

CRIMINAL LIABILITY OF THE MENTAL CRIMINALS IN STATUTE

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ABSTRACT

Insanity and its different types remove the criminal liability, if they appeared during the commission of the offence. By virtue of Iran criminal law insanity after the commission of the offence does not remove the criminal liability though it leads to non-suit or delays the punishment depending on the commission time. By virtue of Article 51 of penal code in 1991 and Articles 149 and 150 of Islamic punishment law in 2014 insanity removes the criminal liability. The difference between above articles is that the article of 1991 removes the criminal liability because of any rate of insanity, but by virtue of the new one insanity removes the criminal liability, if it justifies the guilty in a way that he (she) suffers from mental disorder(s) when committed the offence involuntarily or without discernment but nothing stated about the patients suffering from relative mental disorder(s).

Keywords: Criminal liability, insanity, mental disorder, non-suit, Islamic punishment law.

1 – Introduction:

In Novena dictionary¹ the word 'Liability' means 'Entitled to be interrogated '. The definition of 'Criminal liability' definition which is one of the most important subjects of general penal code emphasizes on one's obligation to reply in relation to the effects and results from an offence or penal phenomenon . In criminal view only commission of any crime or disobeying penal code and regulations may not create criminal liability, but some conditions are necessary to consider someone blamable or guilty in moral and social views as follows: crime due to will and consciously, committed because of bad faith, negligence or fault and also it is necessary to prove that the accused has committed the offence². Present writer believes 'criminal liability' means 'One's potential or capacity to endure the outcome(s) of his (her) crime'.

Insanity means 'Lack of wisdom and common sense¹ or gradual irreversible fading mental life namely his (her) ability to understand, feel and will²; by virtue of variety of insanity and mental disorders and hierarchy of some types of it, their rates and some of them overlapped with wisdom to commit offence it is necessary to define specially the case in view of psychiatry.

2 – Mental criminals' criminal liability in statute:

2 – 1: *Insanity in general penal code approved in 1926:*

By virtue of article 40 of general penal code (1926) if someone commits an offence while he(he) is insane or suffers from some mental disorder(s) , he(he) is not considered as guilty , but if his(her) illness continues , he(he) should be delivered to asylum ; the article is derived from old punishment law of France by which insanity during the commission of the offence removes the culpability The legislator mentions separately 'Insanity' and 'Mental Disorder' but in the same row³ . It is disputable to consider them irresponsible regarding their crimes. In addition to insanity the expression 'Mental Disorder' indicates severe mental deficiency, severe depression and abstract hysteria during which one loses his (her) discernment and will completely. Many jurists consider mental disorders as moral insanities and diseases related to will, asleep, drunkenness, deafness and dumbness⁴. Legislator believes that the guilty is either sound and healthy or completely insane and there is nothing between these two states.

2 – 2: *Insanity in general penal code of 1974:*

After general penal code of 1974 the words 'Lack of wisdom' and complete disordered discernment and will' replaced insanity expression (Article 369) in manner that if the perpetrator suffered from lack of inherited or acquired wisdom or complete disordered discernment or will during the commission of the offence, he (she) was not culpable (Paragraph A, article 36) so he (she) was not punished. If the perpetrator suffered from relative lack of wisdom or disordered discernment or will during the commission of the offence in a way that , his(her) problem was effective in committing the offence , he(he) was not culpable (Paragraph b , article 36) so the general penal code of 1974 differentiated between complete and relative disordered discernment or will and used the expressions 'Lack of wisdom' , 'Complete and relative disorder' and 'Discernment or will' to classify insanities and believed that 'Lack of wisdom' and complete disordered discernment or will remove the recognition liability .

Having used the expression 'Diseases' instead of 'Illness and disorder' the legislator was to state that the disease subject had not been emphasized and 'Diseases' go beyond mental diseases or disorders.

2 – 3: Insanity in Islamic Punishment Law of 1983:

After Islamic Revolution victory the legislator selected the expression 'Insanity' in a descending process in 1983 in a manner that ignored any difference between different levels of insanity and removed previous differentiation mentioned in article 27 indicating that, "All levels of insanity remove criminal liability; when the legislator mentioned ' All levels of insanity means different levels of insanity such as schizophrenia by virtue of psychiatry ¹.

2-4: Insanity in Islamic Punishment Law of 1992:

Article 51 of Islamic Punishment Law indicates all levels of insanity remove criminal liability". The phrase ' All levels of insanity ' has been commented differently:

Firstly: Having used the phrase ' All levels of insanity ' includes the diseases in the frontier between health and insanity so related sick people may be subject to the exemption of article 51 ²; present writer believes that notwithstanding article 51 confirms somehow such interpretation such concept acceptance indicates approximately no other one is considered culpable because most of the perpetrators suffer from some mental disorder during the commission of the offence.

