



Analysis of awareness and attention in Article 290 of the Islamic Penal Code approved in 2013

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Abstract

One of the important elements of intentional homicide is the psychological element. In fact, distinguishing intentional from unintentional murder is in their psychological element, which has various components, such as general malicious intent in the behavior or the intention of the intentional act in the result or the intention of the result. In Iranian criminal law, in addition to the element of "intention", the legislator has accepted "awareness and attention" as a rule of psychological element in intentional crimes only in typically lethal behaviors; In such a way that the lack of any of these two causes the non-compliance of the committed behavior with the title of intentional murder and as a result of its other forms. Each of these two has its own meaning; Awareness means inherent or acquired knowledge of an action that typically or personally or with regard to the prevailing circumstances causes murder, and attention is directed to the perpetrator at a certain time and place. The existence of awareness is not the proof of the existence of attention, and attention is not the proof of the existence of consciousness. The present article, while explaining the spiritual element of intentional homicide, considers awareness and attention as the most important and basic components of the spiritual element of intentional homicide, as well as the place and role of knowledge and will in realizing it. It analyzes intentional murder and its different stages.

Key words: intentional murder; spiritual element; intention; awareness and attention.

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Introduction

The psychological element in criminal law has resulted from a historical necessity. In fact, the psychological element in the process of imposing and determining criminal liability has been a human and rational reaction to a human issue and problem.

Before the emergence of this element, there was almost no noticeable difference in terms of the purpose, basis and structure of civil and criminal responsibility; But with the understanding of this importance, criminal responsibility was shown to be distinct and different.

This difference, for example, has been justified in the expressions of some jurists in this way. Dr. Mohammad Bahri says in his book on page 198:

"In civil fault, the obligation of the person to whom the compensation is documented to compensate it is never against justice; Because in any case, the damage that has occurred must be borne by a person, and the first thing is that this person is the one to whom the damage and compensation are documented in some way.

In this section, the civil rules actually determine the property relationship and determine from which property the damage should be deducted (paid), and it is obvious that the appropriate justice is to deduct the damaged property from the property owned by the owner. The damage must be compensated in a

documented way. But in the case of criminal guilt, the ability to refer to a material criminal act to a person is not enough for the said person to be found guilty. His will must somehow be effective in the criminal act. The effect of the will on the nature of the crime is, in fact, a reflection of the human personality in the criminal act.

In this way, the introduction and necessity of the psychological element in criminal law shows the importance of paying attention to human rights and character and creating restrictions on the irrational ways and reactions of society towards criminals. In other words, the psychological element of the crime is the guarantor of human rights and freedom and prevents the violation of his dignity and distinctive character. Ever since the need to establish the mental element in criminal law has become inevitable, the balance of justice has moved in favor of the accused. Although the legal element is the basis for the recognition of the crime; Because until the act of crime is not defined and the legislator does not declare the act as a crime, it is not possible to discuss the other two sides of the crime triangle, but in the crime triangle (material, psychological and legal elements), while verifying the existence of three relationships a specific category is necessary, each of these relationships and elements is important in the territory of a specific criminal category; So that the psychological element is clearly and meaningfully related to the issue of responsibility, and this shows that fault is one of the pillars of responsibility. The psychological element determines whether a person is guilty or not. And if he is guilty, how much punishment should he bear? Because he can be a manager, partner, causer or deputy or have vicarious liability (criminal liability of legal entities).

The psychological element is considered in the sentencing phase and the other in the sentencing phase, and this process makes decision-making difficult and requires scrutiny, research and patience. (Ismail, 2013, criminal responsibility without fault)

One of the most important crimes committed against physical integrity is intentional murder, which has always been blamed in all periods of human life due to its innate ugliness. This can be deduced from the punishment that was determined for this crime.

Verse 32 of Surah Ma'ida has stated the heinousness of murder for this reason: "If someone kills another without the right of retribution or without causing corruption in the land, it is as if he has killed all the people. In this context, Allama Majlisi II says: "A person Killing unjustly is one of the greatest sins.

