

Considering the mental element of the crime

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Abstract: it is required three legal, physical, and mental elements for realizing each crime. Mental element has been discussed in law and criminal books under the various titles of deliberate, bad faith, intent etc. Mental element of the crime is considerable in intentional, unintentional, and material crimes. In intentional crime, presence of criminal intent is necessary for mental element of the crime. A purpose of mental element of the crime in unintentional crimes is actions that are occurred without considering their result. There are some crimes that are neither intentional nor wrong which are called mere material crime.

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1)Introduction

Triple elements and items which have realized as consisting of the crime in enacted criminal law are necessary from the perspective of law to consider an action as a crime and this action is not punishable without gathering the triple elements. Thus, it is not realized each action as a crime unless it has been determined a punishment or safeguarding or disciplinary measures for it by law (first term) and elements exist for it which it is not realized the crime title if not any. Therefore, existence of law is not merely enough that subject anyone to the penalty but also a committed person must actually do something that was prohibited by the law or does physical act or attempts to omission an act that will be deserved the punishment. Criminal behavior may be appear positively (act) or negatively (omission) (second term). Scholars were realized first term as legal elements and second terms as material element. Aggregating legal and material elements are not enough to subject committed person to the penalty but it is necessary another condition, the fact that committed person did prohibited act with desire and willingness or at least committed it with indiscretion and imprudence. The scientists called this third term "mental element of the crime" and total mentioned conditions was called "triple elements of the crime". We discuss the concept of one of the element consisted the crime- mental element of the crime.

Word and term discussion

Word and term definition of mental element of the crime. Elements is plural of element and element in word means principle, substance and primary material (Jafari Langroudi, 476), crime in word means guilt, fault, offence, bad act, disobedience, and sin (Dehkhoda, 876/5). In terms, it is called crime to positive and negative action against individual social order of the society which it was

determined penalty or safeguarding or disciplinary measures for it (Bahery, 125/1). Mental element of the crime is the same criminal intent and desire and willingness to commit the act which was prohibited by the law (Noorbahae, 311/1).

1. Mental element of the crime

Mental element of the crime is considerable in intentional and unintentional crimes which we express following, respectively:

1.2. Mental element of the crime in intentional crimes

In addition of legal element based on predicting criminal behavior in the criminal law and material element of the crime included act occurrence outside, mentioned action must be resulted of a committed person will. In fact, it must present mental relation (voluntary relation) between action and agent person that is called moral (mental or spiritual) element. Merely committing the act is not a reason of spiritual or mental element presented and in some cases despite of action occurs, regulation does not consider its committed in intentional crimes and punishable due to absence of criminal intent or lack of criminal responsibility. For example, establishing the lack of intent in the crimes against property such as theft and building destruction which disappears criminal description from committed action. There are two essential factors in realization of spiritual and mental element: will to commit an action and criminal intent that we deal with them in below.

1.2.1. Will

In all crimes including intentional and unintentional one, will of committing act is presented and legislation only realizes voluntary commit action as a penalty. So even in physical injuries resulting from traffic accidents or drunken driver, a person did not have will however he/she has derived with this

will and the only physical injuries were not the intent of the driver (Goldooziyan, 176).

In fact, will to commit a crime is wishing to do criminal action and it is cause of personal interaction to do an action including normal or criminal. But it must be known that it is not easy to understand the nature of will and its affect on committing action and individuals behavior including normal or criminal and can not internally be recordable. This is a problem which has been always engaged human mind (Validi, 262). Also, if a person committed an action with a will to do that without requested its result, realization of intentional crime is denied. So, a will of committed action must accompany with criminal intent or criminal fault (indiscretion, imprudence, lack of skill, and non-compliance of state systems) otherwise committed action is not considered as crime due to not having mental element (except one case which has *wergild* and it is when murder, assault and/or maim occur as real fault).

1.2.1.1. Will elements

In franc law, what is create an agreement is called an agreement between two wills (Abdipour, 23). Also in common law, it is considered "consent" which means an agreement of wills, confirmation, and optional and voluntary acceptance of another proposal and/or satisfaction or agreement with that contract, despite this, it was translated these terms in its apparent meaning- satisfaction- in Farsi and Arabic law books but it is obvious that a concept of these terms with the satisfaction meaning is of clear difference with what is common in our law. Therefore, if we want to find its equivalent in our law, it must consider terms for it like compromise, will agreed or at least, will and total harmful and satisfaction. However, the purpose is that although formation steps of will have analyzed by law professors in Roman-Germanic law but as is common in our law it has not decomposed a will to components (Goldooziyan, 19).

1.2.1.2. Mental analysis of the will as a law perspective

Lawyers believe that everyone for doing a legal action, for example, signing a contract is inevitable of some stages:

a. Conception stage: in first step, the elements of purposed legal action and its result occurs in a mind of person, although thought step is still introduction of person will but it is of very significance as a law perspective because without earlier correct thought, no correct voluntary action is done; thus, equation of crazy and drunk is canceled due to lack of correct thought.

b. Deliberation stage: In this step, various thoughts occur in mind and the individual deliberates

them. Each thought may be come along with reasons and aspects which are called motive and stimulus (Haman, 20)

c. Volition stage: after occurring various thoughts about legal action and deliberating them and finally affected by various motives and aspects, the mind confirm one of them, satisfy with it, and make decision to do it; this decision and crime which is ego pleasure is called "will" by the experts (Kazemi. 132/1). Will is the most important thing to form spiritual pillar of intentional action.

d. Execution step: after a person passed volition, he/she enters to execution stage. It means what ego has willed, bring to act and action (Katoziyan, 226/1).

