



INVESTIGATING THE RECOGNITION OF PSYCHOLOGICAL TRAUMA IN THE STAGE OF PREPARATORY RESEARCHES OF LEGISLATION IN IRAN

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Abstract:

The main purpose of the present study is, to investigate the recognition of psychological trauma in the preparatory stage of legislative research in Iran, with an emphasis on recent laws of the Islamic Republic of Iran, including: Islamic Penal Code, adopted in 2013, as well as the Code of Criminal Procedure of 2013. In this research, the author has tried to technically and expertly identify both the material and the spiritual aspects of psychological damage, and finally, by knowing and providing the appropriate criminal policy in the laws, it helps the process of rapid prosecution, investigation, and prosecution and reveal the importance and the subject to avoid the prolongation of the judging process. The method of research is a library procedure. In light of the foregoing, it can be admitted that crime, the use of material sciences and the status of the detection of crimes in the preparatory phase of investigation, such as crime detection, crime proof, identification of offenders for the purpose of providing criminal justice, and the study of material grounds for crime prosecution through the works and documents obtained from crime scenes, such as the behavior and psychological states of individuals, have a particular value and is often somehow certain in the knowledge of the judge in proving the charge or removing the charges. In existing laws, especially the new Criminal Procedure Code, the importance of this issue is mentioned and, even in certain cases, the legislator has clarified with specific precision and obsession.

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1. Introduction

Human history shows that the crime has been an integral part of human societies, and by referring to some of the Qur'anic verses, it can be seen that with the formation of the first human family on the planet, the first crime also occurred but this process never prevents humans from identifying the causes of crime and preventing it. The attention to this issue has not been reserved for ordinary people, but also the divine religions and the chosen ones of God have always paid attention to this issue, as the religion of Islam which brings with it all the mechanisms of human life, includes the concepts of prevention of sin it is a crime and it explains the causes of it. In the occurrence of crime, various factors can be affected by the fact that the number or importance of each of these factors varies in different societies due to cultural, economic and political differences. In a general split these factors can be divided into three categories.

A. Individual or biological factors such as gender, age and limb,

B: Psychological factors such as weakness of faith to resurrection, pessimism, aggression, timidity and fear,

C: Social factors such as disorderly family, parents' incompatibility of the reference group, immigration and the press.

There is no consensus between the scholars on the number or extent of the role of these factors, and each of them, according to their kind of specialization, views this issue, and a certain category of these factors is only effective in committing criminal acts. Internal factors of delinquency with their own characteristics are divided into two inherited and acquired groups.

Hereditary factors include self-reports that the child has taken from his father, mother and ancestors and born with them. The effect of inheritance cannot be denied on the development of a child's personality. Recent studies in the field of hereditary science show that some of the chromosomal abnormalities have a profound effect on emotions, and in general, human behavior. Acquired features of human personality cause some of the potential hereditary talents to flourish, or, alternatively, the barrier provides a way for its development. These characteristics, which cannot be doubted in their criminality, require the investigation, identification, and then appropriate action to control and prevent it in order to prevent crime. Prevention of crime, which is the most effective means of combating the behavior of abuses and social maladministration, has a high status in the criminal policy of the countries. From the scientific point of view, preventing the occurrence of any social and personal dilemma is the best way to combat

it. This issue economically is important because it does not waste much time and effort (Ghannad, 1998). Psychology in the past has not given too attention to the unconventional man, including the perpetrator, henceforth a lot of information is found in the previous psychology of the will, emotions and memory, and the reaction of man against stimuli, etc but about real human triggers - in short, the deep emotions and desires of the alive person did not get enough information. In fact, the same fanaticism that was found in the criminal doctrine and its purely objective judgments had also a psychological problem. Freud's psychoanalytic movement took the lead in real-life psychology research and examined the profound powers of human action. When there is a judging about the offender, mental analysis should be the main criterion, because psychoanalysis can understand a person and his actions in his own way with his own methods.

