



Analysis of the Psychological Element of the Crime in Article 290 of the Islamic Penal Code

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Abstract

One of the main elements of intentional homicide is the spiritual or psychological element. In fact, the separation of intentional and non-intentional murder is in their spiritual element, which has different components such as Ahmad's general malice in behavior with the intention of the act and Ahmad's specific malice in the result with the intention of the result. While explaining the spiritual element of intentional homicide, knowledge and will as the most important and mirror elements of the spiritual element of intentional homicide, as well as the place and role of knowledge and will in the realization of intentional homicide and its various divisions, are analyzed. The article concludes that the Islamic Penal Code approved in 2013 has some innovations compared to previous laws, but it still faces shortcomings and the need to pay attention to the abandonment of the act in intentional homicide, specifying the intent of the act committed against the victim as a free person. Intentionality in the crime, the need to pay attention to the intentionality of the perpetrator's behavior in the crime of intentional homicide, as well as the need to distinguish between premeditated murder and premeditated murder, are among the issues that should be considered.

Keywords: spiritual element, intentional murder, typically lethal intent, intentional crime. 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 Baheri 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 personality and creating restrictions on the irrational ways and reactions of society towards criminal people. 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. 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.

The first topic: methods of determining responsibility

At the beginning of the discussion, the question is how the guilt entered the criminal system? To answer this question, first we describe the systems (methods) of criminal responsibility:

- 1- Random liability system
- 2- Absolute liability system
- 3- strict liability system
- 4- Object liability system
- 5- Conditional liability system or based on mental or culpable element (conditional liability system)

1- Accidental liability system

In this system, it is not necessary to establish any kind of causal relationship, whether material, spiritual or psychological, and the person being considered responsible is just an incident or in other words, bad luck. In this way, the evaluation criterion is not the perpetrator; Rather, it is the criterion of your results that happened.

An example in Hammurabi's Law: If an architect builds a house and this house is destroyed due to the weakness of the architectural system and the son of the owner of the house dies there, then the architect's son must be killed. (If it was a girl, the architect's daughter must be killed.). As you can see, there is no logic in this matter. This system cannot be defended today.

2. Absolute liability system (absolute means free of any conditions)

In this way, a person is responsible for all his behavior (both voluntary and involuntary) and no defense is accepted from him; But establishing a kind of purely material relationship is necessary. In this way, there is no difference between humans and animals; But it is better than the previous method; Because it considers the responsibility towards the perpetrator and not another person. But it still doesn't make sense; Because it does not pay attention to the psychological element. In civil rights, the responsibility is almost based on the same. This system is like saying: "Everyone ate a melon, Basti..." It is somewhat more logical than the

previous system; Because the responsibility lies with the perpetrator. The difference between this system and the previous system is that it is not governed by the event and a person is responsible for the result of the action attributed to him.

3. Liability system without fault

This system is a fault system. That is, it is subject to fault; But not the whole fault. In this system, behavior must originate from a healthy and existing will. It is assumed that the fault has quality and quantity; It means it has levels. The reason is that the material element is small. While the material and psychological elements should be examined together, not separately, this type of view (quantitative view) has caused us to associate criminal responsibility with the degree of a person's guilt. This method is used in cases (such as paragraph 2 of Article 206 of the Islamic Penal Code) that if a risk is considered for the individual, a greater risk in the society is eliminated.

Example: The offense of issuing a bad check:

(As long as the relevant account belongs to a person and is empty of money and the person himself has drawn a check, a crime has been committed. A person who has the will to issue a check is assumed to have knowledge, which actually indicates a psychological understanding of his behavior. and finally, such a person is considered guilty. In the no-fault system, the psychological element is required. The difference between this method and the previous method is that The defense system is accepted. The defense of the fault of the third party causes the responsibility to be removed from him.

4. System of objective or objective responsibility

This system is, in fact, a type of fault liability system. Usually, in this way, the material element or parts of the material element, as human behaviors or interactions, have been shown to be conventionally influenced. In this way, the perpetrator is responsible for all intentional acts; Provided that these behaviors cannot be justified on the basis of conventional and reasonable people. Therefore, with the occurrence of a crime, it is clear that a person has not fulfilled his current duties and must be punished. Therefore, with excitement, it is clear that he did not act in his current environment and should be punished. For example, in the case of driving at high speed, we say: it is a violation; Because this speed is not normal.

Here is the only standard for normal human behavior. The similarity of this system to our no-fault liability system is that here, like the no-fault system, it must be voluntary. Its difference from the no-fault liability system is that it is a personal liability system; But in the system of religious responsibility, if a person proves that he did not know, he is still responsible. This method exists in many crimes and is based on the psychological element in the framework of the system. For example, the responsibility of an athlete on the football field is objective.

