

# The Foundations of Criminalization and the Scope of Discretionary Punishments

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Criminalization, or the prohibition of conduct with criminal sanctions, constitutes the most severe form of state intervention in restricting citizens' freedoms and stands in opposition to the principle of liberty. In general, the three principles of harm, paternalism, and legal moralism are the foundational justifications that render state intervention in citizens' rights and freedoms legitimate and defensible, forming the legal bases for the criminalization of discretionary punishments (Ta'zir). In Islamic law, sins are also linked to one of the recognized interests in Islam, known as the five essential interests (Maṣāliḥ Khamsah). However, it must be noted that in Islamic legislation, the scope of sin does not entirely coincide with the scope of crime. The indeterminate nature of discretionary punishments in Islamic law and the authority granted to the Guardian Jurist (Vali-e Faqih) in defining discretionary crimes does not imply unlimited power. Rather, the criminalization of such offenses requires justification and considerations such as adherence to expediency and necessity. The Islamic Consultative Assembly (Majles) is also obligated to observe Islamic legal standards in this regard. This article examines the jurisprudential and legal foundations of the criminalization of discretionary punishments.

**Keywords:** Criminalization, discretionary punishments, jurisprudence, foundations, law.

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## 1. Introduction

The principle of discretionary punishment (Ta'zir) has been legislated in Islam, and its precise determination is among the critical responsibilities of the leadership of the Muslim community. The exercise of this authority by the Guardian Jurist (Vali-e Faqih) in criminalizing religious prohibitions occurs through the Islamic Consultative Assembly (Majles).

The question arises as to what criteria and principles the Islamic Consultative Assembly must consider when establishing discretionary sanctions for behavior that is religiously prohibited. On what basis should some religious prohibitions be criminalized while others are left unregulated?

According to Article 71 of the Constitution, the authority of the Islamic Consultative Assembly to enact discretionary punishments is restricted by the "limits set forth in the Constitution." Additionally, Article 4 stipulates that "all laws and regulations, including criminal, financial, economic, administrative, cultural, military, and political provisions, among others, must be based on Islamic principles." In light of these principles, the Islamic Consultative Assembly faces two constraints in criminalizing discretionary offenses: first, adherence to Islamic legal standards, and second, compliance with constitutional provisions. This matter is explicitly stated in Article 72 of the Constitution, which provides that "the Islamic Consultative Assembly cannot enact laws that



contradict the principles and provisions of the official religion of the country or the Constitution."

Therefore, the legislature, in compliance with Islamic principles and in accordance with the provisions of the official religion of the country, can criminalize behavior that is religiously considered sinful and prohibited, imposing discretionary sanctions. However, this process must be confirmed by the Guardian Council jurists to ensure it does not contradict Islamic regulations.

The question remains: what criteria and principles should the Islamic Consultative Assembly consider when determining discretionary sanctions for behavior that is religiously prohibited? On what basis should some religious prohibitions be criminalized while others remain unregulated?

## 2. Conceptual Framework and General Discussion

Criminalization is the opposite of decriminalization and serves as the primary tool of criminal policy in combating delinquency. "Criminalization can be defined as a process whereby the legislator, taking into account the fundamental norms and values of society and relying on accepted theoretical foundations, prohibits an act or omission and establishes criminal sanctions for it" (Aghababayi, 2005). Based on this definition, several key points can be highlighted:

First, "beyond the concept of crime lies the concept of value; the violation of values equates to the commission of a crime" (Najafi Ebrahimi, 1994, pp. 72–73, p. 119). Criminalization serves to protect social norms rather than governmental or moral norms, employing criminal sanctions as a tool. "A norm is the legislator's description of human conduct and behavior; in guiding or directing a particular behavior, the legislator prohibits acts or omissions that pose a threat to certain social values" (Ardabili, 2014). The significance of values and norms in criminalization becomes more evident when considering that some scholars argue that criminalization is entirely intertwined with values and lacks a scientific foundation. Without a doubt, criminalization, like other socio-political matters, cannot occur without considering the dominant ideological system's perspective on humanity, society, and governance. Therefore, "depending on the governing ideological perspective on human nature and concepts such as freedom, justice, power, and security, certain behaviors are selected and assigned criminal sanctions" (Aghababayi, 2005).