Depriving the rights and freedom of people who are considered as criminals, in the first step, it is necessary to be able to blame them, and the main basis of this ability is to verify the spiritual element. Weakness in understanding this issue and ultimately the verdict to convict or acquit people is one of the problems that our judicial system is dealing with, the root of which should be sought in research and education.

The psychological component is the relationship between the criminal and the crime, and accordingly, the criminal reaction of the crime is affected by this relationship. The existence of intentional and unintentional meanings as attributes of crimes is completely dependent on the existence of the psychological component and the examination of this element. Of course, committing a criminal act does not in itself cause mental illness, and in some cases, even though a criminal act is committed, the law does not consider the perpetrator to be prosecuted due to the lack of criminal intent or criminal responsibility; Because every human being bears the consequences of a crime committed out of understanding, choice, will, and intention, and the perpetrator is considered responsible for the poison only if he has the ability and competence to understand his actions and behavior. In other words, he should be able to understand the nature of his actions and situations, check the consequences of his actions and have the ability to control his behavior.

In Article 292 of the Islamic Penal Code approved in 2012, crimes are generally divided into three types: intentional, quasi-intentional, and pure error. In describing intentional crimes, the legislator has taken into account some changes and tried to smooth out those cases that had gaps in the previous law. Among these things is awareness.

The aim of the current study is to answer the following questions: 1- What is meant by psychological element in intentional murder in Iranian law? 2- What is meant by knowledge and care in Article 290 of the Islamic Penal Code?

The meaning of the psychological element in intentional homicide in Iranian law is awareness and attention to the subject of the crime, the intention of the act and the intention of the result. Despite the fact that the act is typically fatal, intentional homicide is not realized without the intention of the act towards the victim. Also, all voluntary behaviors are basically intentional behaviors; Because the will does not come into existence except with consciousness and awareness and by imagining an action and commanding the mind to commit it by the members.

Research method

The current research method is descriptive.

Concepts

Psychological element

Intentional murder is one of the crimes for which it is not enough to have a material action in the outside world, which is called the crime, but the act committed must be the result of the conscious will of the perpetrator or at least it can be inferred from his action.

The psychological element is called the mental interactions of the perpetrator during the crime. The spiritual (psychological) element of intentional murder includes two factors: general sunnah, specific sunnah. General sunnah can be considered equal to the demand for action, and special sunnah is equal to the demand for the result. In the definition of general sunnah, it is stated: the perpetrator knows that the law forbids it", or "a person's conscious will to commit a criminal act"

Intentional homicide

Intentional crimes against members' lives and interests that lead to death

Will

Will is considered as a basis in any type of criminal guilt. Criminal law understands will as something that knowledge has identified. Will in criminal law is a kind of sensual act combined with consciousness, which is the direct origin of criminal behavior, both the act and omission, and in all crimes, this sensual process (existence of will) is necessary. A component of the psychological element is will. Will plays a role in both material and psychological elements. The influence of the will in the psychological element precedes the will in the material element. When the human body and parts are put to the service of the will, intense desire (following which the human nervous and physical system is used) arises.

This element is an important feature and indicator in humans. Man is the only creature that has a will, and his behavior is caused by his own will. Human behaviors are always voluntary; Unless it is proven that it is involuntary. Will is one of the terms that is used a lot in philosophy, law and psychology.

In different cultures, wanting, demanding, loving, sincerity, request, desire, song, taste, and livelihood are synonyms of will. It has also been said that will is an attribute that creates a special state in a person. In fact, will belongs to perishable things. In Surah Yasin verse 82, the will belongs to something that is eternal, and the will is the source of its existence.

The will is to convince the ego. Some have said that will means "the inclination of the soul and its desires to the present and the knowledge is against them" and the meaning of inclination is desire and desire; It means love and intention.

Some have stated levels for will. For example, it has been said that the first manifestation of will is desire, and then, in order, lust, love, passion (ultimate attachment), love, grama (fascination that dominates the human body), love, wood, and the ultimate will is "love". In psychology and psychoanalysis, it has been

stated as follows: " "The meaning of volitional act is that act which is issued by a person after reflection for a specific and known purpose."

