

The approach of criminal law towards drug sales in cyberspace

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ABSTRACT

The present paper deals with the approach of criminal law towards drug sales in cyberspace. Drug sales in cyberspace is an emerging phenomenon remained unaddressed to this date from criminal law's perspective. The increasing trend of using the Internet and cyberspace for example in the field of drug sales on one hand and the drug sale due to its association with the health of people in society on the other hand make it necessary to present this paper. The essential question on this regard is that what is the approach of criminal law towards drug sales in cyberspace? This is an analytic-descriptive study conducted using the library method to address the above mentioned question. The research findings suggest that the legislator is silent in respect to drug sales in cyberspace by pharmacies, while the sale of non-medicinal items in cyberspace such as complementarians has been deemed to be legal for sale, with a specific instruction even being established in this regard. Regarding the drug sales, however, the legislator has neither criminalized nor authorized it, thus based on the offence legality principle it seems that there is no legally prohibition on drug sales by pharmacies on the Internet. The situation is however different about the drug trafficking and the sale of false or scarce drugs in cyberspace. Trafficking and the sale of false and scarce drugs by anyone, including pharmacies in cyberspace, are considered criminal and have a clear criminal sanction. Due to the increasing role of the Internet and cyberspace in the world today, it seems that there is a need for specific rules and regulations for online drug sales, as shifting from offline to online approaches has made it necessary in all areas, including the drug provision and distribution.

Keywords: Drug Sales, Cyberspace, Pharmacy, Criminal Policy

Introduction

Informatics revolution is the main characteristic of human life at the beginning of the third millennium, a transformation which effects various fields including drug sales. The cyberspace as a manifestation of on lime exchange provides a platform for accelerated trading and serves as a catalyzer for product introduction, its competitive pricing and direct distribution. This has even extended to drug sales. Today we easily encounter with internet pharmacies selling various drugs on their sites, telegram channels and other tools and Internet

applications. Drug sales on the Internet is not just carried out by pharmacies. We also face with another phenomenon such as drug trafficking in the cyberspace. Drug is among the products which its transit through country is conditional to permission from ministry of health, treatment and medical education and trafficking ranks among the most horrible traffickings after narcotics and arms, as it endangers the lives of human beings^[1]. Drug trafficking done by virtual networks largely concerns the scarce drugs and sex enhancing, anti-addiction and weight loss drugs. By now there has been no independent and comprehensive research on drug sales in cyberspace and this along with the significance of community health which is effected by harmful effects of possible drug sales and trafficking in cyberspace make the present research necessary. The essential questions raised on this matter have been discussed: what is the approach of criminal law towards drug sales in cyberspace? How is drug trafficking explained in cyberspace? To answer these questions, we first investigate the related concepts and then introduce the criminal policy on drugs sales in the Internet. Then it deals with the issue of drug trafficking in cyberspace.

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The Concept of Drug and Cyberspace

Here we address the concepts of drug and cyberspace

Drug

The word “drug” literary refers to anything with which pain can be treated or a substance that can stop a disease ^[2] or what prescribed by a physician to treat a patient ^[3]. The term “drug” or generally “medicine” is used in English language. In pharmacologic science, drug naturally refers to any substance that brings about biological changes through chemical actions ^[4]. In another definition, drug is referred to any substance which can enable us to diagnose, prevent, treat or stop a disease or alleviate the symptoms and the unnatural physical status and relieving the pain, reconstructing and making natural the functioning of human or animals organs.

According to food and drug regulations by the ministry of health and medical education, the mentioned products for prevention, diagnosis and treatment of diseases or physiological modifications are applied and the ministry of health, medical education has authorized its use in the country in accordance with legal and regulatory requirements. Also, in accordance with Note 3 of Article 3 of the food and drug regulations effective 1955, with subsequent amendments and supplements of all reinforcing, stimulating, vitamin and other products listed by the ministry of health, treatment and medical education are announced and published as part of the medicinal items.

Drugs are basically divided into two categories: generic drugs and brand name drugs. The generic drugs can be manufactured and supplied by any producer; however, the brand name drugs are specific to particular manufacturer ^[4]. According to Note 2 of Article 13 of food and drug regulations, the title of generic drugs refers to drugs that are approved by the ministry of health, treatment and medical education as either chemical or general (non-specific), and Pursuant to Article 13 of the Act, a special drug includes drugs that are obtained simply or by mixing or combining several drugs as a result of the invention by a particular legal or natural person with a fixed name formula and a special industrial mark in the name of the inventor in the country registered in Iran or foreign countries.