Second, in the process of criminalization, previously permissible behaviors are declared prohibited. Thus, beyond the definition of crime, the fundamental question arises: which behaviors should transition from permissibility to criminality? Criminal law philosophy literature offers various criteria to answer this question. Jonathan Schonsheck, in his "filtering criteria," argues that a legislator's decision to place a behavior within the realm of prohibition must go through several stages, functioning as filters. These stages include:

a) Principle Filter – It must first be demonstrated that the behavior falls within the jurisdiction of the community or the state based on a set of theoretical principles regarding criminalization (e.g., the harm principle).

b) Presumption Filter – This filter asserts that methods that impose the least interference with individual liberty and are less coercive are preferable to those that impose greater restrictions.

c) Function Filter – This filter examines the practical consequences of criminalizing the behavior. The enactment and enforcement of criminal laws have practical repercussions, some of which are immediate and apparent, while others may take time to materialize and can be unexpected. A cost-benefit analysis of the social consequences of enforcing or not enforcing the proposed criminal law is necessary (Habibzadeh & Zeynali, 2005).

At the first stage of criminalization, the discussion focuses on the theoretical foundations that justify state intervention in the rights and freedoms of citizens. A crucial point to note is that "not all criminal policy models worldwide justify the criminalization of behaviors and the punishment of offenders in the same manner" (Delmas-Marty & Najafi Abrand Abadi, 2002). Additionally, "criminalization in any legal system cannot be confined to a single criterion, but one can assert that a particular legal system tends to favor one criterion over others while simultaneously utilizing multiple criteria. For instance, the European legal system predominantly applies the harm principle. The root of this variation in criminalization principles across legal systems must be traced back to the foundational ideologies of these legal frameworks, which are shaped by political and anthropological thought" (Qamashi, 2010).

"The term Ta'zir does not have a specific religious, jurisprudential, or legal definition, as jurists have used it in its linguistic sense" (Makarem Shirazi, 2003). The

linguistic meanings of Ta'zir can generally be classified into two categories:

1. Positive meanings – Such as honor, reverence, assistance, and veneration.
2. Negative meanings – Such as prevention, discipline, striking, reproach, and admonition, all of which revolve around the concept of prevention.

In jurisprudential discussions, Ta'zir is used in its negative sense, meaning punishment or discipline to deter criminal behavior (Makarem Shirazi, 2003).

Article 18 of the Islamic Penal Code (2013) defines Ta'zir as: "A punishment that does not fall under the categories of Hudud, Qisas, or Diyat and is determined and imposed by law for the commission of religiously prohibited acts or violations of governmental regulations. The type, amount, execution method, and regulations related to mitigation, suspension, annulment, and other aspects of Ta'zir shall be determined by law." This article delineates two key characteristics of discretionary punishments:

1. They do not fall under the categories of Hudud, Qisas, or Diyat.
2. They are imposed for committing religiously prohibited acts or violating governmental regulations.

Regarding the first characteristic, Ta'zir represents the fourth category of punishments alongside Hudud, Qisas, and Diyat. A fundamental distinction between Ta'zir and other punishments is that its type and extent are not predefined in Islamic law. "Ta'zir is a punishment or reprimand that has not been specifically determined by Sharia". "If the punishment is not predefined, it is called Ta'zir" (Tabatabai, 1993). Considering the discretionary nature of Ta'zir, Islamic punishments can be categorized into two groups, as highlighted by Al-Muhaqqiq Al-Hilli in *Sharayi al-Islam*: "All punishments that have a predefined measure in Sharia are called Hudud, whereas those without predefined measures are called Ta'zir" (Mohaghegh Helli, 1998).

Accordingly, the first category includes punishments whose quantity and quality are determined by Sharia and are only applicable to specific offenses (Hudud, Qisas, and Diyat). The second category consists of punishments that are not predefined in Sharia and fall within the discretionary authority of the Imam or the Guardian Jurist. This discretionary authority is reflected in the latter part of Article 18: "The type, amount,

execution method, and regulations related to mitigation, suspension, annulment, and other aspects of Ta'zir shall be determined by law."

The second clause of Article 18—"the commission of religiously prohibited acts or violations of governmental regulations"—defines the scope of discretionary punishments, answering the question of what types of conduct may be criminalized as Ta'zir offenses. The following sections analyze this issue under the category of "grounds for discretionary punishment."