Before Freud, psychology could not give a clear idea of personality because it was superficial and mechanical. One basic point was left to the view of these psychologists, namely that humans are not a harmonious unit. The notion of "postulate", in which man's nature is full of contradictions, and the forms in which they can be made, were neglected but Freud, with his own clinical reviews, gained this principle of universality. He found that the conscious mind - the centerpiece of psychological research before him - only made up a small part of the human mental system. This conscious mind is based on a huge reserve of stretch marks and intentions and unknowing desires and in many ways depends on these factors. The fact that has been obtained by psychoanalysis has an important reflection on criminology. Psychoanalysis has shown that one may consciously love another, but in his unconscious mind, he hates him and vice versa. Therefore, a person may commit a crime for the sake of loving and hateful acts, or may do stealing because of the desire to possess, and at the same time, due to having the illness pleasure to the stealing. While her innate pleasure has no a relationship to her material profit. These contradictory factors are not only the characteristics of the perpetrator, but also seen in the accepted groups of society. Psychiatricians typically divide criminals into two healthy and sick categories, thus the first group to be sent to the hospital and the healthy people are sent to the prison. Secondly, the Border Line, which is between healthy and sick, remains uncertain. Therefore, psychological medicine does not produce any results without using psychoanalysis (Goodarzi, 2008). Just as histology cannot be achieved without the use of a microscope, psychology is also impossible without psychological analysis. In contrast to veteran psychology, which counts perpetrators with old theories and based on the biology of the machine, in vain, it seeks physical impairment in criminals, or in the face of contemporary mechanical psychology, which is engaged in superficial

experiments on intelligence of individuals. Psycho-thinking, based on emotional factors, creates a great revolution in human knowledge. Psychoanalysts cannot satisfy themselves with statements made by a mental health specialist who consider the offender mechanically ill or healthy because he is able to reach the psychological mechanisms behind the curtain, and in particular turning on a lot of criminals or suspicious criminals, until Freud had brought human-type research into an exact scientific instruction.

Given that the psychological harm is the novice in the field of criminology, disagreement over its position is high in the preliminary research phase, for example, it is believed that support is only possible in the form of material compensation, but some others believe that by knowing the exact psychological damage and the consequences of the crime, they can be materialized as well as moral support. Therefore, it is important to recognize the exact types of psychological harm, their role in preliminary studies, the presentation of legislative approaches to dealing with victims, the definition of the types of support provided after committing a crime and analyzing the process of psychological damage.

2. Research Methodology

The method of research in this study is descriptive analysis and like most of the conducted researches by the humanities is as the form of a library and documentation. Therefore, in this regard, we have used the internal and external books and articles of the Internet sites and all of the subjects that are relevant to the research and help us for the desired purposes.

A. First speech: The rights of the accused at the crime discovery stage

The discovery of crime are acts that are done, after knowing the crime to protect the works and reasons, arresting the accused and preventing his escape, and collecting information related to the crime of committing crimes. This is under the responsibility of the judiciary and is on behalf of the authority of the judiciary. The defendant at this stage has the following privileges and rights that prevent him from attacking the police.

- invoking a defendant by means of a summons or drawing paper; generally, the invoking of the accused is possible by means of a summons or letter of receipt and is possible under the order of the judicial authority. The police authorities are different at the stage of detecting crime by cleaning up evident and intangible crimes. According to Article 24 of the Criminal Code, in the evident crimes, the police have the authority to interfere and, in order to preserve the work of the crime and arrest the accused, the defendant will appear in the courtroom within 24 hours.

