International Academic Institute for Science and Technology

International Academic Journal of Humanities
Vol. 5, No. 2, 2018, pp. 131-140.
ISSN 2454-2245

International Academic Journal of Humanities

www.iaiest.com

Legislative developments review at the start of crim, Crime is impossible, Incomplete offence in the Penal Code of 1352-1370 and Adaptation to its the Penal Code Approved in 1392

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Abstract

For implementing the crime, although appearance of an action or abandonment of material action is always a condition, the punishment of this action is not always subject to a result that a misdemeanant has attempted for taking it. The most important mode of Islamic penalty code 1370 approved against its self, has not had a transparent position versus deficient crimes, in a manner that about beginning of the crime and more about impossible and abortive crimes, was vague and brief, GH. M. A approved 1392 after the excursion of evolutions and much promotion with refer to GH.M. A 1352 to many extent, making clear legal conceptions and the conditions of beginning the crime and impossible crime and considering the crime. In new code of Islamic penalty about beginning the crime, the principle is being crime of it but from 1370 up to now that is during the past 20 years, the principle was that beginning the crime requires legal supported. Abortive crime and impossible crime aren't predicted and Article 122 mentioned code is about beginning the crime. By considering to this material, punishment of abortive crime and impossible crime are conceived to some extent that amount of operation has been conducted, like beginning the crime, is the crime. This article is in the manner of library and descriptive research, we attempted to make clear legal evolutions of beginning the crime, impossible crime and abortive crime in the codes 1352 to 1370 as if we mention the weak and strong points of the rules related to aforementioned crimes and also we compare the survey of this evolutions with ones created in Islamic penalty code 1392.

Keywords: crime, beginning the crime, abortive crime, impossible crime

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

Introduction

Today, criminal law of more countries in the world against the past, merely in the face of commitment and implementing criminal action doesn't react, but toward the beginning crime commitment or criminal measures without result (abortive crime and impossible crime) because mentioned deeds, against public order of the society and /or suggesting the mood of crime commitment, decided to punish properly. In the code of public punishment 1304 of Iran about the concept of impossible crime and its punishment, it has not been predicted provisions. After Islamic revolution and approving the codes of a fixed punishment for certain crimes and retaliation, wergilds and discretionary punishments, provisions related to beginning the crime by virtue of Articles 15 to 18 of the code about Islamic punishment approved 1361 subjected to the changes that is controversial itself and deserves objection and criticism.The most important mode of Islamic penalty code 1370 approved against its self, has not had a transparent position versus deficient crimes , in a manner that about beginning of the crime and more about impossible and abortive crimes, was vague and brief, Islamic penalty code approved 1392 with refer to public penalty code 1352 to much extent , making clear and crime considering legal conceptions and the conditions of beginning the crime and impossible crime, but in identifying impossible crime and its crime considering as before, is qualified ambiguity.

In this thesis, we try to make clear legal evolutions of beginning the crime, impossible crime and abortive crime in the codes of 1352 to 1370 as if we mention the weak and strong points of the rules related to aforementioned crimes and also we compare the survey of this evolutions with ones created in Islamic penalty code 1392 and at the end, we present the results and suggestions and difficulties related to this domain.

1. Conceptions

1-1- The concept of complete crime

In the divisions of the crimes in Iran criminal law , dividing the crimes to complete and incomplete crimes .In complete crime , all executive operation of the crime is performed to the end and the crime is committed completely ; but in incomplete crime , perpetrator who intends to commit complete crime , more than doing its executive operation , due to its defect (abortive crime) defect in the target (absolute impossible) or defect in means (relative impossible)and /or after the beginning to perform executive operation due to existing impediments out of determination (beginning the crime) doesn't accomplish to his purpose . the expression of incomplete crime versus complete crime is used and a complete crime is one that all the elements consisted it in a manner that is defined in law, is occurred. The crime when is called complete crime, committed act is included all the elements consisting the crime and stipulated in legal definition. That is intention of the doer is visualized in the form of a behavior which the law deserving it punishment. In spite of all that, some of the crimes are considered complete irrespective of their possible pernicious result. These crimes are termed as absolute crimeس idiomatically. Bound crime is versus absolute crime (Ardebili , Mohammad Ali, 1392 : 176) .