1.2.2. Criminal intent

Ill will, attempt, intent and knowledge, criminal intent, offence purpose and terms like these all indicate one aspect of spiritual principal in intentional crimes and they have used in various matters of criminal law mean that containing criminal intent. In intentional crimes, a person must consciously and with the knowledge commit the crime to take into account his/her action as intentional. (Mental element in intentional crimes: will to commit a crime + criminal intent) when committed a crime wish to achieve the result in addition of executing the action, in this case, he/she idiomatically has offence intent or ill will and has committed a crime (Sanei, 308/1).

1.2.2.1. Arrangements to form criminal intent

Realization of criminal intent as a quality and mental phenomenon like every other behavior tends to the presence of arrangements because when conscious attention or personal interest is paid to certain object like commit a "criminal phenomena" it is naturally occurred a hierarchy of interactions and deliberations in the mind of a person about how to achieve that object. Islamic experts express the arrangements of forming an intentional action as following:

1. Durance: it is the first order of forming intent that is a situation which is become clear under influences of internal instincts and external factors in individual psychic.

2. Mind: is an order of forming intent in which forming trend of intent become more clear but more unstable.

3. Ego story: is an advanced state of forming intent which is based on association of meanings and in which personal attention is paid to special subject among other subjects.

4. The most important: is a step of forming intent where doubt and hesitancy situations become clear in volition to execute or leave an action in a person.

5. Determination: final step of forming intent in individual psychic and it is a state in which doubt and hesitancy will be replaced with volition and quiescence determination and it is a flow that clarifies person's inner intention and purpose as an external and tangible operation to power to act and completes person's decision to do or omit an action (Validi, 259)

1.2.2.2. Criminal intent

Ill will or criminal intent that generally means the intent to commit a crime has classification and we indicate the most important if it is as following:

a. General ill will or intent or specific ill will or intent

Ill will or intent is conscious will of agent in committing a crime in which it is enough for realization of intention that crime committed takes place his willingness and interest to commit an action that he knows and informs its committing is legally prohibited and illegal. In cases that realization of intentional crime in the criminal rules that is subjected and provided to achieve a result of that act, one must essentially wish to achieve the result of done action in addition of general criminal intent to realize criminal intent. Existence of this criminal intent that is complementary of criminal intent is called specific ill will intent.

1.2.2.3. Criminal intent and incentive to commit a crime

Incentive to commit a crime should not be mistaken with commitment intent because they are separated. Incentive (or motive) is a profit thought or inner feeling which drives a person to commit a crime. Motives to type of crime, characterization of the convict and various situation and specific condition which surround convict are different and may be the motive of a murder is revenge, vengeance, competition and jealousy and even sympathetic to the victim whom instantly has refractory disease or not have pain tolerance and felon try to kill him to save him. Then motive usually is going to kill him before the intent of the crime which is the same criminal intent and volition to execute a crime (Feyz, 279, 280). So, criminal intent means willingness and consciousness intent to commit a crime and doing crime operation with the intent of obtaining criminal result that is the same in the perpetrators of the crime but a motive to commit a crime may be different in intentional perpetrators of the crime. For example, in commitment of deliberate murder, criminal intent of murder committed is always similar and it is murdering victim while the motive of murder commitment is different and it may be steal victim property or hatred or sympathetic.

2.2. Mental element of the crime in unintentional crimes

To realize some crime, existence of criminal intent and wanting the result of action is not necessary but in this case a person who is known as convict, his charge is commitment of action that was occurred with its committed will but criminal result of action was not its subject purpose but its subject caused criminal result due to neglecting and subject is known as blamed and punished thus penalty fault is determinant measure of mental element in these crimes (in unintentional crimes, mental principal is: will to commit a crime + criminal fault) and committed crime of the perpetrators is called quasi intentional or unintentional. The term blame or criminal fault that is used based on legal resources in criminal law against intention is a social concept that is for blaming a perpetrator of unintentional and quasi-intentional crimes (Validi, 271,272). Also, blame is including violation and wastage.

2.2.1. Types of criminal blame

Examples or types of criminal fault such as indiscretion, lack of skills, disobedience of state systems etc. (Aliabadi, 60/1) that we briefly define:

a. **Indiscretion:** incaution is a person who attempt to do so without considering effects and results of it that are predictable. In law language, the purpose of indiscretion is doing action which its perpetrator causes damage or loss to other without considering probability result effects of it which is predictable to him.

b. **Lack of skill:** since doing some technical and scientific work need specific skill and lack of skill in doing so may be cause to make physical and financial risks for others thus lack of skill is one of the criminal blame as a law view.

2.3. Mental element of the crime in merely material crimes

Merely material crimes are committing a crime which realizes the mental element of the crime by only doing material action as a part of perpetrator and without considering criminal intent or existence of criminal blame as a part of perpetrator. For example, non-compliance with traffic regulation and non-compliance with wrong state regulation which is generally examples of merely material crimes. In these crimes, that is enough that crime perpetrator uses his/her will and tendency to commit a crime and executes it. So, realization condition of mental element in the merely material crime is subjected and provided to realization of preparation will. A purpose of preparation will in all crimes including intentional and fault and merely material is common which is violation of criminal laws in a interest and charge of its subject, without which is necessary to prove criminal intent of perpetrator or his/her blame (Haman, 282).

3. Result

According to mentioned subjects in this paper, it can conclude that gathering general, public, and common elements is necessary in all crimes. Therefore, existence of a law which knows an action or omission a crime (legal element) or its realization in outside environment by a person (material element) will not be enough to punish its perpetrator but also it is require the existence of mental element that make perpetrator entitled the punishment. So according to mentioned subjects, it can conclude that for realization of mental element in each crime, existence of principles or components of its mental element is necessary and each crime has its specific mental element components which gives it intentional or unintentional nature because title and nature of each crime will change with changing each component of it. So, it is necessary to deal with it carefully.

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