

Legislation and Legality -- A Critical Study of Afghan Criminal Law

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Criminal law literature in the Persian language pays little attention to the nature and classification of the subordinate rules derived from, or to the implications of the principle of legality; and legislators of Persian speaking countries also feel less committed to these rules or implications of this principle. This article sheds light on the following aspects: firstly, it recognizes the nature and categorization of these implications with the help of comparative analyses with other selected legal systems, and secondly, it evaluates the commitment of the legislator, in the case of Afghanistan, to these implications. We will see that although the principle of legality is guaranteed in the best possible way in the Afghan Constitution, the legislation of this country in recent decades does not properly reflect the implications of this principle: several provisions do not respect the consequences of the principle in “defining” criminal behaviours and/or in “specifying” the relevant punishments, in the form of written, explicit, unequivocal laws, drafted in accordance with jurisprudential and literary standards. On the contrary, by violating the implications of the principle of legality, they have paved the way to violating human rights and freedoms, to be left abandoned and inapplicable, or to cause deviations and faults in legal practice. After recognizing the implications of the principle and reminding the Afghan legislator of his constitutional obligation to respect them, this article categorizes a vast variety of numerous violations of the above obligation in different Afghan laws and provides suggestions on how to amend the laws in a way that they comply with the implications of the principle of legality and Afghan Constitution.

Key words: *Principle of Legality of Crime and Punishment, Implications, Quality of Law, “Blank Check” Crimes, Unspecified Punishments, Afghanistan, Iran, Hanafi Jurisprudence.*

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