### 3. Principles of Criminalization in Secular Criminal Law

Criminalization, as a restriction on human freedom, is in conflict with the principle of liberty. Therefore, "the burden of proving the necessity of restrictions falls on those who seek to limit individual freedoms through criminalization, rather than on those who wish to live free from criminal constraints. Accordingly, a presumption in favor of liberty can be considered, meaning that any encroachment on the free sphere of citizens' behavior and any expansion of the zone of mandatory and controlled conduct through criminalization must be supported by strong justifications" (Habibzadeh & Zeinali, 2005, p. 4). These justifications for state intervention in restricting the freedoms of society's members are referred to as the principles of criminalization. In other words, the principles of criminalization provide an answer to the question of why legislators impose prohibitions in criminal laws. These principles include the harm principle, the principle of legal paternalism, and the principle of legal moralism.

Before explaining the principles of criminalization, it is crucial to emphasize that justifying the prohibition of conduct based on these principles does not necessarily mean that criminalization is mandatory. The necessity of criminalization, which has been raised by criminologists through concepts such as "the principle of minimal use of criminal law," highlights that "criminal law should only be employed as a last resort for social control in strictly necessary cases" (Clarkson, 1995, p. 225).

Thus, the principles and criteria of criminalization function as a filter that distinguishes behaviors subject to public authority intervention from others. "Society's response to behaviors that fall within its jurisdiction for intervention is not always coercive and repressive, warranting criminalization; rather, such actions may

merely be condemned by society, with public opinion pressure being sufficient to counteract them" (Najafi Abrand Abadi, 1994). Indeed, "these principles merely justify removing certain behaviors from the domain of individual freedoms and placing them under public authority, which encompasses a broad spectrum of civil, disciplinary, social control, and ultimately criminal measures" (Najafi Tavana & Motafi Zadeh, 2013).

### 2.1. *The Harm Principle*

The roots of this principle, which entails minimal state intervention in individual freedoms, can be traced back to the ideas of John Stuart Mill. "Individual liberty should be restricted only to the extent that one's actions cause harm or inconvenience to others. However, if an individual does not violate the rights or comfort of others and acts according to personal will and judgment in matters that concern only themselves, then the same reasons that justify freedom of thought also justify their right to act on their opinions responsibly and without interference from others" (Mill, 1984).

Although John Stuart Mill initially considered only tangible and material harms as justification for criminalizing harmful conduct, later interpretations of the harm principle extended it to non-material harms, such as causing severe distress.

According to this principle, conduct should only be prohibited by law if it results in harm, whether tangible or intangible, to someone other than the perpetrator. Therefore, "the harm principle deals leniently with three categories—self-harm and the risk of self-harm, consensual harm to others, and harmless behaviors—excluding them from the scope of legislation" (Borhani & Rahbarpour, 2011).

### 2.2. *The Principle of Legal Paternalism*

The principle of legal paternalism is one of the governing principles of criminalization and stands in contrast to the harm principle. Legal paternalism allows for the criminalization of behaviors that, under the harm principle, would otherwise remain beyond the reach of state intervention, such as so-called victimless crimes.

"In modern legal philosophy and judicial practice, paternalism manifests in treating individuals without their consent for their own good, just as parents treat their children. Paternalists prioritize people's welfare

over their liberty, believing they can make rational and reasonable decisions on behalf of individuals for their benefit" (Sabor & Dworkin, 2009).

This principle, also referred to as the **principle of legal protectionism**, is justified on the basis that "such intervention is beneficial to the affected individual or serves to protect them from harm" (Sabor & Dworkin, 2009). Paternalists generally view most people as uninformed and in need of guidance and legal protection. Accordingly, when lawmakers prohibit actions such as riding a motorcycle without a helmet, failing to wear a seatbelt, drug use, suicide, organ trade, prostitution, and similar behaviors, their reasoning may be rooted in paternalistic considerations.

"Islamic governance does not recognize the private domain or the right to privacy in the broad sense found in Western legal literature. However, despite the extensive scope of Islamic legislation, in practice, the Islamic government's intervention in private affairs is limited by various factors. The examination of legal provisions such as enjoining good and forbidding evil (Amr bil Ma'ruf wa Nahi an al-Munkar), offensive jihad (Jihad Ibtida'i), and apostasy does not necessarily establish them as paternalistic. Furthermore, totalitarianism cannot justify paternalism in an Islamic government. Principles such as the ease of religion (Tashil) and tolerance (Tasahol wa Tasamoh) in Islam stand to some extent in opposition to paternalism in Islamic governance" (Qiyasi, 2010).