Cyberspace

Cyberspace consists of words: “cyber” and “space”. In terms of meaning, the term “space” has various applications. It sometimes refers to an apparently infinite arena beyond the atmosphere and among the stars which has a physical and thus limited nature, though its limits remain unknown for human being. It is sometimes referred to a 3-D territory for placement of something and sometimes it is a real or abstract territory which something is attributed to it such as the intellectual or spiritual space. It is also sometimes construed as distance ^[5]. The word “cyber” (virtual) stands against real. In other words, cyber is used in its unreal meaning but is not a lie; because though this term is used in its unreal meaning but really exists and is not obsolete ^[6]. Space in Persian geography is fully equal to the Persian term “Fazaa” and is part of nature, finding a human-geographic meaning in relation with human environment ^[7].

The cyberspace is a term first employed by William Gibson in his well-known fiction-scientific book titled *Neuromancer*. It

refers to a space which without considering the distance or a particular status, formulizes the social relationship between different customs in a new form ^[8]. In other words, cyberspace is a metaphor for the operation of computers, cable networks and the trend of electronic and telecommunication technologies ^[9]. In informatics language, cyberspace is defined as the application of Internet in cultural, technical and social dimensions, but it can be the place for reference of any person with whatever purpose ^[10]. In fact, regardless of geographical possibility, cyberspace provides the relationship with users as a subject; it is an arena for extra-territorial communicational action in which the icons, language, text and image involves semiotic and intertextual analysis.

The Approach of Criminal Law towards Drug Sales by Pharmacies in Cyberspace

Drug sales are only permissible for pharmacies with work permit. According to the Article 14 of penal code of health and treatment affairs: pharmacies shall have establishment permit issued by the ministry of health, treatment and medical education, and its breach would be considered as an offence and related location shall be closed down. Accordingly, the location of drug sale is pharmacy and it shall possess the required permit. However, the basic question is: what is the approach of criminal law towards drug sales by pharmacies in cyberspace? According to the law, the online selling of pharmacy is limited to selling hygiene products, cosmetics and nutritional supplements, baby milk, natural and traditional products. According to the Internet sales code 2014, non-medicinal items are licensed for sale in the country's pharmacies, pharmacies are licensed exclusively to sell cosmetics and nutritional supplements, baby milk, natural and traditional products, and they will not be allowed to sell in the Internet if they aren't licensed or for any other reason closed down for a certain period.

According to Articles 6, the Internet sale directives in the country's pharmacies approved on 2014, the functions of the technical officer for the online sales of pharmacy are required to supervise the Internet sale and provide the necessary directives to consumers, seal and sign the Internet sales invoices, control the originality of goods, conditions of maintenance, apparent form, history of consumption, form of construction, form of preparation and supply of products, prevent unauthorized people from interfering in Internet sales and trying to improve the quality of service offered to internet consumers.

Also, according to the Article 2 for the online selling of non-medicinal items instruction in the country 's pharmacies, internet sales can be done via the Internet web sites and the they should carry the name of pharmacy, exact postal code, telephone, fax, e-mail address, the founder or founders name, operator / technical officer and the pharmacy license.

In the Article on Internet sales, it is referred to the website, while Internet sale methods are very diverse, and the website launching is only one of these methods. It is unclear whether the Internet selling tools and methods of non-medicinal items are limited to websites or pharmacies can benefit from other Internet methods.

Regarding internet sales, pharmacies have to observe certain conditions prescribed by the lawmaker. It is necessary that exact communication is done with appropriate reference preferably with links to foodstuff scientific resources on health oriented products (e.g., product image, volume or weight, and type of packaging, consumer prices, consumption cases, and non-consumption cases) so that the consumer is fully and accurately aware of the nature, quality and quantity of the desired item, and after receiving it, he can match the specifications on the web sites with the received goods. It is obvious that the responsibility and confirmation of this information is upon technical officer of the pharmacy having a license to sell in the Internet.