Secondly: The legislator has used 'Insanity' equal to 'Lack of wisdom' which is usual meaning in order to observe religious principles and rules specially regarding rights and duties ³. So if any mental disease is defined as insanity in a way that it removes discernment completely, it removes criminal liability ⁴; so the Note of mentioned article is surplus.

Generally it can be concluded that firstly an evidence(s) is(are) necessary to remove the punishment and it is not possible to exempt people from punishment only because they could not accept and agree with social , moral norms and committed the offence because of incentive and lack of ability voluntarily if they have no intellectual or conceptual deficiency or disorder and show no insanity diagnosis . Secondly in consideration of the phrase 'All levels of insanity' how is it possible to take into consideration some diseases which are naturally out of insanity field as a level of it? Thirdly it is disputable to disagree with above analysis indicating law considers such people liable criminally while the base of justice indicates that such people has less criminal liability .

2 – 5: Mental guilty punishment by virtue of the penal code approved on 21, April, 2014:

By virtue of article 149 of the penal code approved on 21, April, 2014 the legislator indicates in relation to the factors removing the criminal liability that " If the perpetrator suffers from mental disorder during the commission of the offence in a way that he (she) has not will or discernment, he(she) is considered as insane and has no criminal liability " . We examine some precise points in the article as follows:

1 – The common point between previous and present article is that the perpetrator's insanity during (Neither before nor after) the commission of the crime is the precondition.

2 – The 'Lack of wisdom' should be complete to remove the criminal liability namely the perpetrator cannot understand the relation between affairs absolutely; otherwise, the criminal liability is not removed ¹.

3 – Lack of wisdom should not be permanent, but if one is insane and sound periodically and commits a crime when he (she) is lack of wisdom , he(she) is not liable criminally ² .

4 – So it is concluded from the article that the insane have not civil liability.

5 – Mental disorder removes criminal liability during the crime commission not after it. Insane after crime commission is effective only in governmental crimes, but it does not remove the criminal liability and the insane is kept in related place until recovery to normal condition. Article 150 of Iran Penal Code approved in 2014 states, ' If the perpetrator is insane when he (she) commits the crime or becomes insane after governmental crime and related specialist certifies he (she) is insane and dangerous for community and public security, he (she) should be kept in related place as long as he (she) is dangerous by public prosecutor's order '.

The kept person or his (her) relatives may protest against the court order and then the court examines the subject and the specialist's view with the presence of the appellant and if the court distinguishes the perpetrator is no more dangerous, the order is issued to terminate the period; otherwise, the court orders the continuation of the public prosecutor's order which is final, but the kept person or his (her) relatives may protest whenever the perpetrator shows improvement signs.

At the same time, whenever related psychiatrist distinguishes the perpetrator is treated according to the health center manager the public prosecutor may terminate related order.

Note 1: If the perpetrator commits a crime which is known as Had (The punishments defined in Islam) and he (she) becomes insane after the order issue, the punishment is executed. If the perpetrator becomes insane before the order issue, the final order is issued when he (she) becomes normal and sound. In relation to the punishments with private aspects such as loss due to crime the insanity does not remove the suit and investigation.

Note 2: Judicial power is obliged to create some residential care centers in the court district for people subject to the article; some hospitals or welfare associations do related tasks until the centers become ready. Hereby we examine the conclusions due to above article:

1–Insanity plays some role after the crime commission only in governmental crimes; otherwise, it does not prevent the order execution. Of course , present writer believes insanity after crime commission does not prevent the order execution even in relation to governmental crimes (By virtue of Article 149) because the perpetrator is kept in an appropriate place and this period is taken into consideration as his(her) imprisonment time until he(she) becomes normal .

2 – It is possible to keep the insane in related place if: (1) By virtue of the specialist it is proved he (she) is dangerous and insane. (2) If he (she) is liberated, he (she) is dangerous for public security and tranquility.

3 – It is possible to keep the insane in related place only by virtue of public prosecutor's order. One may ask, “If the perpetrator becomes insane in any step of the investigation, May the public prosecutor issue the order?”May the court issue the order directly or should inform the public prosecutor?” It had better the legislator clarifies the subject.

4 – Also it is not clear that if the insane should be kept in related place until recovery or should be there for a limited time; the former is better in consideration of related article.

5 – The perpetrator kept in the place or his (her) relatives may protest against the order; the order does not clarify which categories (how much close or distant) of relatives may protest against the public prosecutor's order.

6 – It is possible to protest whenever the improvement signs appear; the protest is investigated in usual (Not extra) session.

