of interpretation or not. In response, it should be said that even if this is not the case, some interpretation methods are more consistent with the nature of public law or at least more efficient in some areas. For example, the inefficiencies of the originalist school in public law have been widely discussed, especially since the second half of the 20th century

Is. In the constitutional law, the special nature of the constitution as a document with many ambiguities with general and general words, as well as the most important document in the regulation and distribution of power and the expression of fundamental rights, makes the interpretations based on determining the text and meaning difficult. In administrative law as well, due to the fundamental developments that have taken place in modern administration and also the questioning of many of its basic assumptions such as the rule of law and the separation of powers, purely originalist approaches are not the answer and today there is a trend towards more dynamic schools and this It plays a central role in the distribution of power among judicial, quasi-judicial and administrative institutions [8].

Babaei Mehr (2009), its commentary, principles and foundations in public law

Only clear, clear and unambiguous laws are expected from the legislator, despite the great care that is generally taken when drafting and approving the law, ambiguities occur during implementation that require interpretation. Interpretation of the law is a difficult matter and requires a legal method, it is not appropriate to leave it to the personal tastes and thoughts of every judge and jurist, therefore, the idea of drafting a law that explains the principles and rules of law interpretation has long been It has been considered by legal experts, but due to the difficulties of the work, this opinion has not been implemented. This article, with a philosophical approach to the principles and foundations of



interpretation, accepts the opinion that the job of interpreting the law should be the responsibility of the chosen institution, in order to provide a reasonable, neutral and conventional interpretation of the laws [7].

## Conclusions

In various legal fields, including criminal, civil and commercial, the law may need interpretation. The judge of the court must try, but he has the duty to find out the intention of the legislator so that he can find the verdict of each case. In civil matters, according to Article 3 of the Law on Procedures of Public Courts and the Revolution in Civil Affairs, judges are allowed, if the relevant laws of the country are not complete or clear, or are contradictory, or there is no law in principle in the case at hand, in accordance with the spirit and provisions of the relevant laws. And the custom and custom of the matter should be settled. Therefore, the interpretation of the law is of little importance, but in criminal matters, the interpretation of the laws is more important, the same causes and directions that cause the difference between criminal law and its goals with other fields of law, cause big differences between the interpretation of criminal laws and other laws. would have existed. In criminal matters, in addition to the financial affairs of individuals, other matters such as their dignity, honor, freedom and even their lives are subject to consideration. For this reason, the interpretation of laws in criminal matters is of special importance. Although the criminal judge is also obliged to conduct proceedings like the civil judge, but in the criminal laws, the principle of legality of punishments and crimes, the prohibition of indiscriminate punishment, and the limitation of suspicion prevent the judge from going beyond the scope of the legislator's opinion.

The interpretation of the law can be divided into legal interpretation, judicial interpretation and interpretation through doctrine according to the importance and credibility of the interpreter.

### 1. Interpretation of the law by the legislator

Sometimes the legislator himself tries to interpret the law and while removing the ambiguity of the law, he makes his opinion known to the public.

Many scientists, especially the scientists of the classical school of the last century, were in favor of this interpretation. Referring to the principle of separation of powers, they said that "since legislation is one of the special duties of the legislature, therefore interpretation of the law is also one of the duties of the legislature." Article 73 of the Constitution of Iran also states with regard to this principle: "Explanation and interpretation of ordinary laws is within the jurisdiction of the Islamic Council. The provisions of this principle do not prevent the interpretation of the laws by the judges in the capacity of distinguishing the law".

In addition, Article 98 of the same law considers the interpretation of the constitution to be the responsibility of the Guardian Council with the approval of three-fourths of them. Such interpretations made by the legislator are like other laws in terms of executive power and are binding for all people and courts.

### 2. Interpretation of the law by the judge

According to Article 166 of QA, court rulings must be substantiated and documented by legal articles and principles based on which the ruling was issued. According to Article 173 of the above-mentioned law, in addition to the legislator, the judge also has the right to interpret the law regarding legal or criminal cases.

### 3. Interpretation in terms of doctrine

According to their opinions and thoughts, the scholars of criminal law have presented different theories regarding how to interpret the laws; some of them believe in the limited interpretation of the laws by considering the individual interests of individuals, while others believe in the broad interpretation of the laws by considering the interests of the society as more important. .