In accordance with Article 7, the Internet sales instruction for non-medicinal products in pharmacies of the country adopted in 2014, in case required to affix the originality of the goods, the founder must monitor the authentication of the label on all the products provided, so that, if necessary, it is possible to identify the consumer of the product, and in case the E-Namad is revoked, the Internet sale of pharmacy also will be automatically revoked and the pharmacy's activity will be limited to the normal activities of the pharmacy under the supervision of the technical officer (pharmacy is obliged to display the message "No internet sale" on the front page of its website and deactivate its admission system).

The most important thing that can be attributed to the Internet sale directives in the country's pharmacies is that there are no clear sanctions, i.e. if a pharmacy doesn't meet the mentioned rules, what punishments it would face with? On the other hand, drug sales have not been introduced in the cyberspace from pharmacies, i.e. it is not clear if the pharmacies can sell drugs through cyberspace or not? In fact, it hasn't banned the pharmacies from selling drug sales in cyberspace, and based on the legal principle of the legality of offence^[11] nothing can be regarded as illegal unless a matter is not forbidden by law. Meanwhile, there is no specific instruction regarding drug sales in cyberspace for pharmacies.

The Approach of Criminal Law towards Illicit and Fake Drug Trafficking in Cyberspace

The criminal law approach to drug trafficking and sale of fake drugs is explained in the special rules supervising the sale and distribution of drugs as well as general rules such as the Islamic penal code.

The law relating to the regulations of medical and drug affairs, foodstuffs, beverages and cosmetics approved on 1955 after subsequent amendments

The first law introduced into medical and drug issues is this very rule. As we will see in the coming chapters, drug trafficking has been completely noted, and even the legislator in this law has mentioned the topics such as the type of security order and the competent special tribunal.

While by study of the provisions of this law, we see some conflicts between this law and the law of combating of goods and currency trafficking 2013, but this law is still much more

comprehensive in the context of drug trafficking than the above law. As an example, since the adoption of the first law of combating the trafficking, the legislator has deemed important usually and exclusively the type and value of trafficked goods in IRR, but has not mentioned any future effects of the use of that commodity, whereas this law not only deals with the criminalization of trafficking but also the punishment of individuals in some cases are varied according to the amount of damage to the injured party or parties and even the punishment of executions are foreseen for some forms of drug trafficking, which we will deal with in the following sections, and especially in the case of further punishment. Although there is no law under the title of drug trafficking, and even the word "trafficking" is not used throughout, the vast majority of its provisions are covered by the definition of trafficking, as exemplified by the two Notes of article 3, Note 2, Article 5 (under specific conditions) and Articles 15, 14, and 18 of this Act, which refers to all types of trafficking practices, such as import, export, sales, production and distribution, as well as various types of drug frauds, such as the change in the date of drug use.^[12]

It is also noted that in Article 27 of the law on combating trafficking of goods and currencies, it is noted that any natural or legal person charged with importing and exporting drugs, supplements, medical supplies and drug, foodstuffs, cosmetics and sanitary products are deemed to be punished as trafficking prohibited goods.

As mentioned, obtaining the necessary permits from competent bodies including the ministry of health, treatment and medical education is one of legal formalities, which is derived from article 16 of the matter on hand Act, which is evident in Note 3 no. 4 Chapter 30 in customs tariff table of 2016.

In addition, the Note 1 of the Article 3 amended on 1995 on the provisions of medical and drug regulations of foodstuff and beverages approved on 1955 provides as follows: "import and export and drug sale without obtaining permission from the ministry of health, treatment and medical education are considered as criminal and it will be punished according to Article 3 and the discovered drugs will be confiscated to the favor of government."

According to the above article, if a person is able to purchase and sell drugs in a cyberspace, it is deemed as violation. In fact, what matters is that drug sales without permission from the ministry of Health.

In addition to selling, pharmacies shall not provide drugs from unauthorized resources. Article 17 of the governmental Penal Code provides that: "pharmacy should provide drugs from distribution networks determined by the ministry of health, treatment and medical education (drug distribution companies) and violating the provisions of this offence shall follow the following punishments:

First time - written notice with indication on the record.

Second time – fine in cash up to five hundred thousand IRR.

Third time - fine in cash up to 500,000 IRR and a cut off of drug quota for three months.

Fourth time - Temporary close-down of pharmacy for one year.