- the forbid of prosecution and arbitrary detention; So, just as governments are committed to respecting the rights and freedoms of individuals, combating criminals to maintain the order of society is also one of the most important government tasks but in the combination between the respect of individuals and the order of the community, it should be noted that freedom as a natural right is commonplace, and the invasion of the order of society is an exceptional one. In this case, the pursuit and arrest of perpetrators should be rational, justifiable, and based on legal criteria (Hashemi, 2004). According to the thirty-second principle of the Constitution, "*No one shall be arrested except in the manner and order prescribed by law*".
- the arrested person on the basis of articles 572 to 575 of civil rights which guarantees the execution of criminal penalties for the illegal seizure of individuals by law enforcement agents or law enforcement officers and the person is banned to give the protests to the authorities.
- the principle of the legality of crimes and penalties, the individuals can only be prosecuted for committing acts that are in the law with a guarantee of execution of punishment or measures of security. Justice ruled that no acts of crime should be considered as a crime in order to protect the lives and property of individuals from the offense, unless they have already been considered a crime under the law and their punishment has been determined. In accordance with Article 169 of the Code of Civil Procedure, under the law that was subsequently imposed, no acts or departed from the act, don't considered as a crime and also Article 36 stipulates that "*the sentence of punishment and its execution shall be done only through the competent court and also it should be lawful*". This principle in Article 638 of the Islamic Criminal Code has been removed that states that the publicly banned acts which are not crime in essence, but harm the public chastity are punishable.
- respect for the inherent dignity of individuals; the accused has the right to behave in accordance with the inherent dignity of man. Article 39 of the Constitution provides that the honor and dignity of a person arrested, detained, imprisoned or exiled in any manner prohibited or punished by law.
- today, the right to silence, in many countries of the world, not only is the accuser's right to remain silent, but the judicial police are obliged to remark that the defendant is not obliged to answer; after having summoned or convicted the accused in addition to asking for identity but if he/she express a statement, it may be entered in the minutes, and be used subsequently against it. This right is in the direction of giving the accused information to the unpardonable statements he may make. According to Article 129 of the Criminal Code, the judge is obliged to declare to the accused before beginning the investigation "*to take care of your statements*".

Understanding the charge: Each accused must be informed of the criminal nature of his crime before commencing the investigation so that he can obtain appropriate defense tools. This right is referred to as the right of understanding charge must be included in the subpoena sheet and as soon as the defendant is present at the police station, he will be told what his charge is.

The thirty-second principle stipulates in this regard states that "*the charge must be summoned with reasons to the accused immediately in writing.*"

B. Second speech: Rights of defendant in the preliminary investigation phase

One of the most important and decisive stages of the public prosecution is the preliminary stage of research. The reason for the importance of this stage is that, in terms of time, it has usually not been long since the crime occurred before the investigation was completed and the causes and effects of the crime have not disappeared. The possible witnesses still remember their observations, and it is likely that the accused has not yet fled or failed to collusion with partners and deputies to release them from punishment. Thus, the research that takes place at this time has a great impact on the preservation and collection of reasons and a complete and ready-file case for trial, the importance of timely and prompt reference to research in this area is indisputable but the defendant at this stage has some rights, such as the right of having a lawyer. So one of the strategic principles in A .D.K is the protection of the rights of individuals, in which the protection of the defendant and his defense rights are of particular importance. The defendant, who is one of the parties to the criminal lawsuit, needs to use defenses to remove the allegations from himself against the evidence of the other parties to the lawsuit, namely prosecutors and the plaintiff. These rights should be developed to provide maximum protection from the accused. At this stage, which forms the basis of the criminal case, three groups of acts are carried out.

- A. Collecting evidence for and against the defendant
- B. Appropriate measures to prevent the accused from fleeing or being hidden, through issuing the appropriate measurements
- C. Commenting about the appointments crime in the form of one of the prosecution, cease prosecution or conviction

At this stage, of course, the principles of summoning or accusing the accused and so on, as well as the following, should be followed:

- A. The right to be accompanied by a lawyer; the accused must have the right to appear before the investigating authority with a lawyer. Research should be conducted in the presence of a lawyer and not confidential. In exceptional cases that the investigator considers it necessary to obtain some of the explanation without the presence of a lawyer, after the approval of the prosecutor, it is

necessary to obtain the right from the competent court. This should be addressed at the earliest opportunity (Shirazi, 1993, p. 7).