In the instinctive verb, the subject is not known to have reflection and discretion in his work; But in the volitional verb, its subject is known. Reflection means thinking and balancing profit and loss. Some psychologists have stated four stages in the will:

1. The stage of imagination (an image of that work or behavior is definitely created in the person's mind).
2. Reflection stage (thinking about that image). The initial decision stage is related to the principle of behavior. At this stage, the profit and loss of committing the act is measured.
3. The stage of determination or final decision (definitive decision). When a person reaches this stage, he actually wants to implement it.
4. Implementation stage (Article 41 of the Islamic Penal Code).

Criminal intent is discussed in criminal law. Most psychologists believe that will is the result of human mental and intellectual actions. The will is purposeful and directed, which is called "criminal will" (Abdolahi, Ismail, 2013, criminal liability without fault)

Consciousness

In the word, it means "news, information, knowledge, knowledge". In the term, it is an attribute of people who have come out of ignorance about a subject and have been informed about it. Some jurists consider the awareness of the perpetrator to be superior to the action that actually causes the crime. Sahib Jawaharlal states in the statement of intentional murder: "It is done with the intention of the wisest to kill unjustly, but often with the intention of killing, and with the intention of multiplying, it often kills knowingly."

The concept of Awareness

What did the legislator mean by awareness? Several hypotheses can be stated in this area:

First; Awareness of the sentence is intended, meaning awareness of the criminality of the committed act and awareness of the punishment of the committed act.

Second; The meaning of awareness is awareness of the subject. That is, the perpetrator must be aware of the material element of the crime, the absence of which causes the spiritual (psychological) element to weaken.

attention

The irrevocable death penalty for intentional murder has caused the legislator to consider aspects in order to exclude those who have the least impact on their psychological element from its scope, which is well seen in the law. Attention in the word means: "turning, giving heart, turning" in the term attention, it is expressed to a person who concentrates his intelligence and senses on a specific matter and performs the desired action with an ability that this It is a step beyond awareness. Due to the fact that unlike awareness, attention also has an external appearance and is not only dedicated to mental matters.

The connection between awareness and attention

In criminal law, the meaning of awareness and attention is not so far from the literal meaning, but it is clear and obvious that the legislator of our country has distinguished between awareness and attention; A topic that researchers have not mentioned in the books and articles that prove the human psyche, such as the research done in the field of psychology, or at least they have considered it very difficult to distinguish between the two. What is meant by awareness is the subject's knowledge of both the nature and consequences of criminal behavior and It is illegal. The meaning of attention is the renunciation of the human mind in a clear time and place to a matter that can include two points of view, i.e. obtaining or not obtaining awareness of that matter. The placement of the two words aware and notice in the law together,

It brings to mind the doubt of emphasis; That is, the legislator has put these two words together just to emphasize the knowledge of the perpetrator.

"Awareness" "Attention"

In Iranian criminal law, various assumptions can be considered for the attention element:

First; Due to the fact that attention is placed next to awareness, it can be said that the awareness of the action is actually fatal and the attention is related to the effects and consequences of the committed action.

Second; Paying attention refers to the fact that the perpetrator, in addition to doing an act with the knowledge that it usually causes a crime, should also pay attention to the fact that his act involves a human being; For example, the perpetrator knows that the food is poisonous and deadly.

third; The intention of paying attention is that the perpetrator pays attention personally while doing an act that only causes a crime or something similar; It means that he should be aware of his work and his intelligence and senses should be focused in his actions and he should be in a dominant way.

In the case of awareness and attention, the kind of symmetry that is in the first rule of the spiritual (psychological) element of intentional homicide is not necessary. In other words, awareness and attention are sufficient even if they exist before the deadly act.