5. Conditional immunity system

This system is subject to the psychological element in the framework and corresponds to the material element of the crime. Regarding the mental element, the term that is common in legal sources is *mens rea*, which is a Latin term. Based on this, the nature of a behavior is not considered criminal *per se*; Unless it is done with a criminal mind or intention. (has been done with a criminal nature).

Some have objected that the meaning of *mens* is not the same as mind and they say that instead of this word (i.e. psychological element), the term "criminal will" or "blameability" should be used. Some have also used the term "fault condition". It is that in the "wicked mind" *mens* with other concepts such as guilt and the ability to blame, it is that in the "wicked mind" criminal behavior is a manifestation of evil characteristics, but in other concepts, such a characteristic is not needed, but only for this. A person who has participated in a behavior that violates the law is blamed (such as a person who commits mercy killing). We must understand the psychological element in the form of social relations that are implemented.

In a division, crimes can be divided into two categories:

1. True crime, which is a crime in itself, such as murder and robbery.

2. Disciplinary or non-real crimes that have been compiled over time and as a result of social needs, the number of which is much more than real crimes. For example: illegal fishing, crimes related to satellites, etc.

The understanding that is about real crimes is a global and social understanding. However, the understanding of non-real or disciplinary crimes varies according to time and place, and there is no uniform understanding of it in the world.

Guilt is an integral part of real crimes; Because the basis for the appearance of the psychological element is an individual, moral and humanitarian basis, in which the rights of the accused are more respected

There are two different understandings of the element of fault:

1. For each crime, put a quality of guilt that does not have at least two maxima. Meanwhile, we do not have a person who is more guilty or less guilty.

2. Let's look at fault as elements or components, that is, fault is a structure that has components, each of which has its own place, and none of them can replace the other, and in totality, these components form fault, which It can have levels (will, knowledge, intent, criminal error) called full culpability crime. Like theft and fraud. But if a crime does not require all the components of the fault element and the legislator has modified it or replaced something with something else, we say it is a criminal offense; That is, it does not need all the elements and components of the psychological element. For example, in the crime of insult, it is enough to prove that the insult was done on purpose, and there is no need to see whether the insulter had knowledge or intention. It is enough to prove that the person insulted on purpose and while he was not asleep or drunk.

3. The second topic: the evolution of the psychological element

In order to know how ambiguous the composition of the psychological element is, it is necessary to study legal works. Many sources have been studied and it has been determined that this term has seen significant changes in terms of concept and content. The terms used in this field are diverse and have different literature, which can be mentioned as the following common ones:

1. Mental element (mens rea or mental element)

2. Specific state of mind

3. Culpability

4. Blameworthy thinness

5. fault

This variety of interpretations shows the inconsistent perception and recognition of the rights of the scholar; So that, for example, in two books where the phrase "special mental state" is used, one considers it to include intention, knowledge, and indifference; While in the other work, in addition to these, neglect is also considered as a kind of mental state and includes the psychological element.

Neglect is mental emptiness. It means that a person must have paid attention to something; But he did not pay attention and the person does not have an idea of the subject in his mind. This term has an existential and affirmative aspect, not a non-existent and negative one.

In this way and by summarizing the information about the concept of psychological element, the following assumptions can be stated:

1. Psychological element means a special state of mind (evil in the traditional sense) and includes criminal intent and indifference and blameworthy in the new sense, and in addition, includes negligence in committing a crime.

2. The psychological element means criminality or the ability to blame morally, which thus, negligence in committing a crime is a departure from it and is considered as an independent indicator within it (in Clarkson's book p. 52 and...) "The ability to Negligence has a conventional meaning.

3. The psychological element in the traditional concept and application as a kind of psychological state or way of thinking and exclusively including criminal stature and indifference in the new application as a condition of guilt and including negligence.

4. In order to avoid ambiguity, instead of analyzing the concept and content of the psychological element as one of the elements of criminal responsibility, some have used the general term blameworthiness and one of its indicators and variables is the psychological element including intention, knowledge and indifference. And they neglected another indicator; That is, they put the psychological element apart from negligence.

5. Some others consider the psychological element to be synonymous with guilt or criminality and include all examples of wrongful behavior such as intention, knowledge, indifference and negligence.

The above assumptions express the fact that only words and phrases are not enough to explain some concepts and phenomena; Rather, if individual tastes and mentalities can be intervened in this regard, the uncertainty will increase.