Remark: Drug exchange within one day among pharmacies of a city shall not be subject to above provisions.”

According to the above article, if the drug has a valid manufacturing license or entrance permit but is realized from unauthorized sources, including sales agents in the cyberspace, offence is realized ^[13].

Also article 20 of the discussed item provides that: “the maintenance or supply of corrupt or expired drugs which should be destroyed, is an offence and the offender shall be condemned for the following penalties.

A) Supply and maintenance

First time - written notice and removal of corrupted or expired drugs.

Second time - cash penalty up to 100,000 IRR and accumulation of corrupt or expired drugs.

Third time – cut off of drug quota for up to three months.

Fourth time - temporary holidays for up to six months.

B) Sale:

If no more severe penalties are provided in other laws, in addition to compensating the patient:

First time- cash fine up to 100,000 IRR and the removal of corrupt or expired drugs.

Second time - cash fine up to 500,000 IRR and cut off of drug quota up to one month.

Third time - pharmacy closed down up to one year.

• Governmental Penalty Law on medical affairs 1988

According to the governmental penal law on health and medical care approved on 1988, drug sales without manufacturing license is prohibited and shall be punishable. Article 13 of the said rule stipulates that: “drug shall have manufacturing license from the ministry of health, treatment and medical education, and the supply and drug sales without a license or entry permit from the pharmacy is an offense, and the offender is charged with the following punishments:

First time - written notice and removal of unauthorized drugs.

Second time - fines of up to 100,000 IRR and reflections in the case.

Third time – cut off of drug quota up to three months.

Fourth time - the pharmacy is closed down for one year.

The conditions for an offense to realize is that the supply and sale should be by the pharmacy, but if ordinary people and peddlers try to sell the drug without a license or without permission, according to Article 3 of 1995, the provisions of the medical, pharmaceutical, and food and beverage law of 1955 are followed. The above mentioned Note stipulates that importing and exporting, and buying and selling pharmaceuticals without permission from the ministry of health and medical education shall be considered a criminal offense and the offender shall be punished in accordance with article 3, and drugs shall be seized for the favor of the government. “As noted, the legislator at the the first line of the Article, absolutely mentions the term “import, export, and drug sale”, which includes both ordinary people and selling in cyberspace.

The point to be made here is that, it is also an offence if realized in cyberspace, i.e., if a drug is allowed to offered without

having a manufacturing permit, the material element of the offence has occurred, and also it is offence if it is on sale. So there is no need for supply and sale to occur at the same time. However, the maintenance of this product is not sufficient to prove the charge if it is not indicative of supply or sale.

Due to the fact that the legislator used only the term “drug” in the lead of the Article, it does not include other goods such as baby milk, medical and dental equipment and laboratory supplies.

Regarding the first time punishment, it should be noted that the reference to the removal of illegal drugs is not clear, but it seems that this is the responsibility of the pharmacy and this punishment is “different from the seizure of goods for the benefit of the government.” Otherwise, the legislator also would have explicitly expressed it in the law.

As noted, the legislator approach is generally expressed and can include the maintenance or sale of corrupt or expired medications or the history of the past in cyberspace. In addition, the legislator's attitude towards selling these drugs is more difficult to deal with than their supply and maintenance, so the stricter punishment has been imposed. Regarding the explicitly of law, it is assumed that merely maintenance of corrupt or expired drug is not sufficient to establish a violation, but it seems that if the technical authority does not receive such goods in store them in a place that is not conventionally supposed to keep for supply and sale (e.g., where it has put such drugs in separate boxes with label “corrupt or expired drugs”, intending to refer it to the ministry of health and medical education inspectors), then offence is not realized.

Also, according to Clause 6 of Article 21 of the “Code of Practice for Pharmacies”, Supervision over the preservation of drugs, the appearance and physical qualities of the drug, and the expiry date of drugs is the responsibility of the technical officer. Clause “an” Article 18 “The Law on Medical, Pharmaceutical, Foodstuff and beverages Law”, also adopted in 1955, stipulates: “Anyone who sells corrupted or expired drug or sells a drug in place of another drug, and this action stops the consumer from using the main drug and, as a result leads to his death, the seller shall be sentenced to imprisonment between two and ten years, and if he does not lead to death, but causes permanent illness or impairment of consumers or users, it will be punished by on to three years’ imprisonment for the seller.” Drug sales can be done through the presence of customer in pharmacy or through cyberspace.

