The study of mental dimension of intentional murder in the Islamic republic of Iran law

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ABSTRACT: Mental constituent, as one of the main cornerstones of deliberate crimes, is interpreted as the criminal's latent intention and conduct, where the criminal's will is directed towards the prohibited action and the realization of the result which has been considered a crime by the penal lawmaker. It is also considered to be one of the most important and difficult elements in interpreting a murder as a deliberate or an unintentional by the judiciaries. For the abovementioned reasons, the researcher is interested in studying and analyzing the mental constituent in Iranian law. The researcher also tries to define the mental constituent and analyze the legal articles related to it as well. The impediments towards the mental attribution of murder are also studied in this article.

Key words: Of deliberate crimes, criminal's will, law analyzing, murder.

INTRODUCTION

Mental constituent, as one of the main cornerstones in deliberate murders, is interpreted to be the criminal's intention and conduct, so that in the process of accomplishing it the criminal's will is directed towards doing the forbidden conduct and achieving the result which have been recognized as a crime by the lawmaker. The criminal intention which is not defined by the penal lawmakers has caused a variety of issues in the interpretation of deliberation.

Emil Garson the French lawmaker and some other criminologists define deliberation as "the knowledge of the criminal to perform an illegal action." (saniei.1977) While criminal's knowledge on the illegality of the action performed is in fact "Knowledge to the decree", it is an indispensible element in the accomplishment of intention.

Some of the Islamic lawmakers, in the process of establishing intent, have taken the statement of the action into consideration along with the intention to the action. This is due to the fact that voluntary action may not happen without labeling it, and an action may have more than one label, so it may be considered intentional on one hand and unintentional on the other hand. Thus, in interpreting the definition of deliberation, it can be stated that: "criminal deliberation or intent includes the criminal's will to conduct the action despite the fact that s/he knows about its illegality and forbidden nature. (allameh tabatabai.2001)"

The mental element of deliberate crimes includes some fundamental elements, and since crime is bound to a result, then the conditions for deliberation are both basic and specific malice. In Islamic collections they are interpreted as deliberations in action and in result, respectively. (helli.1969)

In addition to general and specific intents, criminal's knowledge on the forbidden action and its results along with the possibility of mental relation of the murder to the person's will are of the other issues which must be taken into account in the process of studying mental factors underlying deliberate murders. Therefore, as it is stated in the articles 206 and 295 of the Islamic punishment law, being deliberate murder or any other type, it is the mental factor quality of the crime and its constituents that matter and the study of various aspects of the crime are of crucial importance as well.

The mental factor of basic malice includes the knowledge of the crime elements and the will or accepting to do it. It is called the "mental or literal element" of the crime in French law and "llow" in Italian law. Mental element in the sense of basic malice is the necessary constituent in all crimes, and this element includes knowledge and will, and all the lawmakers accept this unanimously.

In the same way, they agree upon the fact that the object of knowledge is an element of the crime meaning the murderer should know about the murder elements, but they disagree on the object of will. Some follow the knowledge doctrine and state that the object of will is a criminal behavior, i.e. the criminal should both intend and conduct the crime, and some others follow the will doctrine and state that the object of will is criminal conduct and its result, i.e. the criminal should intend the result along with the physical conduct.
Hence, considering the knowledge factor, a criminal who has committed a deliberate murder is convicted as a murderer in case he realizes the victim is a human being. Then if he sees a figure in the distance and presumes that it is an animal and shoots at it and kills it and then it is proven to be a human being, s/he has not committed a murder which deserves talion.

Secondly, if he realizes that the victim is a human being, about whose death he is not certain, and he buries the person and then it is proven that the person was alive, he has not committed a murder which demands talion. Third, if the person knows that s/he is qualified to put an end to the life of a victim, and kills the person, s/he has not committed a murder which demands talion.