1-2- The concept of beginning the crime

Beginning the crime is a behavior that has been done in order to make practicable criminal purpose. In the most cases of acquiring pernicious result, is one of the elements of implementing the crime. When the mentioned result isn't achieved, it can be said the crime in the phase of beginning the crime. Beginning

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

the crime is deserving the punishment, when the warrant of executing a punishment was predicted for its perpetrator. The Article 41 Islamic penalty code 1370 (Article 41 Islamic penalty code 1370 prescribed that : " Everyone who intends to commit the crime and begin to perform it but the crime isn't considered as an intention although actions have been taken to be the crime is sentenced to the punishment of the same crime") and in this way , Article (122) GH.M.A (1392)(Article (122)GH.M.A (1392) says : " Everyone who intends to commit the crime and begins to perform it, but through the agent out of his will , his intention remained suspense , to be punished as following ") mention the cases that in all these Articles included two parts :

The first, the conditions and the elements of implementing to begin the crime, includes previous criminal intention and commence the executive operation and existing outer impediment for implementing the crime and the second, the quality of legal reaction versus beginning the crime (Golduzian ,Irej, 1395: 316 , 317) are studied in following order .

One of the lawyers expressed beginning the crime such that in criminal law, a person is not punished for having criminal intention unless a crime occurs in outer world physically. A culprit for acquiring criminal result should be committed all stages of committing the crime that is 1- mental incarnation (criminal thought)2- preliminary operation (preparation of preliminaries) 3- executive operation (execution of criminal operation) that is punishable or deserves punishment. However, a culprit always doesn't succeed to achieve the result by committing the crime and during its stages.

In the definition of beginning the crime is said that " a behavior has been done in order to make practicable criminal opinion but due to outer impediment is not led to acquire intended criminal result ". With due attention to the text: " Everyone who intends to commit the crime and ..." in Article 41 GH.M. A approved 1370 beginning the crime in intentional crimes is conceivable and realizable and in unintentional crimes by virtue of lack of criminal intention, beginning the crime is not realizable. Beginning the crime is impossible and lose its point in the crimes which their material element is discontinuing the action.

1-3- impossible crime (or abstainer crime)

Beginning the crime for this respect is an incomplete crime looks like impossible crime but are different; Although Islamic penalty code, is not objected to impossible crime, it isn't bad to say a little difficult about impossible crime and its relation to beginning the crime. Lack of acquiring favorable result for the culprit in abortive crime has different reasons that the most original of these reasons is such as: The lack of subject possibility, due to lack of searching intended means (like prescription of the drug which is not at all caused abortion the fetus or using a weapon which thought to be full while the weapon is empty and there isn't a shooting in it). Pointing out this matter also is not useless that expression " but my crime doesn't occur", although it is an absolute expression, is regardless of impossible crime; because mentioned presumptions in the Article have such exigency. Impossible crime is one that perpetrator or another person cannot do it in circumstances that existed. Here like beginning the crime, doing his activities successively.

But circumstances that existed in impossible crime and hindered to occur the crime. Against beginning the crime, there are inherent conditions that existed in the moment of beginning the crime. In Islamic penalty code, impossible crime is not predicted explicitly. Article 41 Islamic penalty code 1370 and Article 122 GH.M. A 1392 also prescribes and points to doesn't occur intended crime of committed, after

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

intending and beginning to perform the crime. "...Everyone who intends to commit a crime and begins to perform it but it doesn't mean the crime ...". Therefore, in the format of doesn't occur intended crime of committed, can be specified " impossible crime " by continuing the stage of beginning to perform to continuation of without result operation. (Golduzian, previous, page 328)