- B. Providing sufficient opportunity for defense , the right to defend is the most natural person's rights; therefore, during the preliminary investigation proceedings and before the issuance of the sentence, the defendant must be given adequate opportunity to provide defense equipment. If the defendant is arrested, he will be given the opportunity to prepare documents and talk with witnesses, and he will have the opportunity to use the opportunity to reject the accusations in court and the right to research and appeal is guaranteed to him; and there must be a reasonable and appropriate gap between the date of the crime and the final conviction of the offender.
- C. Rules governing the gathering of evidence; Immunity of the accused's private life is one of the important issues that should be carefully considered by the judicial authorities and the judiciary; because the slightest neglect in the gathering of evidence and the discovery of a crime constitutes a violation of fundamental rights and freedoms.

Nowadays, sciences such as fingerprinting, gunnery, genetic identification, and computer use to identify the accused have such an evolution and development that creates a high degree of reliability in the field of accurate and rapid detection of crime. It should be noted that the necessity of observing the defendant's defense rights at the time of the discovery of a crime requires that it does not use unethical and inhuman scientific and technological advancements. In fact, the boundary between the use of the criminology, the rights and freedoms of the accused is used (Sirkishikian, 2006). The preliminary investigation process should be conducted in accordance with legal and regulatory requirements and with the required speed and precision in order to provide a fair trial. An attempt to stop or slow down, or delay in prosecution, will be considered a measure against judicial justice. In order to provide a fair trial in national and international law, it has been stipulated in several provisions that it provides for the fair trial. From the beginning of the occurrence of the criminal phenomenon until the time of enforcement order, the judicial authorities and all persons involved in the crime, including officials and government authorities, witnesses, investigators, and other persons who are involved in some way in the proceedings, and predict penalties for violating, these assignments. We refer to the issues that they are considered to be criminal or illegal, but they are not discussed in relation to other matters for which there is merely a guarantee of administrative or disciplinary enforcement, as a result of avoiding prolongation of the discussion and the issue of a subject from the title (Sirkishikian, 2006). These crimes can be categorized in several ways:

Dividing crimes based on legal bases: Crimes are then divided into four categories:

- a) The crimes that originate from the constitution;
- b) Offenses that are the source of that law;
- c) The offenses underlying international treaties;
- d) Offenses based on the combination of two or three categories of rules and regulations above

This classification was not applied since a special impact is not over it. Regardless of their legal basis, all crimes have special enforceability warranties and their legal validity does not depend on the authority to approve it. The division of crimes into the credit of the perpetrator: the crimes are divided into the validity of the act and the imprint of it can be divided into four categories:

- a) Crimes of judicial authorities;
- b) Crime of Offenders;
- c) Offenses by state officials;
- d) The crimes of those who associated with the case, including experts, witnesses, informants, and people who somehow interfere in the case (Parvini, 2009).

However, this division also has a significant impact on the credibility of the audience, but because some of the crimes, common to several groups, cannot be based on work, they are neglected.

The type dividing offenses: In this division of crimes, they are placed in a stable section. This division was of concern to the French legislature, and it is the nature of the crime's impact in the fair trial process. That is, the crimes that have a negative impact on the process of administering justice in the world are systematic crimes, and the crimes that are at the stage of proving, the criminal phenomenon and at the time of the issue are called in the law enforcement agencies and are called punitive crimes.

The subject division of the crimes: the division of crimes based on their nature and taking into accounts the perpetrators of such crimes;

- a) Breach offenses generally prevailing on preliminary investigations
- b) Felony crimes of the rights of the accused or the victim for the convenience and speed of access to the matter.

The division of the fourth type is the criterion of labor (Parvin, 2009).

Clause 1: Offenses Infringing the Principles Governing Initial Investigations. A fair judging in the preliminary investigation stage requires compliance with its principles and rules. To comply with these criteria, a guarantee of sufficient implementation is foreseen. Are there enough guarantees in our judicial system that we

have implemented this? To answer this question, it is necessary to pay attention to the following points:

First, the principles and terms for preliminary investigations can be summarized in two categories in terms of implementation guarantees.