7 – Although the order to keep the perpetrator in related place is issued by the public prosecutor it seems the court is permitted to do it because of its high judicial position.

8 – In relation to the crimes known as had it is not possible to remove the punishment, if the perpetrator become insane after the crime commission

9 – If the perpetrator become insane before final order issue in public domain , the suit and trial is delayed until his(her) recovery in order to observe justice in the judgment in a manner that the perpetrator would be able to defend him(her)self .

10 – In relation to the punishments concerning private rights (Such as loss due to crime) if the insanity is after the crime commission, it is not possible to remove the suit, trial and punishment.

3 – The meaning of dangerous in relation to mental patients:

Dangerous condition is a sensible and ponderable subject in different scientific fields such as criminology (Specially clinical criminology) , criminal psychiatry , criminal law , etc. ; these majors have analyzed the definitions , features , distinction , forms , fundamentals and causes of dangerous condition and some of them indicated it is necessary to treat it ¹ .

By virtue of criminology dangerous condition is when different (Individual and social) factors together influencing and inciting someone to commit the crime ² . Pintail defines the state as follows, "Dangerous condition is when someone commits some antisocial thing known in law as crime ³ " .

There is no definition about dangerous condition in security performances law, but article 1 of the law states, " The dangerous criminals are ones whose previous records, mental and moral features and the commission and crime features either they are legally responsible or not " The article has not clarified the features of the insane who is dangerous but it indicates some measures such as records and mental and moral features , the crime commission conditions and type of the crimes ; however , it seems it is difficult to distinguish the dangerous condition because someone's is (are) dangerous without any penal record . Only criminology may distinguish dangerous condition because it benefits from clinical and medical methods to examine the criminals, but generally the criminologists believe the most dangerous condition is when the perpetrator has both high criminal capacity and adaptability with the milieu.

4 – Social reactions against mental criminals:

When a crime is committed the criminal justice system arrives at scene to execute necessary investigations to define the crime and issue the order to punish the accused or execute security performances. The punishment execution is the last step of the criminal legal procedure in which social reaction suppresses or prevents the crime; here we examine the reactions

4 – 1: Suppressive social reactions:

Although criminal insane punishment is not in accord with any goal of punishments article 37 of Islamic punishment and note of article 291 of legal procedure law of public and revolution courts in relation to imprison one who become insane during the imprisonment some approaches have been predicted by virtue of criminal law such as transferring to asylum or appropriate place while financial punishments regarding

such perpetrator are disputable ; that is why the financial punishment execution has no relation with the deficiency appeared in such perpetrators ¹.

4 – 2: Preventive social reactions:

The community is permitted to do something to keep security to prevent the insane criminals ; such performances are not because of what the insane have done but of their danger and threat against the community security ; such performances have no the punishment qualities ; these executions in relation to insane criminals with dangerous condition are not only useful , but also remedial and that is why by virtue of article 4 of legal bill orders the insane criminals should be kept in asylum during dangerous condition because it is necessary for social benefits .

Conclusion and Suggestions:

Generally the conclusions of the study are as follows:

If the perpetrator is insane when he (she) commits the offence, he (she) is not criminally liable; such factors do not influence other accomplices liability unless they are insane, too.

The crime committed by the insane should be certified by the judge or related specialists.

Article 149 of punishment law approved in 2014 states concerning the factors removing the insigne's criminal liability " If the perpetrator suffers from some mental disorder when he (she) commits the offence in a way that he (she) has not discernment or will, he (she) is considered as insane and has no criminal liability ", but unfortunately no decision taken in relation to the rate of the liability and punishment of the patients suffering from relative mental disorders.

The suggestions are as follows:

1 – By virtue of common features between mental disorders the criminal liabilities of the perpetrators suffering from the disorders are described as follows:

A: If the perpetrator has no wisdom and will (Such as mental retarded, abstract hysteria and acute depression), he (she) has no criminal liability

B: If one suffers from relative disorder (Such as anxiety disorders), he (she) is relatively liable.

C: Other patients whose wisdom is intact, but they have no moral feeling, kindness, affection and sin feeling (Such as psychopathic ones), they are criminally liable completely.

2 – Insanity after the crime commission does not remove the criminal liability, but the punishment execution (Except for financial crimes) during insanity is in contrast to their goals; so the legislators should try to forbid suppressive social reactions during insanity and order the preventive ones concerning al dangerous insane perpetrators because it is in line with social benefits and such perpetrators.

3 – Some efforts such as support, sending patients' conditions reports in different steps and possibilities to renew or decrease the time to keep the patients in related centers may improve the mental patients' conditions, cure or recover them to return to the community and also influence the social security against such patients.

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