It seems that the different and scattered knowledge of lawyers in the field of psychological element is caused by the difference between traditional and new perceptions; Because it can be stated that some traditional jurists do not reach an approach other than positive (existential) and limited mental states that include "intention, knowledge and indifference"; Whether they call it "moral blameworthiness", "criminality" and even rarely "guilt"; However, some others who pay attention to the term psychological element according to the time and need, turn and find a new and more realistic understanding of the mental states, either subjectively or objectively, or positively, or negatively, and Finally, it includes all existing and known examples and degrees of the psychological element, such as criminal intent, subjective knowledge, indifference, and negligence. In this regard, the psychological element is often discussed synonymously with the condition or the element of fault. There is no consensus in Persian sources and writings and there are three types of perceptions of guilt.

1-First impression

In some sources, guilt is used in a special sense, and it means the psychological element required in unintentional crimes, i.e. criminal error. Of course, according to the documents of this group, it seems that the said perception is not correct despite its prevalence; Because according to the category used and the fact that a criminal offense is a type of fault, the defect and insufficiency of such an inference is revealed.

2- The second collection

Another opinion related to the element of fault in some sources is that apparently, fault is a combination of psychological element, criminal intent and criminal error and the conditions of criminal responsibility or its preconditions. The precondition of responsibility means that a person is responsible when it is proven that he is human and secondly that he is healthy. Then let's say whether this person is guilty or not.

With careful consideration in these writings, it seems that what is meant by the element of fault is not something equal to the psychological element, but beyond it and even contrary to it. Dr. Parviz Sanei says on pages 306 and 307 of the book of General Criminal Law "In order for the perpetrator of a criminal act to be punished, it is not enough to commit the crime; Because punishments are based on guilt. It means that someone who has committed a crime with the will to commit and criminal intent, must also be at fault.

In the third part of this book (General Penal Law by Parviz Sanei / Adaptation in Islamic Penal Law 1365 by Dr. Faiz) under the heading of responsibility, we will see that: the legislator in some cases, criminal acts that exist with the formation of three elements such as the behavior of a minor, insane and In all these cases, a person commits a complete crime, but because he is innocent, he is not held responsible and is not punished. Let's complete it like this: fault = responsibility + psychological element.

The above-mentioned expressions do not express a single thought; Because on the one hand, based on the initial expressions, fault is considered in the sense of assignability; And on the other hand, in the conclusion, guilt is synonymous with psychological element.

3. The third collection

In this understanding, which seems to be on the same side as the nature of fault, the meaning of fault is its general concept, which means the collection of psychological elements in the form of criminal intent to be punished (criminal responsibility, Volume 1, Mirsaeidi, pp. 106 and 67 onwards). Dr. Ardabili writes on page 233 of his book: "What is called fault in the general sense is either based on intention or based on error." Intention is the psychological element of those crimes that are called intentional crimes, and criminal error is the psychological element of erroneous and non-intentional crimes.

Dr. Bahri also writes in this regard: "The guilt depends on the perpetrator wanting to violate the penal titles and being aware of its nature and quality; therefore, the root of guilt is wanting and knowing (awareness).

Islamic criminal law approach

In Islamic criminal law, the totality of will, knowledge, intention, competence and criminal error are considered as guilt. Based on this, someone is subject to punishment if he has committed a criminal behavior with a criminal offense (sanity and criminal offense) along with appropriate physical and mental conditions. In the Islamic criminal system, there is a broad concept of guilt, which according to some of our own lawyers, this broad concept requires the existence of a mental element and capacity at the time of the crime. "Eligibility" means having understanding and authority. The term that indicates fault in Islamic criminal law is the term "rebellion". In this sense, wrongful behavior (disobedience) as it is raised as a rebellion, will deserve punishment.

There are two forms of rebellion:

1. Through intentionality (criminal intent).
2. Through negligence, which includes the concept of negligence and fault, which is required in non-intentional crimes. Criminal guilt has been discussed in the writings of Arabic-speaking jurists in the concept of "al-khata al-jana'i".

The third issue: the structure of guilt

Today, the most common term to explain the historical concept of the psychological element is the term "guilt". The essence of guilt is "wanting" and "knowing". Establishing guilt in all crimes is one of the basic elements of crime and criminal responsibility, and it is subjective and objective. In the definition of criminal culpability, it can be said that culpability (psychological element) is the intentional, knowing or wrongful commission of a prohibited criminal behavior.

This definition consists of three parts: "will", "awareness" and "criminal error".

1. Will

Will is considered as a basis in any type of criminal guilt. Criminal law understands will as something that science 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 is stated as follows: "The meaning of volitional action 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".