• The Approach of the Law on Combating Trafficking of Goods and Currency 2013

The law on combating trafficking of goods and currency has finally been approved after its many ups and down in 2013. After nearly a century in the field of trafficking, the legislator found that it is necessary to define the terms of trafficking, thus suggesting that “trafficking is any act or omission which constitutes a breach of the law relating to the entry and exit of goods and currency, is considered to be a violation of the law or other laws, trafficking, or any point in the country, even where its supply location is found in the domestic market.”

Under Article 27 of this rule, “any natural or legal person who acted on import and export of drug, supplements, medical supplies and equipment, foodstuffs and foodstuffs, cosmetic and sanitary equipment would be condemned to punish for trafficking goods to the following effect. The penalty does not prevent the payment of compensation and damages: a) drug trafficking and its products, supplements, supplies and medical equipment are subject to the penalties for trafficking the prohibited goods under Article 22 of this law. b) If the discovered trafficking goods consist of material and food products, drinking, cosmetic and sanitary products, the responsible authority is required to respond to the inquiry of the human consumption of mentioned goods, and the ministry of health, treatment and medical education shall answer within ten days of this inquiry. If the discovered goods manage to obtain health and treatment licenses in regard to human consumption, the offence of trafficking is subject to the penalties in Clause (b) Article (18) of this law and otherwise the confiscated goods are considered as corrupt, expired, or harmful to public health and are subject to the punishment FOR trafficking of forbidden goods. Note 1- carriage, supply, and sales of the above products are subject to the penalty of this Article. Note 2 - The Executive Code of the Article is prepared on how to implement and the necessary quantities of goods for the inquiry of human consumption permits with the proposal of the ministries of health care, treatment and medical education, industry, mining and trade and the maximum within three months of the date of the entry into force of the Council of Ministers.”

As it is noted, the legislator classifies the material and the pharmaceutical products, supplements, requirements and medical equipment among the banned goods, so dealing with the offence of drug trafficking, including the issuance of all kinds of criminal provision, final appointments, legal penalty, as well as the recognition of competent authorities is easily recognized, which has already been disputed before the law has been approved.

More importantly, the mentioned bans in the law of combating the trafficking of goods and currencies, includes the illegal buy and sell in cyberspace. What is inferred from the letter of the law is that the emphasis of the law prohibition on the ban due to the absence of legal formalities, and so it doesn't matter whether this is done in the cyberspace or the real space. What is important is that the drugs and pharmaceutical products, supplements, requirements and medical equipment are classified into banned goods and committing it at any point in the country either in cyberspace or in any other way is considered an offence.

- **The Islamic Penal law 2013**

According to articles 36 and 109 law of Islamic penal code effective 1392, goods and currency are examples of economic offences. Article 57 of the law on combating trafficking of goods and currencies approved in 1392 also states “trafficking of goods and currencies is an example of economic offence”. The economic offence oversees the acts committed against the public and state economic system in such a way that the

disruption of the monetary and banking system will lead to the disruption of country. ^[14] Of course, like some other terms with the origin of criminology, it still has no legal definition, and the mentioned law only in Article 36 suffices the items which are considered as economic offence which include: customs offenses, smuggling of goods and currency and..., in the meantime, the purpose of customs offenses is not clear, and it seems that there is no exemption from customs smuggling, which is an independent case of economic offences.

In addition, one of the conflicts that always surrounds economic offence is its definition. Therefore, trafficking including drug trafficking, as referred to in Article 109 of the same law, are not subject to time limits and are also documented in paragraph 47 of Article 47 of the same law, provided that the value of the IRR of pharmaceutical products, supplements, supplies and medical equipment is more than one hundred million it will not be subject to postponement or suspension, and consequently the issue of suspension will be negative proposition because of its subject being non-existing.

5- Analysis of punishments

This study investigates the penalties for buying and selling fake drugs in cyberspace. As noted, there are several rules in the field of drug sales and drug trafficking, which is not necessarily about cyberspace, but it has the capability to spread to the cyberspace.