The psychological element of intentional homicide

Intentional murder is one of the crimes that, for its realization, it is not enough just to have a material action in the outside world, which is called the element of the crime, but the committed act must be the result of the conscious will of the perpetrator, or at least it should be perceived as such from his action. For this reason, it can be emphasized that the basis of this element of crime is the will

In Iranian law, in general, special malice in intentional murder, according to what some jurists have pointed out, can be considered as a combination of two rules (Pourbafrani, 2018: 461). It is read directly or explicitly. The second rule, which is also the main topic of this article, is mentioned in paragraphs b and p of article 290 and the note of article 292, which is the implied malice.

7. Components of the mental element of intentional murder

In intentional crimes, including intentional murder, the spiritual element of the perpetrator includes knowledge or awareness, the will to commit, and the will to result or criminal intent, which we will explain each one.

Knowledge

Knowledge in the word means knowing, making sure and knowledge [25]. Knowledge as a synonym of knowledge is also mentioned in the meaning of knowledge, knowledge, information and news. From the point of view of some scientists, knowledge is one of the qualities of the soul that everyone finds it in themselves, therefore, just as everyone knows pleasure, pain, hunger and What does thirst mean, he also understands the meaning of knowledge. Regarding the role of knowledge in the structure of criminal intent, some jurists have divided knowledge and awareness of the criminal event into three categories, and understanding these three stages can be effective in explaining criminal intent. According to this point of view, the first type of knowledge and awareness is real and actual knowledge. The next stage, which can be considered as deliberate ignoring, is realized when the accused deliberately closes his eyes to awareness. The third state of knowledge and awareness is credit knowledge, which is expressed by the phrase "he should not have known", this knowledge is never in the real sense; Rather, it only means that the accused actually had the way to reach awareness.

The role of will in the psychological element

The will plays a role in the material and psychological element. Will plays a role in the psychological element when a person has imagined and thought about the behavior he wants to do and wants it (has found a strong desire for it). And it has a role in the material element when it belongs to a specific behavior. We

usually distinguish the will towards the material element before the will over the mental element; That is, when a person performs a behavior, we believe that it is voluntary and because the behavior is a part of the material element; So we find the will. Therefore, we recognize the intentionality of the behavior within the limits of how a person is involved in a certain behavior; But scientifically, not practically, the will is primarily in the realm of the psychological element that is created and is a trigger for the occurrence of a criminal act or omission. In other words, from the point of view of criminal law, the will goes through two stages: one is the stage of sensual, psychological and internal desire (will in the psychological element) and the other is the stage of guiding and controlling the organs and organs that have objective and external aspects that This will is in the material element.

These two stages, one is imagining and visualizing something in the mind and psychologically specific attachment, and the other is determining this will in an external behavior. So the will continues to the end of the behavior. The will continues to guide and control the organs and organs in the direction of a behavior, which can be divided into two stages: psychological and material (external).

With the above explanations, the will is necessary to commit any crime (both intentional and unintentional); But intentional and unintentional crimes are different in terms of other components. That is, if the will is accompanied by awareness, the crime is intentional; But if the will is combined with a criminal offense, which is often in the form of a wrongful behavior, the crime is unintentional.

Grading of knowledge (knowledge)

1) Actual knowledge: In this level of knowledge, a person is considered dogmatically and definitively aware of specific events and conditions.

2) Voluntary recklessness: which is comparable to the culpable ignorance of jurisprudence; It means that a person has the means of knowledge and acquiring knowledge; But don't use it intentionally. For example, someone sees that he is near a precipice, closes his eyes and drops the child in his hand. Or issuing a check immediately knowing that there is no balance in the account.

3) Implied or implied knowledge: This knowledge is when a person refuses to do careful and reasonable investigations to obtain knowledge. In such situations, knowledge in a person is neither real knowledge nor voluntary recklessness; Rather, he has refused to do the reasonable behavior that is expected of a reasonable person. Like looking at a gun to make sure it is loaded or empty. Therefore, in the provisions of the knowledge, it is predicted in different ways and it shows the intentional truth of a crime, and the way of verifying it is different. Often, the verification of knowledge is subjective; Because achieving the intention, which is a subjective category, is subjective; Unless the legislator has made an exception and considers it intentional, which does not require proof of knowledge and intent. Legislators do not always place the verification of knowledge according to external facts, but sometimes they place it subjectively, such as the use of weapons and typically lethal behavior, which, naturally, in such cases, the claim that a person was not a scientist is not accepted.