- Principles that is lawfully enforceable under criminal law;
- Principles that have a guarantee of administrative, civil, or civil law enforcement.

Second, violations of the principles of the pre-trial investigation may be carried out in a variety of ways and in different ways, some of which considered a crime and some other considered violation. For example, one of the most important principles of consideration in the preparatory phase of the investigation is the principle of impartiality of the investigating judge. If the investigating judge violates this principle due to an error in inference, it has only committed a violated offense, but if committed by bribing one of the parties, these sidelines will be considered as a crime against judicial justice. According to this point, this section deals with crimes that violate the principles governing pre-trial investigation and for which the law implicitly or explicitly provides for punishment. In order to express these crimes, the analysis of the legal protection of fair trial in the preliminary investigation phase and then its criminal enforcement is discussed in the framework of Article 597 of the Islamic Penal Code (Parvin, 2009).

3. Conclusion

Those who involved in the criminal justice system, especially the experts involved in the preparatory research phase, have an important and basic role in addressing the needs of the victims and their needs, because the basis of a criminal case often occurs during the preparatory phase of the research. Therefore, any negligence or neglect of the agents of the institutions involved in the preliminary investigation of the prosecuting authorities and the police, in addition to the violation of the rights of the parties to the dispute, will lead to secondary victimization, the consequences of which will be far deeper and more severe than the primary victim. Although the traditional mission of the prosecutor's office is to institute and prosecute a public prosecution at all stages of criminal proceedings, the prosecutor plays the role of the plaintiff in this regard, but in recent decades, the arrival and reflection of the findings and doctrines of crime in the field of politics the criminality of countries has moderated this classic attitude in prosecutors. So today, as one of the institutions of the criminal justice system, the Prosecutor's Office, in addition to its duties, is charged with numerous duties and responsibilities towards the victims of crimes.

The impact of these developments on the police body is also tangible, because today the role of law enforcement officers or police specialists in the criminal process is not limited to crime detection, arrest and investigation of offenders, but they are considered as those who may be more than others professionals in the criminal justice system with contact and communication of victims play an important role in advocacy and support for the victims. Having the scattered regulations in domestic law regarding victim support and service to the institutions involved in the initial phase of the investigation, it must be admitted that, pending an effective and standard criminal policy that addresses needs and desires there is still a lot of distance between the victims and the provision of services to them in the police and prosecutor's office, as well as the active participation of civil society, especially the victims of the criminal process, and in particular the preparatory phase of the preliminary investigation. However, the lack of relevant laws in this regard can be basis for this affair, but the classical culture and beliefs governing these institutions also did not affect the consistency and continuity of this traditional practice. Psychological problems are one of the main causes of the tendency to commit criminal acts between women and men. Psychological damage such as mental retardation and the lack of development of personality are important psychological factors in crime; it is harmful to other people. Aggressive and anti-social personality is one of the most important injuries. For some criminologists, the lack of affection and lack of emotional relationship are among the determinants of crime. This lack of affection may sometimes lead to incorrect relationships between girls and boys with friends and inferior people. As well as the main motive for criminal behavior, anxiety, personality instability and negative emotions are also considered to be other psychological predisposing factors in dealing with delinquency.

Legislator in statute laws predicts a personality file for criminals, and requesting an examination of the defendants for mental health by legal psychiatrists (and before their education by psychologists and psychiatrists). In fact, it is up to psychologists and psychiatrists to identify the types of illnesses and psychological injuries (after identification in the text) so that they will comment on the subject matter and determine the case and the judicial authority will issue a ruling. In fact, the legislator must use the services of psychologists and psychiatrists in all of the important crimes, which at present do not have a precise criterion for their diagnosis and cleansing, so that as soon as such offenses are committed, the defendants are examined by psychologists to be studied, because, as shown in previous discussions, a number of psychological injuries are susceptible to criminal misconducts. As these professionals can, with the cooperation of social workers, sociologists and criminologists, look upon the