1-4- The concept of abortive crime

The purpose of abortive crime is one that the purpose and the aim of misdemeanant from committing the crime has not achieved. For example, misdemeanant volleyed shooting for the purpose of kill another person but the shooting went the wrong way and didn't hit to the goal. Abortive crime by doing acts consisting the crime by the agent is distinct from beginning the crime and from this respect that the crime doesn't occur as a purpose look like beginning the crime. Therefore, in the domain of Article 41 Islamic penalty code 1379 and Article 122 GH.M. A 1392, if taken actions is a crime, agent will be sentenced to punish the same crime. nevertheless, substance of Article 613 of the Code ... discretionary punishments approved 1375 that is proofs of beginning the crime of murder and is pointed to lack of proving intended result without perpetrator will is generalized to abortive crime and therefore perpetrator of abortive crime in murder deserves 6 months to 3 years imprisonment (Article 613 GH ...discretionary punishments : " Everyone begin to murder but intended result without his will doesn't occur , is sentenced to 6 months to 3 years of discretionary imprisonment") In committing abortive crime like impossible crime , doer using all his attempt for achieving to conclusion but for unpredictable reasons that is out of his will; for example lack of skill in shot which is out of doer will , intended result is not achieved. In abortive crime, act is done doesn't remain any doubt that doer remained in his intention until the last moment and just crime result by circumstances independent from doer will remained without result.

2- Similarities and differences of impossible crime and abortive crime

the similarity between impossible crime and abortive crime is that there is a criminal motivation until the last moment and their difference is in the possibility of proving the results both of them while proving the result in committing abortive crime is always possible, the possibility of taking result in present crime is not possible at all. It means without result and useless. It means impossible, vain, unfounded and falsehood.

Namely, main difference of abortive crime and impossible crime is that in impossible crime doesn't provide the possibility of occurring the result but in abortive crime, it's not possible. But both of them from that respect that the crime is not mean, they are like to begin the crime. In abortive crime, criminal path traversed to the end and can be obtained criminal purpose clearly while in beginning the crime, there is a doubt in being certain criminal purpose. Abortive crime and impossible crime (unproductive criminal measures) are measures that doer against the case of beginning the crime that is stopped in the path half, traversed criminal path completely, but he doesn't achieve to a result of operation and misdemeanant in spite of terminating entire the operation, doesn't achieve final success that the result of this, occurring abortive and impossible crimes. In this case, the circumstances that existed are independent from doer will. For example, misdemeanant volleyed shooting for the purpose of kill another person but the shooting due to lack of skill or inefficiency or unpredictable eventual cause went the wrong way and didn't hit to the goal, here the criminal in spite of preparing preliminaries and shot and doing entire

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

operation in criminal path couldn't achieve final result that is the same killing intended person, this act is said abortive crime.

3- The distinction of abortive crime with beginning the crime

In beginning the crime, the operation of acts consisting the crime is not terminated and the crime has not occurred, while in abortive crime, this operation and consisting acts is terminated and the crime doesn't occur. In the Code, there isn't a special expression for the reason of punishing abortive crime, nevertheless, it can be punishable in the format of beginning the crime. Therefore, whenever actions have been taken to be the crime, the agent sentenced to punishment is the same crime.

4- The survey of evolutions of beginning the crime punishment, impossible crime and abortive crime in the rules of 1352 to 1392

In this part, we survey the evolutions of beginning crime punishments, impossible crime and abortive crime in the rules of 1352 until before 1370 and mentioned rules in time interval 1370 to 1392.

4-1- Abortive crime punishment in 1352 until before 1370

The Article 20 public penalty code modified in 1352 and Article 15 of the Code about Islamic punishment code 1361, it is not possible abortive punishment explicitly.

4-2 - The punishment of abortive crime in 1352 until before 1370

The punishment of abortive crime in Islamic penalty code abolished, approved 1370 has not predicted and it is mentionable that Article 41 of mentioned Code about the beginning the crime had been brought. With due attention to this Article, punishment of abortive crime is conceived to some extent that amount of operation has been done like beginning the crime, to be crime, abortive crime for this respect that intended crime has not occurred is like beginning the crime. Therefore, in limitation of Article 41 GH.M. A, if action has been taken to be the crime, the agent sentenced to punishment is the same crime. Nevertheless, substance of Article 613 of Islamic penalty code that was proofs of beginning the crime of murder, was generalized to abortive crime and also committed of abortive crime in murder deserved 6 months to 3 years' imprisonment. Considering that it may inflict a damage from abortive crime to insane, although it has not been committed a crime but because there is a fault, it can be brought action and pursuit for damages according to civil liability code on account of compensation and giving a reason against accused.