3. Criminal offense:

One of the components of the psychological element is a criminal offense that is not defined in the law and only its examples are discussed. A criminal offense is actually a wrongful behavior that includes a material element and a psychological element. Compared to malice or intent, criminal wrong is based on inattention to the possibility of injuries and damages that exist in the prohibited criminal behavior and the person refuses to pay attention and predict them. In our regulations, various headings are provided to explain the criminal offense. including carelessness, impudence, lack of skill and non-observance of government regulations, neglect, indulgence, etc. or even though he predicted it, he ignored it with indifference and indifference. The standard for error detection and evaluation is common practice, and a type or objective evaluation is the criterion.

Ruling 4787-21/8/1329 of the Supreme Criminal Court of Judiciary states: "The subject of the punishment stipulated in Article 177 of the General Penal Law is unintentional murder, whether it is due to carelessness,

impudence, lack of skill, and non-compliance with the rules. state has happened and distinguishing these characteristics is based on custom and habit.

a) Carelessness:

One example of a criminal offense is carelessness. Carelessness is a mistake that a prudent person does not commit; because he predicts the consequences and results of his work in the conditions of action, and this result itself is naturally predictable and is not far from expected. Therefore, a cautious person does not have a mental vacuum; But a careless person, in a state of mental vacuum, willfully commit harmful behavior. The criterion for diagnosing carelessness is whether the action occurred at a certain time and place and under certain conditions was supernaturally predictable or not. Of course, the diagnosis of carelessness in many cases is the responsibility of the expert, and the expert must declare whether this person has met the necessary criteria or not.

b). carelessness:

Recklessness is equivalent to negligence, and definitions such as forbearance, brevity, carelessness, negligence, and carelessness are also used as its synonyms. In the term, impatience is carelessness in the verb form (in impatience, we intend to act, but no action is taken). The way carelessness occurs is the opposite of arrogance. Carelessness is reflected in a positive behavior; But carelessness manifests itself in a behavior that was expected and not. Like a nurse who, according to the doctor's order, should give an injection to the patient at a certain time, but she didn't. Or not having a chain for the driver in some seasons of the year.

Some jurists believe that there are two forms of negligence. For example, Dr. Pod states:

"Recklessness may firstly happen in such a way that the perpetrator does not foresee the results and consequences of his action, which were normally expected according to the circumstances, or does not exercise the necessary caution, or the perpetrator does not foresee the consequences. predicts; But for some reason, he ignores them or, due to lack of sufficient knowledge or necessary skills, he imagines that the predictable result will not be achieved (1. Lack of prediction, 2. Lack of attention).

In the note of Article 8 regarding the Law on Disruptors in Iran's Oil Industries, contrary to usual, a distinction has been made between carelessness and negligence, and in fact, it has mistakenly defined carelessness as carelessness. Accordingly, a distinction has been made between these two.

c) lack of skills:

Lack of skill may be based on material or spiritual origin. The lack of material (physical) skill is caused by not having enough agility, skill and practice in things that require skill, skill and enough practice, such as driving and shooting. The lack of spiritual skill is caused by absolute or relative ignorance in certain matters or professions, such as the mistake of inexperienced and uneducated engineers.

d) Failure to comply with government systems:

The meaning of this title is any type of law, regulation, approval letter and section letters that are general and governmental. Some have a general aspect, such as the traffic regulations, and some are related to specific classes or classes or specific individuals, such as doctors, lawyers, judges, manufacturers, etc.

These are general regulations. A person joins these and is evaluated in the framework of these. The criterion of the correctness of a person's action is to act correctly in relation to these systems. Therefore, regardless of the individual's mentality and considerations, these regulations are considered and evaluated in his case. Of course, there are also a series of special defenses, based on these defenses, the presumption of the perpetrator's guilt (presumed guilt) is removed. such as the general defense of emergency and the special defense of necessary effort in order to implement the regulations.