#### Narrow or literary interpretation

The principle in the interpretation of criminal laws is that it should be narrow and limited to the explicit language of the law.

This method has had many supporters at the beginning of the principle of the legality of crimes and punishments, for example, Bekaria believed that the judges of the criminal courts have no right to interpret criminal laws in a broad way and to expand them to cases that are not explicitly provided for in the law.

Proponents of this method, according to the principle of separation of powers, say that in order to interpret the law, judges must pay attention to its context and what is clearly and concisely stated; the courts cannot act based on the spirit of the law and its provisions, because whenever the law deems a directive necessary, it He expresses it clearly and whenever he refuses to express something, it is because that matter is against the assigned duties and the principle of separation of powers.

In this method, even if reference to the legal records shows that the legislator intended a different meaning of the statement and there is a different promise in the text, the text of the law will be proof.

#### Narrow interpretation and interpretation in favor of the accused

In the language of jurists, there is a lot of talk about interpretation in favor of the accused. But it should be noted that these two terms are different because every narrow interpretation is not always in favor of the accused, and the interpretation in favor of the accused is not always narrow. Basically, what is important in the interpretation of criminal

laws is to consider the benefit of the accused, which is sometimes interpreted as a narrow interpretation and sometimes these two types of interpretation are considered the same. Basically, the interpretation in favor of the accused is a practical principle, and its channel is the state of doubt that is found after despairing of finding the intention of the legislator. This means that the judge has the duty to try to understand the intention of the legislator in any way, either by using the historical background of the verdict and the form of negotiations and draft bills, or by using rational requirements, and he can interpret the law in favor of the accused only when he Your search will be frustrated. The source of doubt may also be the silence or abridgement of the law, which is called judicial doubt. But if this doubt belongs to foreign affairs, this doubt is an example. For example, if the accused was accompanied by another person who fled and it is not known whether the fugitive participated in the robbery or not, the act of the accused cannot be reconciled with Clause 4 of Article 656 of the Criminal Code. In terms of the benefit of the defendant, the defendant must comply with Article 661 of the Criminal Code.

We should also add here that the interpretation in favor of the accused is rooted in the principle of acquittal, which itself is derived from the principle of legality of crime and punishment.

Scores and criticisms on limited interpretation

Regarding the privilege of this rule, it is believed that its protection is the protection of individual freedoms. A criminal judge should not apply anything but the text of the criminal law, and if he wants to go beyond the law, he has in fact violated the principle of individual freedom, because the judge's wishes and personal opinions are effective in interpretation.

Opponents of this rule believe that, firstly, if we are bound by a narrow interpretation, because the criminal law cannot foresee all the acts against the social order, therefore the criminals escape from punishment and the administration of justice; Secondly, this method assumes that the law is complete and without defects, while no law is free of problems, and thirdly, with this method, criminal law does not find the necessary transformation, while law is alive and evolving in nature.

Interpretation through analogy

In this style of interpretation, those anti-social acts that are not explicitly defined by the law are compared with the crimes foreseen in the law, and whenever a similarity is found between them, the same punishment is applied to them. Proponents of this theory believe that the unquestioning observance of the principle of legality of criminal law will leave the society defenseless against many crimes such as those committed by law-aware criminals. In his belief, what is important in the society is the maintenance of order, which should not be confused because of the appearance of words. The purpose of interpreting the text is to understand its full meaning, but the purpose of analogy is to find solutions for the silent cases of the law.

This type of interpretation was previously accepted in the laws of the Soviet Union and nationalist Germany, but considering that this way of interpretation, even if it preserves the comprehensive interests, is against the principle of the legality of criminal law and individual freedoms, and is not very popular in the current world; Only a brief example of it can be seen in Danish law. Article 1 of the Danish General Penal Code of 1930 states: "Every act which is criminal in nature and punishable by the laws of Denmark and every act similar to it is subject to punishment".