If the will element is considered, the criminal's will should be towards the physical conduct (whether done or not), and this conduct should be powerful enough to kill the victim. Thus, when a person is not conscious or does not have any will, attacks and kills another person, s/he has not committed a deliberate murder, s/he should also intend to get to the result of a murder which is taking somebody's life. Therefore, if somebody intends to frighten another person or to shoot the surroundings for pleasure without intending to kill anybody and then the bullet hits a person, this is not a case of deliberate murder. (Zeralaat, 2008)

Specific malice, which the lawmaker finds necessary for completing the mental factor, is deeper than basic malice, and the criminal should have this type of intention so that the criminal act is realized by the law. In other words, specific malice is the same as motivation which does not principally considers it as part of the mental constituent.

However, the lawmakers disagree on whether the intention of acquiring the result, i.e. taking somebody's life is basic malice includes taking somebody's life for when a murderer intends to conduct an action which is violent enough to kill the victim, s/he has the intention of taking somebody's life, too, and this does not need a separate intent; but others believe that conduct intent is limited to the hitting of an instrument or weapon to the victim which is common between the murder and assault and battery cases. Therefore, there should be a distinction between these two types of crimes, and that is taking somebody's life where specific malice is involved in the deliberate murder.

As it was mentioned before, the proponents of will doctrine state that specific malice is necessary for a crime to happen whereas the proponents of knowledge and imagination doctrine do not consider it as a necessary malice. The difference between these two doctrines is in the sense they provide for the will and intent, where the first group considers will as a sensual movement towards the result of the action (taking somebody's life), and the second group sees it as a sensual movement towards conducting the action.

They discuss that realization of the results cannot be the subject of the will, since the result is the natural outcome of an action and realizing natural phenomena is out of the human beings will.

There is another line of argument to the necessity of the presence of specific intent in deliberate crimes where the lawmaker has implied the use of this kind of intent, because wherever it is talked about the murder, the word deliberate follows it, hence if it was meant to use general intent then there was no need for the word to be stipulated, for deliberation is a necessary description of all the deliberate crimes and for the other crimes there is no need for the stipulation of the word.

In the article 206 of the Islamic punishment law, the intention to kill someone is stated as the malice intent to commit murder; however from this statement it cannot be concluded that it is necessary to have the specific malice intent in a murder, though it reinforces the specific malice doctrine.

Motivation to commit a crime, the motivation behind it is the mental incentive which precedes the will, that is to say, before a criminal intends to commit a crime, the motivation which might be dignity, position, or material needs, forces him or her to do it. For instance, a person who intends to kill another person might have a mental motivation to avenge, get wealthy, or feel pity.

s/he might think about it, consider all the consequences and then decide to kill (A spark in the mind + Motivation + Decision+ Intention). What constitutes the mental element of a crime is the same intention and will to commit a crime, and motivation is not have such influences because the punishment for murder is firm and it cannot be mitigated or aggravated.

**Time of the Intention Realization**

The major factors of a crime which are related to the criminal are the criminal act and mental elements, and the conditions for these elements to happen at the same time, meaning the absence of one in the presence of the other prevent the fulfillment of the crime. Thus, the criminal should have the intention to commit murder while he is achieving the conduct element.

However, in the time of result realization, if such intention does not exist, then two instances can be imagined. In the first instance the result has occurred, for example, a person is thrown into the fire by the criminal, but s/he immediately regrets the action. When s/he tries to take the victim out of the fire and save him or her, s/he faces his or her lifeless body.

In this case, there is no use in regretting and the criminal intention had also been present in the time of fulfillment. Another instance is when the result has not happened and the criminal changes his or her mind.
before taking the victim's life; then again, there is no use in the victim's regretting; although in the time of result fulfillment i.e. taking the victim's life there is no criminal intention, there is an intent towards the result in the time of conduct, and the result has been achieved through the same intention. Moreover, it is the life of a human being. Supported by the law, which is being infringed and attacked. (zeraat.2008)

**Proof of intention**

The conduct element of the crime possesses an external manifestation but the mental element of the crime is formed inside the criminal's mind. Therefore, proving the conduct element is easier than proving the mental constituent, and the judicial authorities usually reach the mental element through conduct, so the conduct is directly proven while the mental constituent is indirectly proven.