Failure to comply with government systems alone is considered and evaluated as sufficient for the perpetrator's responsibility. Of course, there are also a series of special defenses, based on these defenses,

the presumption of the perpetrator's guilt (presumed guilt) is removed. Such as the general defense of emergency and the special defense of diligence necessary for the implementation of regulations.

Failure to comply with government regulations alone is sufficient for the perpetrator's responsibility, and it is not necessary to prove his carelessness or recklessness; Because the basis of his guilt is non-observance of the rules, not carelessness or impudence.

Note:

In intentional crimes, the relationship between the perpetrator and the crime is a definite relationship (both in relation to the nature of the crime and in relation to the effects and results and consequences of the crime). Therefore, in such crimes, a person is accused based on his knowledge and belief or based on what he should have known. One of the laws that use the terms well is the Law on Punishment of Armed Forces Crimes. In non-intentional crimes, it is not a matter of awareness or the requirement to be aware; The issue is prediction and non-prediction, attention and inattention; Therefore, the relationship between the perpetrator and the crime is not a definite relationship. In his opinion, everything is in the veil of probability and the attribution of crime to a person is based on these possibilities. Liability based on probabilities is within conventional limits; That is, the probability is placed in the framework of a standard in which the average or average behavior is considered; Not a high standard or a poor standard.

Knowledge of the subject

Knowledge of the subject means the perpetrator's knowledge of the elements, nature, conditions and qualities that the legislator has determined in the law and the legislator in Article 290 has specified it. In the same way, ignorance of it while ignorance of real and basic elements will be effective. In intentional murder, the meaning of knowledge of the subject is five things: 1- Knowledge of human existence, 2- Knowledge of the victim's survival, 3- Knowledge of the lethal nature of his behavior, 4- Knowledge of the victim's physical condition, 5- Knowledge of the situation. Place and time. We will examine each one:

Iran's legislator regarding the conditionality of knowledge of the subject until the approval of the Q.M.A. Approved in 2012, it did not have an explicit text except for expressions such as "knowingly and intentionally" and "from knowledge and awareness" and specifying knowledge of the subject and sentence in some intentional crimes; But in the aforementioned law, he determined his position regarding the differences of opinions of jurists that it is one of the elements and conditions of intentional crime. In this regard, Article 144 of the said law says: "In the realization of intentional crimes, in addition to the perpetrator's knowledge of the subject of the crime, his intention in committing criminal behavior must be verified...".

It is necessary to pay attention to this issue, although according to Article 292 of the Islamic Penal Code, "murder while asleep and unconscious and the like" and also "a crime in which the perpetrator has neither the intention of committing a crime against Majnia Aliah nor the intention of offending him such as when he releases an arrow with the intention of hunting and it hits a person" is considered a pure mistake, but the note of the same article contains the words: "When the perpetrator is aware and aware that his action usually causes a crime to others, it is considered an intentional crime." And this shows the legislator's more attention to the issue of knowledge and awareness in the realization of intentional murder.

The rule of doing is that the perpetrator is neither intentional in his behavior nor in his intention. In this type of crime, the perpetrator is wrong both in his behavior and in his intention; For this reason, it is considered a pure error.

One of the innovations of the Islamic Penal Code of 2012 regarding pure error is the departure from the conventional boundaries of pure error. including this

The note on paragraph "P" means that the mere lack of intention to result, the lack of intention of the act towards the victim, and the lack of fault, are sufficient for being a pure mistake if the perpetrator is not aware and aware that his action usually causes a crime to others. Otherwise, if he knows that such an action usually causes a crime to another, it is an intentional crime

The legislator refers to this subject in paragraph "P" of Article 291 of Q.A. that:

"When the crime is committed due to the fault of the perpetrator, provided that the committed crime or similar is not included in the definition of intentional crime". It is considered a quasi-intentional crime and in paragraph c of article 292, "a crime in which the perpetrator does not intend to commit a crime against the victim, nor does he intend to harm the victim, such as shooting an arrow with the intention of hunting and it hits a person. ». However, the note of Article 292 "...if the perpetrator is aware and aware that his action usually causes a crime against another, it is considered an intentional crime", is highly criticizable and is not acceptable.