Imprisonment

In some cases, imprisonment penalty has been established for buying and selling drugs. For example, Clause “A” Article 36 of the governmental penal code for Health and medical affairs 1998 on sale or distribution of food, drinking, cosmetic and sanitary products without a valid manufacturing license, or a permit to enter by distributors and large cooperative companies, one to six-month sentence is foreseen for the manager of these companies.

The imprisonment is among the variety of punishments which has an educative and punitive aspect, it is assumed that in penitentiary the offender's psych is cleansed by tolerating hardship, and he will become a moral and honest person”, which, of course, there is many doubts in its positive influence. The above punishment is for dealing with the sale or distribution of food, drinking, cosmetic and sanitary products without a valid manufacturing license, which can be done in cyberspace or in other forms. In any case, the emphasis on the sale of cosmetic and sanitary items without a valid manufacturing license emphasizes that it may be done in various ways both in the Internet or out of it.

Financial punishments

This type of punishment provides for a major portion of the penalties for health, drug and drug offenses in the government's law of imprisonment. In general, in most cases where the perpetrator of an offence is motivated to pursue the purpose of abusing individuals, a punitive fine is foreseen. In addition, in most cases where the offense is related to the production, distribution, or preservation of corrupt goods, past expiry date, unpardonable, fraudulent or unauthorized, the penalty for seizure and confiscation of property is stipulated.

The punishment of financial offences for the distribution and maintenance of corrupt, the expired, unsanitary, false, or unauthorized use of such offences can be spread across the cyberspace. The legislator has not addressed the offences and therefore it can include the distribution and maintenance of the corrupt, expired, unsanitary, fake, or illegal goods in cyberspace. It seems that the use of pecuniary punishment in health, therapeutic and medicinal offences rather than prison punishment is an advantage: firstly, the selection of pecuniary punishment for those who have committed an offence instead of imprisonment which is usually an offence, prevents the ruin and corruption of offenders. In addition, instead of imposing a huge charge on the state, it is in the interest of the state treasury. Secondly, the sentence of imprisonment for those who have been repeatedly convicted of offence and imprisonment have no intimidating effect and pecuniary punishment is more intimidating, though imprisonment keeps its imitating aspect for rich and wealthy people and this is one of the disadvantages of pecuniary punishment. The third advantage of a criminal fine on imprisonment is that this punishment is generally compatible with the type of offence, especially in offences that profit and wealth accumulation is the sole motive of the offender, while the imprisonment is not always proportional to the severity of economic and financial offences.

If the legislator determines the amount of cash penalty fixed at the minimum and maximum, this type of fine is a fixed penalty. For example, according to Article 18 of the government penalty law of health and of medical affairs of 1998, the provision of an arbitrator without a prescription by the pharmacy causes a fine of up to fifty thousand IRR.

seizure of goods

By this punishment which is a mild type of financial penalty, the relevant goods are counterfeited in the favor of government, but the price is paid to the person. For example, in accordance with Article 27 of the Law on governmental penal code of Health and Medical Services, 1987, in case the companies distributing supplies and Medical and dental laboratories are involved in the offense under article 27 (non-supply of medical and dental equipment at the official price), the producer or importer at first time are sentenced with the seizure of goods in favor of the government and paid at the official price to the said company.¹¹⁵ In most cases, the offender is not compensated for the seizure of goods; for example, in aforementioned offence (paragraph 27), the offender shall be sentenced to seizure of goods in favor of the state for the second time. In this type of offence, the method of commitment of offence has not been referred, and so can also apply to cyberspace.

Prohibition of employment or occupation or profession

This type of punishment is also divided into different forms, such as the closing down of business: such as permanent close down of the pharmacy (Article 13 of the constitutional government of health care) and a temporary closed - up pharmacy (Article 17 of the same rule) or the closing down of the medical institution (Article 1 and 2) is applied.

Some punishments for health, medical, and drug offenses are in the government's law of honor and are used to scare offenders. The following examples are examples of this type of punishment.

- **Announcement of name in the press:**

the punishment is predicted as a supplementary punishment for the establishment of unauthorized medical institutions (the subject matter of a suspended state penal code).

- **Fabric installation on site:**

such as the mass selling of health and beauty cosmetics, baby milk and baby food by the pharmacy (subject to Article 22 of the above law).

- **Introducing through mass media:**

such as announcing the name of the perpetrator as a large seller of mass media in a mass-scale offence (Article 22 of the above law).