Abortive crime punishment and its provisions are as following:

1. In a case that outer impediment made ineffective criminal intention. In the event that, there is an opportunity for nullifying criminal operation and perpetrator compensates before occurring criminal result and provides causes of being ineffective his operation; in this case he is not punished.
2. In a case that criminal intention is realizable, its punishment is the same that brings regarding the beginning of the crime. (Poortarrah, abortive crime and impossible crime, 1395)

4-3- The cases of crime considering as abortive crime in 1392

Legislator hasn't made a decision explicitly about abortive crime in Islamic penalty code 1392 and determining punishment on the strength of Article 122 of Islamic penalty code approved 1392 that is

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

observer of beginning the crime and also the Note of this Article that is related to impossible crime, is exceptionable. Because in this assumption, one who cannot achieve his goal i.e. killing another person due to lack of necessary skill and accuracy in shot, this baseness " through an agent out of his will" is not achieved but was effect of his lack of skill. Following Note of this Article also with this expression: " but for material reasons that perpetrator was not aware of it and occurring the crime is impossible, ..." expressed impossible crime order. Wit due attention to exigency of being legal of the crimes and punishments and preventing from widely interpretation of penal codes in current condition of penal provisions of special order for abortive crimes cannot be found. (Golduzian, previous)

5. The survey of evolutions, achievements and innovations of the crimes beginning the crime, impossible crime and abortive crime in the Codes of past years with Codes 1392

In Islamic penalty code 1392 against the code 1370, as well as beginning the crime, other incomplete crimes also have identified and this isn't an innovation but is legislative returning to public punishment code 1352 that during this time, has mentioned impossible crime under the title in the order of beginning the crime and abortive crime with more implication meantime of the beginning the crime. Therewith, a legislator in the Code 1392 GH.M.A with explicit acceptance of the lack of voluntary dispensing as the condition of occurring beginning the crime , promoted ambiguity of current rule and crime considering beginning the crime almost as the principle in all the crimes , moreover , with obeying the rule about Islamic punishment 1361, when the operation has the proof of beginning the crime and at the moment is according to other criminal title , in this case the legislator only prescribed the punishment of special crime that totally it is an worthy step in a new attitude to incomplete crimes . The objections to Islamic penalty code 1392 in this chapter are considered. In this chapter, we will survey these evolutions.

5-1- Achievements and innovations of punishment code 1392 in relation to beginning the crime

Islamic penalty code 1392 is in this way that expresses everyone who intends to commit the crime and begins to perform it but due to existing an agent out of will, his intention remains suspended, he is punished as following that in the continuation of punishment mentioned it. Therefore, it is said that punishment existed for it. While the Article 41 penalty code 1370 that is equivalent of Article 122 current punishment code, said that if actions have been taken is a crime, will be sentenced to punishment of the same crime. In new Code of Islamic punishment about beginning the crime, the principle is its being crime. Although our current Code appear to be derivative from the Code 1352, this Code also has been taken from France penalty Code; in this Code, all instructions of schools of criminal law theretofore have been respected i.e. even we can see the effect of new social defense school. Therefore, it might be said a rule is considered progressive, however, it should be said that during this forty years, changes of criminal law i.e. the next schools of criminal law don't exist in this Code. Other positive attribute of new Code of Islamic punishment is that in the subject of beginning the crime to be allowed to the judge to prosecute beginning the crime that many of professional perpetrators of different crimes cannot evade for this respect and say that we don't have a rule in this background and can release from the rule , also being grade and gradual system of the punishment is an important point , of course , about the capacities of this rule , it should be said that during the time and in the place of execution is specified that what difficulties it can or it cannot have . (essay of beginning the crime in Islamic Punishment Code 1392).

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

5-1-1 - Become systematic of beginning the crime to criminal liability of legal persons

In the part of beginning the crime, it has been made two major changes in new Code of Islamic punishment. One is the definition of beginning the crime according to scientific measures and the other one is being gradation its punishment. These provisions had predicted beginning the crime with due attention to all kinds of crimes and punishments merely in felony and stipulated misdemeanors. The other criminal liability is not specific to real persons namely humans. Because new Islamic Penalty Code in the Article 20 for legal persons (companies, structures and public or private institutions) also has considered criminal liability. Namely hereafter, the companies and institutions just like people in the case of committing the crime, will be punished.