Conclusion

Examining the three elements of crime helps us to understand the nature of crimes. Intentional murder is one of the most important crimes, the investigation of its elements, especially the psychological component, is essential. In the psychological element of intentional murder, will, knowledge, general malice, specific malice and motive are discussed. Basically, crimes that are absolute require general malice in the psychological element, and crimes that are tied to the result, in addition to the intent of the act, also need the intent of the result, and intentional murder is one of the last-mentioned crimes. The criterion of intentionality of murder in Iranian law is stated in four clauses in the Islamic Penal Code approved in 1392. The jurists and jurists refer to the criteria listed in paragraph "A" as "express or initial intent" and the criteria listed in paragraphs "B, C, and P" as "implicit or secondary intent." The Islamic Penal Code approved in 1392, although compared to the previous laws approved in 1370, has had innovations that were mentioned in the text of the article, but it still has shortcomings, which the current research proposes to provide mechanisms to complete and improve this law, including:

1- The appearance of Article 290 indicates that intentional homicide is realized only by means of a positive material act, while the possibility of realizing intentional homicide by omitting the act is agreed upon by jurists and jurists, and Article 295 of the same law also mentions it.

2- In the criminal laws, the legislator did not explicitly and clearly mention the need for the crime to occur; While the determination of intent in a crime depends on the "intention of the act" on the part of the victim.

3- Voluntariness of the behavior and its necessity are not explicitly included in a specific article in this law, but the examples and concepts of articles 502, 503 and 530 B.C. A. It implicitly confirms the necessity of intentional behavior of the perpetrator in the crime of intentional homicide. 4- In most of the legal systems of the world and even in Islamic countries, despite adhering to Sharia rules, they distinguish between murder with prior decision and murder without prior decision, and murder without They have considered the decision as an unintentional murder; While in the Islamic Penal Law, despite the fact that it was proposed in the third note of Article 290 of the Islamic Penal Law, it was not given attention.

The second rule of the spiritual (psychological) element of intentional homicide in Iranian criminal law is bound to the awareness and attention of the perpetrator. The legislator's support for the second rule of the psychological element of intentional homicide is due to the prevalence of this type of murder compared to the first rule. He has paid special attention to the spiritual (psychological) element of a typically fatal act and for this purpose, he has collected the opinion of two groups of jurists, that is, he has provided the opinion of the jurists who only emphasized on awareness and the opinion of a group which have emphasized attention. The reason for this can be seen as sensitivity to the spiritual (psychological) element in cases of typically fatal acts, because perhaps a person commits a typically fatal act, but his awareness and attention in such a way It is distorted and in these cases he does not deserve to be treated as an intentional murderer. Considering these two conditions, the scope of deliberate murder is reduced, which is our acceptable action

Awareness is a person's awareness of the fact that the committed act usually leads to murder, but only awareness cannot be used to judge

He committed intentional murder, but in addition to that, the perpetrator must also be aware of his work, and what is meant by that is the concentration and control that oversees the perpetrator in such a way that he has the necessary control over his work. Awareness and attention are separate from each other, and each has its own scope. In determining the rule of awareness and attention, if the committed act is one of the examples of a general fatal act, the recognition of awareness and attention is in accordance with the general rule, and in the case of a specific fatal act, it is in accordance with the personal rule. But due to the fact that there is no precise boundary in the law, these two rules coincided with each other, so the mixed rule is the criterion of awareness and attention. There is no symmetry of awareness and attention with a typically fatal act as stated in the first rule of intentional murder, in such a way that if the perpetrator has awareness and attention before the typically lethal act, such as in the cases of sleep and anesthesia of the perpetrator according to the note of Article 292 Although he is asleep or unconscious at the time of committing the act, therefore he does not have awareness and attention, but the previous awareness and attention of the perpetrator will be sufficient. Of course, the same principle of symmetry of awareness and attention with action is typically fatal.

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