Extended or ultimate interpretation

According to the defects and problems that existed in the previous two styles, some scholars suggested an expanded interpretation of the criminal law. This principle states that according to this principle, the context of the law is the greatest guide and source of criminal law, and the judge should not depart from its framework without necessity, but social realities require that the judge understand the true intent of the legislator and follow it. act This principle explains that although in cases of doubt, the benefit of the accused should be prioritized, this is specific to the reasons for the accusation (if there is no reason, one should vote for acquittal), not the interpretation of the law.

One of the pillars of this interpretation is to mean the reason for the provision of the article. The reason for the provision of the article is the thing on which the ruling is based, so that if the reason is fulfilled, the ruling will be fixed, otherwise the ruling is rejected.

Traces of this type of interpretation can be found in some of Iran's unification votes.

Obviously, the most important forms of this type of interpretation are its contradictions with the principle of legality of crime and punishment.

Logical interpretation

Considering the problems and difficulties that were created as a result of the previous interpretations, the explanatory interpretation that indicates the discovery of the real intention of the legislator seems to be a logical solution. In order to achieve this purpose, the judge should discover the real purpose of the legislator by referring to the explanatory reports and preparatory matters and minutes of the regulatory meetings when the government drafts the bills, as well as the debates of the parliament and related commissions and apply them to the cases of ambiguity and brevity. If the actual meaning of the law is not obtained from the necessary investigation and research in the legal records and negotiations during the formulation and approval of the law, the law must be interpreted in favor of the accused.

In order to express the difference between the narrow interpretation and the logical interpretation, it should be said that if the real meaning of the legislator in expressing the words was in conflict with the appearance of the used phrases, then the narrow interpretation prioritizes the appearance of the words, while the logical interpretation at this time gives the real meaning of the legislator over the appearance. Words come first.

The ruling jurisprudence in Iran is also close to the logical interpretation and has dealt with this type of interpretation in many cases; For example, although Article 296 of the Islamic Civil Code uses the word "spreading lies" (in the plural form), the second branch of the State Court stated: "... and lies and acts, although the word "falsehood" is mentioned in the said article, but the meaning is It has been the type of affairs and it applies to an act according to custom and tradition, and if someone attributes a false and untrue matter to someone in the manner prescribed in that article, he can be prosecuted.

## References

- [1] Walidi, Mohammad Saleh, 2009, *General criminal law requirements*, first edition, Tehran Jangal publishing house.
- [2] Esmaili, Samaneh and Jafari Shaharaki, Mohammad and Alavi Hijazi, Sima, 2018, *the ruling or subject of interpretation in Iranian and French law*, regional conference of applied researches in humanities and Islamic sciences.
- [3] Ardabili, Mohammad Ali, 2005, *General Criminal Law*, volume 1, 8th edition, Tehran, Mizan.
- [4] Goldouzian, Iraj, 2005, *Basics of General Criminal Law*, 12th edition, Tehran, Mizan.
- [5] Aghaei Touq, Muslim, 2017, *The necessity and place of interpretation in constitutional rights*, National Conference of New and Creative Thoughts in Management, Accounting, Legal and Social Studies, Urmia.
- [6] Jafari Langroudi, Mohammad Jaafar, 1999, *expanded on legal terminology*, Ganj Danesh Library, number 15, first edition.
- [7] Babaei Mehr, Ali, 2009, *Its interpretation, principles and foundations in public law*, private law journal, volume: 6, number: 14.
- [8] Yavari, Asadullah and Mehraram, Parham, 2017, *Judicial interpretation in public law*, Judiciary Law Journal, Volume: 82, Number: 102.
- [9] Firouz, Mitra, 2023, *Analysis of the jurisprudential-legal foundations of narrow interpretation in criminal law*, the second national conference on social and psychological harms with an emphasis on behavioral sciences, Shiraz
- [10] Amiri, Jalal, 1998, *Rules of Interpretation of Criminal Laws*, Faculty of Law and Political Science Quarterly (Tehran University).
- [11] Sanei, Parviz, 2009, *General Criminal Law*, second edition, Tehran, New Design Publications.
- [12] Katouzian, Nasser, *Philosophy of Law*, 1998, first edition, Tehran, publishing company.
- [13] Qiyazi, Jalaluddin, 2000, *Method of Interpretation of Criminal Laws*, first edition, Qom, Islamic Propaganda Office Publishing Center.