Will from a philosophical and legal point of view

Will from a philosophical perspective

One of the components or essentials of discretion or optional verb is "will". In short, authority means supervision and control that our personality (human ego) can exercise in conflicting situations. Free will is debatable when a person wants to choose between two things and exercise this ability. Young people do not have the possibility to distinguish between things; But when they get this capability, we can put them in optional positions.

Another component of discretion is "power" (discretion has two wings; one is will and the other is power). Therefore, based on these components, the will may belong to something or it may not belong to something due to the weakness or strength of the party. It is said in philosophical books: discretion is the state of a subject who can do the present if he wants to do it and if he doesn't want to, he doesn't do it (optional verb).

"Will" from a legal perspective

The will goes through two psychological and sensual stages and the stage of directing and controlling organic actions or organs. In any case, whether the will has an objective and external aspect (material element) or is viewed from a psychological point of view, the will is seen as a watcher of behavior in both stages: one is an image of something in the mind and a special attachment from the psychological point of view, and the other is the determination of this will. In a foreign behavior:

It has been said that behavior is a muscular movement that is a kind of physical movement and is caused by the use of will. Therefore, the will continues until it actually directs and exercises its sovereignty over behavior. It is at this time that we consider it as a material element, that is, we separate the behavior from the origin of the behavior.

The will is caused by an active and healthy nervous system, which is the origin of behavior, both action and omission. The will of a person towards a behavior is based on principles. Humans and animals share the principle of "interest in pleasures" or the desirable life. This principle can have branches under the title of the principle of "benefit or obtaining benefit" and "avoidance of loss". In this sense, humans and animals have something in common. But at the same time, there are differences between humans and animals in terms of the origin of will. The scope of human benefits and harms is wider than that of animals. As for the animal, it only has a material aspect; But in the case of humans, there is also an immaterial aspect. For example, striving for a sense of curiosity and sacrifice. There are phenomena that have motivation for humans, which may not exist in animals, and animals definitely do not have it. So human wills have wide causes and reasons; But it is limited in animals. Will is not a simple phenomenon. The simplicity of the composition of the will contains the simplicity of the composition of the subject to which the will belongs. In crimes, when it comes to will, this will depends on the behavior that it wants to belong to. For example, in the crime of fraud, which is a complex behavior, the will is also complex. The will is not a phenomenon whose beginning and completion are clearly and reassuringly clear. Sometimes it is in the form of desire and it gradually increases in intensity until it becomes the will that we deal with in the structure of guilt. Sometimes it occurs repeatedly and without precedent and finally, it leads to the occurrence of the verb. Desire is the basic desire that has not reached the strict stage; But the will is a desire that has reached a more intense stage and becomes a very important tool and motivator for creating behavior. The reason for this separation is that in most situations and circumstances, humans may be inclined towards benefits and seek to achieve them; But due to the lack of means or ignorance of the consequences of the work, he refrains from serious will. Therefore, the will, often in strength and weakness, is subject to the power of motivation. It is not acceptable to say that the will does not play a role in the psychological element; Because the support of the psychological element is the same will. Motives do not play a role in criminal liability.

At the beginning of today, we counted the types of human works:

1. Passive behaviors (pure passivity).

In passive actions, the will is not involved and it is done mechanically or with the influence of relevant factors. These actions are also called reflective, passive, reactive, or reflexive actions. Like nervous tics, shivering or jumping when afraid.

2. Normal (everyday) behaviors

These types of behaviors are repeated daily. They are casual and the human psyche is not very visible in them; Although it is in reality and especially with changing conditions, these changes can be seen in behaviors. It acted like changing class hours and changes, but we don't feel that it was voluntary.

3. Voluntary behaviors

This is a behavior that is based on desire. That is, it is based on the deliberation that a person does in his behavior. This behavior is based on the interests and disadvantages of the person.

4. Emergency behaviors

In such behaviors, the will has not followed its natural course. For example, a student sells his books to earn a living. This behavior is caused by imposition; But because it is done with will, it has legal effects. So in emergency work, there is will; That is, they are not involuntary.

5. Compulsive behaviors

This behavior is not preceded by internal or mental activity in the way that voluntary behaviors are issued out of desire, and human choice does not play such a role and is at most a tool and means. That is, it has created a role as a defeated will.

6. Optional behaviors

There are things that happen under the supervision and control of me (human personality) who lead the two opposite poles of action and refraining from action. In discretionary behaviors, the perception of agency

is when a person is faced with at least two options, and with the supervision and control of the human psychological system, it is possible to choose one of the above two options.