### 2.3. *The Principle of Legal Moralism*

Another criterion that justifies state intervention in restricting individual freedoms is the principle of legal moralism. Patrick Devlin argues that "disregarding these fundamental principles of legal moralism is dangerous because a serious attack on morality equates to an attack on society itself, which must retain the right to use criminal law in defense of its interests" (Najafi Tavana & Motafi Zadeh, 2013).

"From the perspective of legal moralism, the state is not only responsible for defending the interests of individuals but also for protecting certain values that are of such significance that the state must use criminalization as a means of safeguarding them" (Borhani & Rahbarpour, 2011). In this view, beyond harmful conduct (to others or oneself), legal moralism expands state intervention to include behaviors that

contravene morality and socially accepted standards, thereby further restricting individual freedoms compared to previous principles.

"The concept of morality, as used in legal moralism, is broadly defined to encompass three types of morality: rational morality (ethics based on reason), revelation-based morality (ethics derived from divine teachings), and human-centered morality (ethics based on social conventions and accepted traditions within a specific society)" (Borhani & Rahbarpour, 2011).

Today, the prevailing opinion among legal scholars is that "not all moral norms can be given legal—especially criminal—status. In such cases, it is morality itself that suffers the most harm; for if all moral values were codified into law, the free will and conscious choice of individuals in selecting virtuous actions would be compromised" (Noubahar, 2013). Only those aspects of social morality that pertain to respecting the rights and freedoms of others and ensuring social justice fall within the domain of criminal law. "In other words, criminal law only prosecutes and punishes violations of moral standards when such transgressions manifest in public and societal contexts" (Validi, 2006).

### 3. The Foundation of Criminalization in Islamic Criminal Jurisprudence

"The foundation of Sharia, which includes criminal punishment, is to secure benefits for human beings and to prevent corruption and harm. However, it is evident that the criterion for recognizing benefits and their extent is determined by Sharia itself. Only what religion considers beneficial is truly beneficial, and what religion deems harmful is certainly a source of corruption" (Ghorban-Nia, 2008, p. 49). This principle follows from the belief that in Islamic law, the authority to legislate belongs exclusively to God. "A jurist is not a legislator who evaluates the interests and harms of legal rulings and then enacts laws. Rather, the role of the jurist is to examine and discover the rulings that have already been established in Islamic sources. In other words, we believe that all laws required by the Muslim community until the Day of Judgment have already been foreseen in Islam. If this were not the case, the notion of the completion of religion and the fulfillment of divine blessings would have no meaning. Therefore, there is no room for the jurist to engage in legislation, nor has such

authority been granted to them" (Makarem Shirazi, 1984).

In other words, "in religious political systems where criminal law is influenced by religious teachings and divine revelation, criminalization within the domain of fundamental religious values signifies the declaration, announcement, and legislative enactment of crimes and their corresponding punishments as prescribed by Sharia" (Aghababayi, 2005).

Accordingly, within the logic of Islamic legislation, prohibitions and restrictions are established to preserve and uphold the legitimate interests of Islam and to prevent harm to them. "The recognized interests of Islam, which can be considered human interests as well, fulfilling both material and spiritual needs, are classified into five categories. Many scholars of both Shia and Sunni traditions have affirmed these categories and discussed them extensively in their works. These five interests are: 1) the interest of life (Nafs), 2) the interest of religion (Din), 3) the interest of intellect ('Aql), 4) the interest of lineage (Nasl), and 5) the interest of property (Mal)" (Faiz, 2002, p. 76). All religious prohibitions, categorized as sins, ultimately refer back to one of these five interests. Therefore, the foundation of criminalization in discretionary punishments (Ta'zir) is identical to that of prescribed punishments (Hudud) and, more generally, the foundation of prohibitions in Islam.

In general, sin constitutes the basis for prescribed and discretionary punishments in Islamic law. However, when a sin does not have a predetermined punishment under Sharia, or when its prescribed punishment cannot be implemented due to a lack of conditions, it may be subject to discretionary punishment. "By the consensus of scholars and according to explicit textual sources, Ta'zir applies to all transgressions and major sins committed knowingly and deliberately, whether it involves the commission of a prohibited act or the neglect of an obligatory duty" (Makarem Shirazi, 1984; Mousavi Khomeini). Similarly, Ayatollah Khomeini states: "Whoever knowingly and deliberately commits forbidden acts or neglects divine obligations shall be subjected to Ta'zir at the discretion of the ruling authority" (Mousavi Khoiy, 1991). The jurisprudential maxim "Ta'zir applies to every forbidden act" and the rule "Every sin that does not warrant a prescribed punishment is subject to discretionary punishment" are



frequently cited by jurists in defining the scope of offenses punishable by Ta'zir.