In addition to the penalties applied in all sorts of health, therapeutic and medicinal offences, some other disciplinary and preventive measures are being implemented, which is included in the governmental penal law 1994, which is used as a reminder, warning, written pledge, record in file and so on. These measures, which are usually predicted by the first time of committing the offences, are to prevent delinquency while other penalties are imposed on the offender in case of repeating offense.

In "the governmental penal code of health and medical Affairs" 1988, for most of the offences contained in it, there is a range of penalties, including written warning, note of written commitment, record in file and a written reprimand, which will be deleted under the provision of article articles of governmental penal code", warning, notification and written pledge were removed. Therefore, other penalties apply in cases where the aforementioned levels have been predicted as punishment for the commission of health, drug and drug offenses in the first or second order.

- **mitigation and aggravation of punishments**

Article 22 of the Islamic Penal Code provides for the reduction of punishment: the court may, in the event of an imprisonment, reduce the punishment or deterrence, or convert it into a punishment of another type that is more appropriately accused, the following are:

According to this Article, the judge has option in many cases in order to reduce the punishment and he can use the appropriate tool to match the penalties to the particular situation of each case. It is worth mentioning in the foregoing that the application of the qualifications of the defendant exclusively within the scope of the offenses is punishable by imprisonment and deterrence, and the judge is in favor of the application or non-application of this discount. There is also no limitation on the amount of discounts in this article, and therefore this article is used so that the court can reduce the punishment to less than the minimum legal. However, he cannot, however, exempt the offender from the penalty. Because the health offences in Iran's penal codes, in particular, in the government's statute of law, cannot be passed, it is a matter of public concern.

However, in some health, therapeutic and medical offences, a special restriction for commutation of the sentence is considered, e. g., article 18 of the law on the regulations of drug and drug and food and drink; "If the court considers the causes for commutation of the penalty, it can be reduced to half the punishment case, in case of criminal penalties, one degree, and in other cases."

But in some cases, the legislator in terms of importance and the dangerous degree of action committed to the community or because of repeating the offence by a criminal constitutes a defined punishment.

In a way that causes the aggravation of punishment, Article 48 of the Islamic Penal Code states that "every person shall be sentenced to terms of imprisonment or imprisonment under penalty of the court, if after the execution of the sentence it can be punishable by imprisonment or restraint," if it is observed that the detention will be handed down to the judge if necessary, and the courts can either tighten the penalty or prevent if necessary. the significant point in the rule of rule is that the legislator in all offences of this law has been punishable by special punishment in order to repeat the offences in such a way that punishment is more severe than ever before. The judge, however, could further aggravate the punishment, citing Article 48 of the Islamic Penal Code. in order to repeat the offence, only for the second or fourth order of punishment and for committing the next generation, it is not an unexpected punishment. Although this point seems to be one of the shortcomings of the law, the judge can make up to some extent by using Article 48 of the Islamic Penal Code.

On the other hand, in some offences concerning health, treatment and drug due to the danger of criminal actions, more severe punishment have been considered for perpetrators. For example, in the Clause "z" of Article 18, "the law relating to the act of drug and medical affairs and the provisions of food and beverages" 1955 about drug frauds we have: in case of fraud in "serum, vaccine or antibiotic and/or foodstuff for babies, the offenders shall be sentenced for the above offences."

Conclusion

The present study addresses this question: what is the criminal law approach towards drug sale in cyberspace? the results showed that the criminal law approach in illegal or fake drug sales is rigid and different types of imprisonment, fines and confiscation of pharmacy licenses are considered. However as for online sales, the legislature is silent. Pharmacies can sell or even advertise the medical food products as a supplement in websites and cyberspaces. In the criminal law of Iran, the sale of drugs in cyberspace is not criminalized, and according to the principle of legality of offenses and penalties, Internet sales are not prohibited. Given the widespread role of the Internet and cyberspace in the life of the community, it seems better for the legislator to provide the conditions for online drug sales. Because as pharmacies under the circumstances and under the supervision of the technical authority have found the possibility of online sales of supplements and non-medicated items, they

can also sell the drug online by legislating by clear directives. Regarding the purchase and sale of drugs by agents other than licensed farms, the measure is also considered as drug trafficking, and the legislator has considered various penalties that could be extended to drug trafficking in cyberspace.

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