Three issues raised in optional tasks

"will", "decision" (decision stage) and "my control and control" which is considered as a manifestation of free will and is based on the assumption that humans have a truth about instincts and other psychological issues, which compared to animals, It differentiates people. Instinctive actions are not optional; Because "I" cannot be imagined to choose between action and non-action in these works. In fact, when we do something with our whole personality (I), we are doing voluntary work. In any work that the human ego can exercise supervision and control over, that work is without a doubt optional, and this authority, supervision and control of the ego is in different human beings. The stronger my supervision and control, the greater the power of discretion, and vice versa. So people are different in terms of authority; Because authority is in the form of my supervision and control, which can be subject to conditions and facts that are not the same in humans. Therefore, human will is assumed as a being that has the capacity and basis of a voluntary act. That is, it is assumed that every human's behavior is voluntary; unless the obstacles to the will or the factors that destroy the will have been proven. So proving the will is not very difficult; Because it is based on an assumption and the proof of its opposite can be based on destroying factors. The decision or determination stage is an unbreakable mental state in which the will has reached the final stage and the will is directed to a specific behavior or a specific goal. The will may be assigned to impossible tasks; But it is impossible to decide on impossible tasks. For example, we may want to be immortal in the world; But we cannot make a decision about it; Because the decision stage is actually the operational stage of the will.

The will plays a role in the material and psychological element. The will plays a role in the psychological element when a person has imagined and thought about the behavior he wants to do and has wanted 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 the person's involvement 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.

2. Knowledge

Awareness is necessary for the investigation and emergence of intentional crimes. Knowledge means knowledge about the nature and specific circumstances of the crime.

The criminal's awareness of the nature and quality of the action as objective knowledge requires verification and proof; That is, such knowledge is not assumed, and the burden of proof is on the prosecution and plaintiff authorities.

Knowledge or knowledge expresses a special component of fault which is mentioned in legal texts with expressions such as knowingly, knowingly, knowing that and... Consciousness can be judgmental consciousness or subjective consciousness. Knowledge of ruling is based on jurisprudence and assumed rights and is mostly placed in the framework of the legal element.

By adapting this part of the psychological element, i.e. consciousness, to the material element, it is clear that consciousness is the consciousness of specific conditions, matter and nature. Awareness of the subject is one of the characteristics of intentional crimes, and this component is not necessary and cannot be discussed in non-intentional crimes. Beside the word knowledge, in some cases, belief is also provided (Article 295 of the Islamic Penal Code).

Knowledge or belief, both refer to the nature and qualities of action and objective science. In the comparison of knowledge and belief, it is said that knowledge is a definite relationship between the perpetrator and the belongings of knowledge. When a person is aware, a certain relationship is established that cannot be denied or violated. Therefore, where knowledge is obtained, it is not possible to violate it; Because science creates a dogmatic and definite relationship; But the belief does not create a definitive relationship and it may be confirmed that the person's belief was wrong. With this understanding, science is different from belief. Therefore, intentional homicide requires retribution when a person kills a person knowing that he is innocent and that it is forbidden to kill him. But if someone believes that a person is Mahduraldam and kills him, and later it is proven otherwise, he is not subject to retribution, and this shows that belief does not establish a definitive relationship. So, in fact, in cases where a person has knowledge about something, a definite and certain relationship is obtained that cannot be rejected or violated. That is, man cannot have knowledge of something that did not exist in reality; Unless there are problems in the foundations and foundations of science, which is no longer science; But it is wrong. But in the psychological state of belief, such a relationship does not exist, and the possibility of the opposite and the realization of a mistake can be investigated and dealt with. Like Article 295 of the Islamic Penal Code, where the legislator has correctly used the word belief. Here, belief is weaker and milder than science. Belief is a stage between science and error.

In paragraph "a", knowledge is achieved mentally. In paragraph "b", knowledge is obtained objectively, and in paragraph "c", it has a composite aspect.

The determination of the intention to kill, which is mentioned in paragraph "A", includes knowledge, which is a part of the intention.

In paragraph "b" with the phrase (fatal behavior), we learn science objectively and based on the nature of behavior. A wise person is aware of this behavior and recognizes the effects and consequences of his behavior, and if he does the behavior, it turns out that he was aware of the nature of the behavior; But this judgment is not subjective, but objective. Here, knowledge is assumed based on the perpetrator's behavior or inferred from his behavior.

In paragraph "a", from the intention, we find out the nature of behavior, and in paragraph "b", we find out the nature of the person's behavior, and in paragraph "c", where science is predicted, it is a combination of subjective and objective. . In this paragraph, verification of knowledge is necessary; But since the act is not usually fatal, the fatality of the act must be determined and proven.

Grading of 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 true 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 science, 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, in fact, 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 custom, and a kind or objective evaluation is the standard.