For example, criminal conduct shows a criminal intent under one of the following frameworks: thrusting a long knife into victim's heart, stabbing a knife repeatedly to the sensitive parts of the body, shooting the victim's head from close distance, hitting the victim's belly, chest and head repeatedly, where in all cases, there is intention of attacking the victim.

Proving the murder intention indirectly is related to all cases for intention is an internal factor which can be recognized through criminal's confession. However, in some cases it is possible to reach the criminal's intention directly by his confessing, classification of importance. (zeraat.2008)

**Impediments to Mental Evidence**

There are different factors which prove the failure of the mental element some of which relate to the derangement in the will and some others relate to the understanding and perception of the person. Sometimes the presence of these factors leads to a change in the labeling of the crime from a deliberate one to an unintentional one. However, in some cases the impediments to the mental intention require specific decrees which are explained as follows:

**Drinking Alcohol**

It is a physical and mental state which is created under the influence of drinking alcoholic drinks which incapacitates human beings to assess and distinguish between good and evil, and it involves and ecstasy where the person loses the harmony in speech and speaks in a way that s/he is not inclined to do in a normal situation. In the meantime s/he feels more powerful, too. (najafi.1985)

Drunkenness has degrees in some of which the criminal loses the power of will and intention. Article 53 of the Islamic Punishment law has stated the decree for committing a crime while being drunk as a general regulation. It is states that "if somebody loses her or his will through drinking alcohol, and it is proven that drinking has occurred to commit a crime, the criminal is convicted on both drinking and the crime s/he has committed". However, the lawmaker has not restricted the law to the article 53 and has referred to the murder while being drunk in the article 224 as follows: "murdering someone while being drunk deserves talion, unless it is proven that the criminal has lost control has lost control and intention due to drinking alcohol, and s/he has drunk with the intention to commit a crime. In case the person's actions create disorder in the community or fear in the victim, a three to ten year imprisonment will be effected. (ameli.1986)

However, jurisprudence have different opinions, the majority of whom believe in talion of a drunken murderer, and some people like shahid Thani and Allame (the great scholar) Helli do not believe in talion. Some have differentiated between a drunken person who knows her or his action will lead to a murder and a person who is drunk and accidentally committed a murder. They only believe in talion for the person in the first case. (najafi.1985)

Some jurisprudence have separated criminal drunkenness and drinking with justifiable excuse. Thus, a person who is drunk due to unawareness, urgency or duress does not deserve talion; however, if a person drinks purposefully and without any justifiable excuse and commits a crime s/he deserves talion. This punishment deserves the person if s/he specifically has drunk to commit the murder where articles 53 and 224 are applicable. (Ghapanchi.2009)

**Coercion**

Coercion, force and influence are instances of suppression on the soul and body in a way that they extinguish the will and intention in human beings. By virtue of the Article 54 of Islamic Punishment Law, in the crimes related to the punishments and preventions, whenever a person commits a crime based on obligation or duress, which s/he cannot tolerate naturally, the crime does not deserve a punishment. Instead the duressor who has forced the duresssee is convicted and punished with regard to the conditions of the duresssee, the times, the status and the degrees of the crime and punishment.

Islamic judiciaries have studied murder by coercion in its various forms and believe that it does not generally deserve talion or blood money. Sometimes coercion is believed to be an internal factor and its origin is the doer herself or himself without having any will in the occurrence of the crime.
For example, a person might become unconscious or fall on somebody from above and cause injury or death, where s/he is neither liable nor capable of preventing the accident. In some other cases, the origin of coercion is external which takes the intention and will away from the person. The external factor may be a thirdey party human factor or his or her intention where that person is liable to the crime, like a situation in which a person pushes or throws another on a victim and kills her or him. (aljabi al ameli.1996)

By virtue of the Article 329 of the Islamic Punishment Law, if a person pushes or throws another on a third person who may die or get hurt, in case the first person intends to commit a crime or if his or her action involves an intention to the crime, the action is considered quasi delict, and a blood money deserves to be paid, and in case there is criminal intention, it is considered deliberate murder and it deserves talion and the person who has been thrown is not guilty due to the fact that s/he has been forced to do so.