perpetrator as a single entity, they can cooperate precisely and efficiently with the delinquency and offense and, in the best of all, reconstruct the delinquent; the field and as a result returning him to society as a healthy citizen. This suggests that the role of psychologists and psychiatrists should not be ignored in the release and clearance of offenders with a reduction in mental health. These specialists must confirm the mental health of the perpetrators and their ability to return to society (with their individual rights). The preliminary research phase can be considered as the most important stage of the criminal process, since the foundation of a criminal case is at this stage, it will always pay attention to the results of this phase. And two basic points are necessary at this stage: first, in order to maintain and restore the general order, which has been corrupted by committing a crime, the prosecuting authorities and all officials must use their best endeavors to discover the truth and create the right conditions for the administration of justice. It is common that in order to prevent the escape of real criminals or to eliminate evidences and similar cases, this stage should be carried out with special sensitivity and sometimes in a confidential and non-public manner. The second and most important point is that at this stage no prosecution of the wanted person has yet been committed and therefore, in the light of the rule of law, the assumption is taken and, under the pretext of public order, it is not possible to deprive individual rights and freedoms without any justification; therefore, the preliminary investigation phase is of particular importance and the art is that the legislature and the criminal justice system can take into account the two above-mentioned considerations. This has led to a major part of the fair trial criteria and standards and the guarantees they provide to the preparatory phase of the investigation. On the other hand, crime is one of the areas that closely cooperate with criminal and criminal prosecution authorities. In complex crimes and decision makers, crime perpetrators usually use the most appropriate time, the most suitable place, and the most appropriate weapon, so the reliance on confession and testimony of these crimes is very low, and on the other hand, the validity of the certainty of material reasons for the invariance and its proof in the lab is far more than other reasons, including martyrdom. The examination of blood spots can be used to confirm the confession of the perpetrator, to deny the confession of the accused, and ultimately in the system of spiritual reasons, for material reasons of particular value, to cause the certainty or knowledge of the judge's self-esteem in proving or removing the charges from individuals. In many cases, after collecting material grounds from scenes of crime such as blood spots, hair, fingerprints, etc., accused persons who have been subjected to arbitrary conditions or inappropriate inculcations or emotional motives in criminal investigations have been convicted of invalidity to make on the face of this, the real offender confronts the actual description

of the crime in confrontation with material reasons and confesses to committing a crime.

The current research, which attempts to explain the importance of the preliminary research phase and the role of mental injuries at this stage, has studied Iran's legal system and it should be noted that, despite the ups and downs in the current situation, despite the adoption of some foundations and the principles of fair trial in the constitution and ordinary laws, such as the acceptance of the assumption of innocence and the right to appeal to a lawyer, and so on, are still far from being resolved to the point of desirability and acceptance of the principle of the images of weapons at the preliminary stage of the preliminary investigation. Some attempts have been made in recent years.

References

1. Hashemi, Seyyed M. (2004). *Human Rights and Concepts of Equity, Equity and Justice*, Tehran University Press, p. 188.
2. Shirazi, M. (1993). *Judicial Justice, Lessons from Experience and History*, Journal of the Center for Attorneys at Law, Tehran, p. 156.
3. Sarkashikian, Seyyed H. (2007). *Principle of "Defamation" of the accused in Iran's Criminal Law*, Young Newspaper, p. 189.
4. Parvin, AS. (2009). *Crimes against Judicial Justice at the Initial Research Stage*, Education Message, No. 41, p. 50.
5. Ghannad, Fatemeh. (1998). *Criminal Assistance Against Sex Crimes in the UK and Wales Legal Systems*, Master's Thesis for Criminal Law and Criminology, Law School, Shahid Beheshti University.
6. Goodarzi, F, Kiani. (2008). *Forensic Medicine for Law Students*, Publications of the Organization for the Study and Compilation of Humanities Books of Universities (Tehran).

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