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 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 is manifested 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 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 rightness 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 perpetrator's relationship with 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 Crimes of the Armed Forces. 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.

The fourth topic: Forms of guilt

Blame is divided in different ways, which include:

1) In terms of the method of ascertaining and proving, which includes "mental fault" and "objective fault".

In mental fault, while the fault of the perpetrator is considered, the necessary criterion is to recognize and identify the mental reactions and interactions of the perpetrator, and it must be somehow entered into his mind and then determine whether this person internally and mentally has Is there a psychological element or not? In fact, delving into the mentality of the perpetrator and ascertaining and proving what the legislator

deems necessary in relation to guilt, that is, through the psychological facts of the perpetrator, it expresses mental guilt. But in objective fault, the criterion and focus on the perpetrator's own sensuality is not; Rather, it is within the normal circumstances and things that society expects from a person, and in fact, we have a standard by which all people are measured, that if the person's behavior matches that standard, that person is not guilty; But if he has deviated, regardless of whether he has that mental process or not; The more the interests of the individual are taken into consideration, the easier it is to determine the fault mentally, and the more we move within the framework of the social interests, then we have looked at the fault objectively. For example, in paragraph "A" of Article 206 of the Islamic Penal Code, mental fault is foreseen (the intention of a certain person must be proven to be completely personal and specific, and this intention must be attributed to a certain person, and this intention must be attributed to a certain person and this is related to the perpetrator's own mind). While in paragraph "b" which is usually deadly behavior, it refers to objective fault.

Basically, finding fault is subjective; Because in the framework of the individual's expediency, it is accepted to have a psychological element (before, crime was viewed as a material behavior); But at the same time, in paragraph "b" where the typically fatal behavior is mentioned, it refers to objective fault.

Basically, finding fault is subjective; Because within the framework of the individual's expediency, we have accepted to have a psychological element (before, crime was viewed as a material behavior); But at the same time, at the time of the emergence of the psychological element, interests superior to the interests of the individual were found in the society and the legislator discovered them, which ultimately reduced the need to establish the psychological element, because if we are to always discover a crime through mental proof, some crimes may never be discovered, so the legislator changes the criterion; Because the public interest demands it. Because if we are supposed to always discover a crime through mental proof, some crimes may never be discovered; So the legislator changes the criterion; Because the public interest demands it. For example, in systematic crimes (related to classes) or organized crimes, it is proved that the fault is objective.

Article 183 of the Islamic Penal Code states that: "Anyone who participates in a subversive plan, everyone, including the commander, the downstream and upstream officials, are all fighters." or in terrorist crimes, the principle is based on guilt; Because their behavior is terrorist and these behaviors are dangerous, and the goal of the legislator is to pay attention to the collective interests and prevent the dangers that involve the society as a result of their actions. It is the same in driving crimes and in vicarious crimes.

2) In terms of territory, which includes "specific fault" and "general fault".

General fault is the fault required in all crimes, both intentional and unintentional. In the structure of the crime (both intentional and unintentional), there is a psychological element and its examples are diverse; But special fault, that is, the fault required in non-intentional crimes, and in fact, special fault only applies to non-intentional crimes, such as carelessness, carelessness, non-compliance with regulations and lack of skill.

3) In terms of the composite structure, which includes "limited fault" and "extended fault".

Limited fault is a fault that can be raised and discussed in the framework of a special element called the psychological element, and it is limited because it is limited to the legislator's prediction; Because the psychological element is the result of the legislator's prediction (both explicit and implicit). But extended fault means fault plus a series of other things that have nothing to do with the psychological element and are actually preconditions like the general conditions of the duty.

Who is responsible? In all cases related to the manner and cause of the execution of the punishment, the criminal must be wise, mature, independent, responsible and aware. These cases, in addition to implying the psychological element, also indicate that the preconditions required in the investigation of the psychological element are the sanity of the observer to be able to attribute the crime to the individual. Intellect has not been considered as one of the accessories of the psychological element; Rather, it is the basis and precondition of the psychological element and has nothing to do with the psychological element.

4) due to the nature of the subject in which the fault manifests itself and includes "existential fault" (positive or positive) and "absent fault" (negative or negative).

Existential fault means those components or components and a structure of fault that are necessary in all crimes (whether intentional or unintentional). In intentional crime, will and knowledge and in unintentional crime, will and wrongful behavior.