In general, the Islamic judiciaries do not consider the erimes in which the coercion factor plays the main role as cases where the doer of the conduct should be punished, and in their opinion the action does not deserve any penal sentence such as talion or blood money, and in case the action is forced by another person liable for the crime, s/he must stand the punishment. (sadeghi.2009)

Duress
Duress is defined as a forcible obligation by another to do an action (sadeghi.2009). As per Article 54 in the crimes related to the punishments and preventions, whenever a person commits a crime based on obligation or duress, which s/he cannot naturally tolerate, the crime does not deserve a punishment. Instead the person who has forced the duresssee is convicted and punished with regard to the conditions of the duresssee, the times, the status and the degrees of the crime and punishment.

According to the Islamic principles and traditions, especially in "Settlement narration" (Raf Hadith) by prophet mohammad (PBUH), duress is influential in all kinds of crimes except there is a "Specific Quranic term" for it and this general regulation has been earmarked. Then, one of the cases where earmarking is emphasized is duress in deliberate murder.

It is stated in the Islamic tradition that "dissimulation is for the occasions such as preventing bloodshed, and if somebody's Life and blood matter, then dissimulation is rejected (Gorji.2003). In this regard, it is stated in the article 211 that "duress in murder or the order to murder is not a permit to murder; therefore, if somebody is forced or ordered to kill another person, s/he should face talion, and the person who has ordered the murder is punished to life sentence. If the duresssee who commits murder is an in discerning child or insane, then only the duressor faces talion as his or her punishment. If the duresssee is a discerning child, s/he should not face talion but the kinsman must pay the blood money, and the duressor is punished to life sentence. (Sepahvand.1996)

Childhood and Insanity
Maturity and intelligence are the general conditions for the criminal liability and absence of one of these conditions causes liability incapacitation. Article 49 of the Islamic Punishment Law about the children states that "in case children commit a crime, they are not liable for the crime, they are not liable for the crime, and based on the judicial opinion their training is a responsibility of the custodian or a guidance school."

Article 50 of the Islamic Punishment Law on the children's civil liability states: "If an immature criminal commits murder of assault and battery, his or her kinsman is liable. In case there is the destruction of others property, The child is liable and the parents must pay for the loss."

Article 51 of the Islamic Punishment Law on non liability of an insane person insane or immature person kills someone on purpose, it is considered to be a mistake and the person does not fac talion, but the kinsman must pay the blood money to the heirs. (zeraat.2008)

Sleeping or unconsciousness
Lawmaker has taken the issue of murder while sleeping into account in articles 225 and 323. As per Article 225 "if a person kills somebody while sleeping or unconscious, s/he does not face talion, but is sentenced to pay the blood money to the heirs." Article 323 states that "if somebody kills the other or causes deformity in the operson's body due to movement or rolling while sleeping, it is considered a simple mistake and the kinsman must pay the blood money."

There are discrepancies regarding who must pay the blood money. The legal department in judiciary power has declared in one of its advisory opinions that:” Article 225 is different form article 323, regarding the manner of conduct and realization of the result, meaning article 323 solely emphasizes on the action of rolling while sleeping, but article 225 refers to the other similar cases. In other words, what is stated in article 225 is related to those who do actions while sleeping or unconscious like sleepwalking and actions causing murder and since their actions are quasi malice they are sentenced to pay the blood money; however what is mentioned in Articles 323 refers to the normal sleeping person whose rolling causes death or deformity in the victim's body, and it is considered a simple mistake and the kinsman must pay the blood money. (advisory theory of legal department of the judiciary.2003)
To conclude, the mental constituent is one of the most important factors in deliberate murder and other crimes, and its distinction requires meticulous inspection. That is why the Iranian judiciaries and jurisprudences pay special attention to the issue. The present article has also pointed to the most crucial issues regarding the mental constituent in deliberate murder.

REFERENCES