Thus, in the discourse of Islamic jurists, the commission of sin serves as the criterion for Ta'zir. "By 'sin,' we refer to its jurisprudential definition, which signifies an individual's violation of primary obligatory rulings in Islamic law. According to the prevailing view among Islamic scholars, sin is categorized into major and minor transgressions. A defining characteristic of sin is that its commission entails moral prohibition and results in divine retribution in the Hereafter" (Fattahi, 2013, p. 88). In other words, "sins include committing forbidden acts and neglecting obligatory duties. A prohibited act is defined by its absolute prohibition upon the legally accountable person, while an obligatory act is defined by its mandatory and binding nature upon the individual. Sometimes, obligations are confused with recommended actions, and prohibitions with discouraged acts; in such cases, context must be relied upon to determine the legal ruling. The most significant contextual indicator in cases of ambiguity is the presence of punishment, as the imposition of a penalty indicates that the act in question is either strictly prohibited or obligatory" (Ouda, 2011). According to Article 18 of the Islamic Penal Code (2013), the grounds for discretionary punishment (Ta'zir) are:

1. The commission of religiously prohibited acts (Muharramat Shar'iyah).
2. The violation of governmental regulations.

"Considering temporal and spatial exigencies, the necessity of effective governance, and the maintenance of social order and security, behaviors that lead to societal harm—even if they are not inherently sinful according to primary religious rulings—should be recognized as crimes and subject to punishment" (Habibzadeh, 2003). As observed, Article 18 classifies these punishments under the category of Ta'zir, thereby expanding the scope of discretionary punishments beyond the realm of sin.

The first basis for Ta'zir mentioned by the legislator is "the commission of religiously prohibited acts." This raises the question: Does the Islamic Penal Code (2013) only recognize the commission of religiously prohibited acts as grounds for Ta'zir? In other words, can neglecting obligatory religious duties be criminalized as a discretionary offense under Islamic law?

Linguistically, "Muharramat" (prohibited acts) refers to "things that are forbidden, the opposite of permissible,

and actions that Islam prohibits and considers sinful" (Amid). "Haram means prohibited; when an action is declared Haram, it signifies that its commission is forbidden" (Allameh Tabatabai, p. 631, *Surah Al-Baqarah, Ayah 168*). A prohibited act in Islam is not limited to the commission of forbidden acts; rather, the neglect of obligatory duties is also deemed prohibited and unlawful in Islamic legislation. The violation of religious prohibitions may manifest either actively (by committing a prohibited act) or passively (by neglecting an obligatory duty). Thus, the phrase "the commission of religiously prohibited acts" in the Islamic Penal Code encompasses both categories.

The critical question here is whether merely committing a prohibited act or neglecting an obligatory duty suffices to classify it as a discretionary offense. In other words, is the commission of religiously prohibited acts a necessary or sufficient condition for Ta'zir?

A legislator who adheres to Islamic legal principles such as the presumption of innocence (*Asalat al-Bara'ah*), the principle of permissibility (*Asalat al-Ibahah*), and the principle of non-authority (*Asl Adam al-Wilayah*) does not possess absolute and unrestricted discretion in imposing discretionary punishments. Instead, such punishments require additional justifications. This is because the criminalization of discretionary offenses contradicts these foundational principles and is only permissible if sufficient justification is established.

"An examination of jurists' perspectives on the philosophy of Ta'zir reveals that, from their standpoint, committing a prohibited act merely constitutes a basis for Ta'zir but does not necessitate its imposition by the Islamic ruler. In other words, committing a prohibited act that threatens an individual or societal rational interest is a minimum condition for Ta'zir; however, its absence prevents the imposition of Ta'zir, rather than its commission automatically mandating punishment. Jurisprudential texts often state 'Whoever commits a prohibited act, the Imam has the authority to punish them (Falil-Imam Ta'ziruhu),' where the use of 'ل' (li) indicating discretion rather than 'على' (ala) indicating obligation confirms this interpretation. Additionally, the discretionary authority of the Guardian Jurist (Vali-e Faqih) is more compatible with this understanding" (Sadeghmanesh, 2012).