The existence of these must be proven both subjectively and objectively. Therefore, existential fault causes the emergence and verification of the psychological element or fault. But non-culpability is matters and causes that cause non-culpability; That is, it removes the existing guilt and it is discussed in the defenses, for example, in intentional crimes, it removes the mistake of malice and removes the criminal title. For example, a mistake in stolen property means that a person has actually stolen his own property, and it neutralizes the guilt of existence and ultimately, the responsibility of the perpetrator. But if a mistake happens in the murder, the criminal title of the act does not apply; Rather, it changes the nature of the verb. Defenses either eliminate or shift blame.

5) From the point of origin, which includes "moral fault" (inherent and qualitative) and "legal fault" (official).

In moral fault (qualitative), the fault is based on moral and social considerations and foundations, and the character, performance and motivation of the perpetrator are considered. That is, by considering the principles based on which someone is morally or socially blameworthy, we should consider him guilty. For example, in political crimes where the jury exists, it makes a decision based on the conditions that govern the individual's operations and actions, which are naturally moral and social conditions. Does the jury find him guilty or not? And if he is guilty, does he deserve a discount or not? Or, for example, the crimes committed by members of the Islamic Council cannot be prosecuted within the scope of representative duties; Because his philosophy is that they support the people; But in legal fault (formal and quantitative), the fault is based on the will of the legislator, and the one who has the specifics of the fault is considered to be the culprit; Whether in the eyes of the people this person is guilty or not, for example, based on Article 43 of the Islamic Penal Code, aiding and abetting in intentional crimes is realized (unity of intention and knowledge); And sometimes, the type of psychological relationship is hidden in its expressions, such as provocation and conspiracy, which has been effective in terms of the effects and results of provocation. In conspiracy, the intention of the perpetrator is mischief, sedition, and evil intent. This type of action is deliberate and malicious and is reprehensible. Words such as violence or knowingly, intentionally, or staging a crime and aggressive possession, indicate bad intentions. In non-intentional crimes, words such as carelessness, tolerance, and negligence indicate unintentional wrongful behavior. Or in the Criminal Law of the Armed Forces, sometimes it is said that whoever flees from the enemy on purpose, or that his escape is the cause of the enemy's control over his own forces, in this case, causality is taken as evidence of the psychological element.

The fifth issue: Burden of proof

In this topic, we are faced with three questions:

- Is proof formal or substantive?
- How is the proof done?
- What is the standard of proof?

From a scientific and precise point of view, the category of proof has two aspects, form and substance. In the substantive (qualitative) aspect, ascertaining and proving the fault is to infer the nature of the fault stipulated in the law in terms of its type and manner. But in the formal (quantitative) aspect, proof implies the burden of proof and proof tasks and requirements.

There are three questions regarding the formal (quantitative) proof of guilt?

- What needs to be proven?

- Who has to prove it?
- How should it be proven?

1) Establishing the nature of the material fault

A) Establishing guilt by type

Considering that crimes are not of two types "intentional and unintentional", therefore it can be concluded that the legislator has foreseen and prescribed the intentional and unintentional fault in the legal texts in a way. In general, it can be said that the legislator has expressed the type of fault in three ways, and by examining the laws, we find that there is no other way in the law outside of these three ways:

1. Explicit method

In most of the cases and limits of criminal requirements (including principles such as the legality of crime and punishment and the necessity of clarity of criminal regulations), the legislator has foreseen the intended fault in the form of explicit expressions and words with specific meanings.

For example, expressions such as deliberately, knowingly, on purpose, on knowledge, on awareness, carelessness, recklessness, negligence, on account of calculation, with neglect, etc. are among the explicit expressions that determine the type of They are intended by the legislator.

2. Implicit method

In some cases, the legislator has expressed the type of fault based on the provision of legal evidence or indirect and implied expressions. Words such as by means of coercion, fraudulently, by means of staging, without license, not using proper equipment, using a vehicle despite a technical defect, etc., are expressions that implicitly indicate the type of fault. desired by the legislator.

These interpretations have both intentional and sometimes unintentional meanings. It is important that we can understand the meaning of the legislator from these indirect interpretations.

3. The method based on general principles and the nature of the crime

In cases where the law lacks explicit or implicit words and evidence, based on the nature of crimes and general principles, it becomes possible to identify the fault intended by the legislator. Crimes such as forgery, collusion, espionage, theft, crimes caused by acts of others, crimes caused by legal entities, etc., can be identified in the framework of this method.

b) How to determine fault

Based on the principles and according to the nature and type of fault, there are ways to determine it. In intentional fault, the verification method is subjective, and all components of the fault must be proven positively and existentially by delving into the perpetrator's mind. Also, in the case of unintentional fault and according to the examples of criminal error, the determination of fault is based on the objective method. This means that by proving the wrongful behavior, the guilt of the perpetrator will be proven and the burden of the opposite will be placed on the shoulders of the accused. Therefore, in intentional fault, the determination of fault is basically subjective, positive and existential.

In comparison of the above methods, the subjective method is in accordance with the interests of the accused and includes most of his interests; While the objective method, in determining the legal and elemental fault, the fault is established as follows:

In intentional faults, with determination of will, knowledge and awareness, and in unintentional faults with determination of will and criminal error.

Regarding the condition of knowledge in intentional crimes, sometimes the legislator has explicitly foreseen it and in some cases he has not foreseen this knowledge and awareness. For example, in some crimes that include possessing, keeping, etc. (status crimes), the legislator assumed knowledge and awareness and did not consider it necessary to prove it.

2. Assertion of guilt in terms of form

This aspect of guilt is related to proof and proof requirements, which have different aspects and dimensions. From a scientific point of view and in the framework of legal facts, guilt has three aspects:

A) Authority to prove fault.

b) Belonging to or the subject of proof of fault.

c) The amount or degree of proof (which is usually different in criminal and legal cases).

A) Evidence reference

In criminal lawsuits, the authority to prove guilt is the prosecuting authority. Unlike civil lawsuits, where proof is the responsibility of the claimant. Of course, in some cases, the burden of proof is removed from the prosecutor. Like crimes that are based on the assumption of guilt, which reduces the burden of proof and changes from a difficult level to an easier level. (Such as Article 206 of the Civil Code of Iran, where there is a difficult level in paragraph A and an easier level in paragraphs B and C).

b) belonging to the proof

Another aspect of guilt is the form, subject or property of proof. That is, what must be proven? It's not just about the psychological element; It also includes the material element. Defenses are part of proofs, such as defenses of urgency, reluctance, negligence, etc., which have a formal aspect.

The legal element, in the beginning and basically, does not need to be proven (in practice, determining the criminal description of people's behavior is the responsibility of the prosecuting authority and the court) and finally, it is the judge's opinion that is decisive. Of course, matching the act with the law, which is the job of the judge, can also be part of proof; But in general, it is not considered as proof.

Note: The legal element is a structure that we know as the basis of the material element and the psychological element. The legal element is not within the psychological and material element, and we identify the material and psychological element based on the legal element. In terms of value, the legal element is not equal to the material and psychological elements; Rather, it is the basis of those elements, and we identify the material and psychological element based on the legal element.

c) The amount or degrees of proof

In civil lawsuits, the degree of fault is measured based on the "balance of probabilities" criterion. However, in criminal lawsuits, the degree of guilt is measured based on the "criterion beyond doubt or reasonable doubt". In various opinions of the Supreme Court of the country, the fundamental difference between criminal and civil lawsuits can be seen in terms of the level of proof. judges' arrangements).

In criminal lawsuits, it is necessary to prove guilt definitively and it should not be based on doubt, suspicion, etc. But in civil lawsuits, this is not the case; Because its subject is different from criminal lawsuits. Criminal lawsuits involve more important issues and may not be compensable, but in civil lawsuits, the issue is the rights of individuals and compensation is not impossible. . In the criminal procedure, with regard to this importance, it is mentioned that the confession must be clear and not have ambiguity, conflict or summary.

It is also emphasized that witnesses must testify based on knowledge and certainty, and oaths must be taken based on knowledge.

Conclusion

Examining the three elements of the crime helps us to understand the nature of crimes. Intentional murder is one of the most important crimes, and it is essential to examine its elements, especially the psychological or spiritual element. 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 require the intent of the result in addition to

the intent of the act, and intentional homicide is one of the recently mentioned crimes. The criterion of intentionality of murder in Iranian law is stated in four clauses in the Islamic Penal Code approved in 2012. The jurists and jurists refer to the criterion in paragraph A as explicit or primary intention, and the criteria in paragraphs A, C, and B as implicit or secondary intentions. Although the Islamic Penal Code approved in 1392 has some innovations compared to the previous laws approved in 1370. which were mentioned in the text of the article, but it still has the requirements that the proposal of the current research is to provide mechanisms to complete and improve this law, such as: 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 abandoning the act is agreed upon by jurists and jurists, and Article 295 of the same law also mentions it. is In the criminal laws, the legislator did not explicitly and clearly mention the necessity of the crime to be committed; While the determination of intent in a crime depends on the intent of the act committed against the victim. 3. Voluntariness of the behavior and its necessity are not explicitly included in the subject of a specific article in this law, but the examples and concepts of articles 502, 503 and 530 A.H. M. 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 Islamic countries, despite adhering to Sharia rules, they have distinguished between premeditated murder and non-premeditated murder, and considered non-premeditated murder in the category of non-intentional murder.

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