Accordingly, while resorting to Ta'zir for transgressions is legitimate, its justification depends on considerations

such as societal expediency. As previously noted, Ta'zir is subject to conditions beyond merely violating Islamic prohibitions, and in the absence of these conditions, the ruling authority can and should refrain from imposing it. In other words, the scope of sins and discretionary crimes are not identical; rather, their relationship is one of generality and specificity. "In accordance with Islamic principles, the concept of crime in its legal sense does not equate to sin in its religious sense. Not every sin is necessarily a crime, nor is criminalization necessarily contingent upon the religious classification of an act as sinful" (Noubahar, 2011).

#### 4. Criteria for Criminalizing Discretionary Punishments (Ta'zir) in Iranian Law

In sum, and in consideration of Islamic legal principles such as the presumption of innocence (Asalat al-Bara'ah), the principle of permissibility (Asalat al-Ibahah), and the principle of non-authority (Asl Adam al-Wilayah), which are also emphasized by the constitutional legislator in Article 37, the Islamic Consultative Assembly is obligated to provide sufficient justifications and evidence for any form of restriction, including criminalization. In cases where such justifications are not established, the legislation should be challenged by the Guardian Council, as criminalization is an exception to the general rule and must be limited to exceptional circumstances.

The religious justifications and necessities for criminalizing discretionary offenses have already been discussed in the previous section. This means that the legislator must establish that the neglect of an obligation or the commission of a prohibited act falls under matters that are unequivocally defined as obligatory or prohibited in Islamic law and have become social norms within the community. Furthermore, it must be demonstrated that criminalization is necessary and serves the public interest by imposing such restrictions. Additionally, in cases where the Islamic Consultative Assembly enacts criminalization, it must establish that such criminalization is intended to prevent violations of individual and societal rights. This religious limitation is also enshrined as one of the fundamental constitutional principles. Article 40 stipulates that "No one can exercise their rights in a manner that causes harm to others or infringes upon public interests."

#### 5. Conclusion

The foundation of legislation in Islamic law is to secure benefits and prevent harm to human beings, with the determination of what constitutes benefit or harm being exclusively within the domain of God, as the authority to legislate belongs solely to Him. The fundamental interests of life (Nafs), religion (Din), intellect ('Aql), property (Mal), and lineage (Nasl) serve as the basis for all religious rulings and prohibitions. Therefore, the foundation of criminalization in discretionary offenses (Ta'zir) aligns with the foundation of prohibitions in general.

Sin, as the basis and criterion for discretionary offenses in Islamic jurisprudence, is not limited to the commission of prohibited acts (Haram) but also includes the neglect of obligatory duties (Wajib), which is likewise considered a sin and a ground for discretionary punishment. The phrase "commission of religiously prohibited acts" in Article 18 of the Islamic Penal Code (2013) refers to all behaviors deemed forbidden and prohibited in Islam, whether by failing to fulfill an obligation or by committing a forbidden act. Therefore, "commission of religiously prohibited acts" should not be interpreted as synonymous with merely committing a forbidden act, thereby excluding the neglect of obligatory duties from the scope of discretionary punishments.

A legislator who adheres to Islamic principles such as the presumption of innocence (Asalat al-Bara'ah), the principle of permissibility (Asalat al-Ibahah), and the principle of non-authority (Asl Adam al-Wilayah) does not possess absolute and unrestricted discretion in imposing discretionary punishments. Instead, such punishments require sufficient justification, as the criminalization of discretionary offenses contradicts these foundational principles and is only permissible if a valid rationale is established. Consequently, the commission of religiously prohibited acts merely provides the basis for discretionary punishment but does not automatically necessitate its imposition. In other words, the neglect of an obligation or the commission of a forbidden act is only a necessary condition for criminalizing discretionary offenses, not a sufficient one.

An examination of Islamic jurisprudential sources indicates that among the essential conditions for criminalization in discretionary offenses are the

commission of a clear religious violation (Khilaaf Shar' Bayyin), causing harm to others or society, adherence to public interest (Maslahah), and necessity (Darurah). The Islamic Consultative Assembly, when criminalizing discretionary offenses under Islamic law, is obligated to provide justifications and demonstrate the necessity of such restrictions through criminalization. Moreover, in accordance with Article 4 of the Constitution, the legislature is required to observe Islamic legal standards and comply with the constitutional criteria established for criminalization.

### Authors' Contributions

Authors contributed equally to this article.

### Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

### Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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### Declaration of Interest

The authors report no conflict of interest.

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### Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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