5-1-2- The division of the discretionary punishments

So far the legislator dealt with a difficulty. Namely he had divided the punishments but in these cases, we should pay attention to the crime so that the legislator used another way, so if it is the life private punishment or continuous imprisonment or one-degree discretionary punishment, included clause A, Article 122. The important and remarkable point is that for the beginning the crimes with the other legal punishments (beginning the crimes with legal punishment of the non- imprisonment discretionary punishment the degrees 1 to 5 and the crimes with legal punishments the degree 6 - 8) that legislator has not stipulated the punishment of beginning these crimes in the other laws specially, also independently is not qualified to criminal title, the legislator has not predicted executive guarantee. (Azimzadeh , shadi , 1395 : 66) .An important and remarkable point is that for the beginning the crimes with the other legal punishments (beginning the crimes with legal punishment of the non- imprisonment discretionary punishment the degrees 1 to 5 and the crimes with legal punishments the degree 6 - 8) that legislator has not stipulated the punishment of beginning these crimes in the other laws specially ,also independently is not qualified to criminal title, the legislator has not predicted executive guarantee . (Azimzadeh, the same, 66, 67)

5-1-3- Being systematic the beginning of the crime

Being systematic the beginning of the crime in the part of beginning the crime has made two major changes in new Code of Islamic punishment. One is that the definition of the beginning the crime has been based on scientific measures and the other one is that its punishment has been graduated.

5-2- Achievements and innovations of punishment Code 1392 in relation to impossible crime

By respecting the note of Article 122 GH.M. A, impossible crime in some cases will be considered in the order of beginning the crime. The Article 122GH.M. A, whenever committed act has direct relation with committing the crime, but materially perpetrator has been unaware of them, occurring the crime is impossible, the action has been taken is in the order of beginning the crime. By respecting the note of Article 122 GH.M. A, impossible crime is versus the criminal prosecution, the bond of direct relation with crime commitment in this note, is observer of material act of impossible crime that executed and for this respect, is terminated and completed but due to profit of issue like beginning the crime is not achieved to the result. (Ardebili, Mohammad Ali,1392: 327). Therefore, impossible crime that in that being impossible, has not issued the order but being impossible of an issue has been resulted, is punishable under the inclusion of beginning the crime like that The weapon without cartridge that thinks

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

it has a cartridge has taken it toward the other one for the purpose of the murder and activate its trigger, in that case, the possibility of his conviction for beginning the murder is existed.
But this note is out of the cases that occurring the crime in them, is legally impossible like miscarriage of a woman who has not been pregnant at all. In this case, alteration in an element of legal elements of the crime not material aspects and also the act is out of inclusion of beginning the crime. (Mirmohammad Sadeghi, Hossein, 1392: 100)

5- 3- Achievements and innovations of punishment Code 1392 in relation to abortive crime

In the punishment Code of 1392 considering to the note of the Article 122 has prescribed that whenever the committed behavior, has direct relation with committing the crime, but materially that perpetrator has been unaware of them, occurring the crime is impossible, action has been taken, is in the warrant of beginning the crime. Legislator, has known abortive crime as the warrant of beginning the crime and considered the punishment of beginning the crime for it. Also, one of the innovations of the new Code is decision of abortive punishment that old Code has not point to it. Now we conceive if one due to lack of skill in shooting after firing the shot, doesn't succeed to kill intended target because of the shot going the wrong way, what is the title of the rate of action has been taken and how is it punishable?
In response, it can be said the rate of occurring the behavior is abortive crime, because in the stage of executive operation has not halted that it can be conceived in the extent of beginning the crime. But it is succeeded to complete the executive operation albeit the result has not been achieved because of lack the skill and this inconclusiveness in acquiring the result, even is not through the agent out of his will but is effect of his lack of skill. Also, the subject in the extent of impossible crime, is the subject of the note of Article 122 GH.M.A. Because the skill is not a component of material aspects that the perpetrator has been unaware of it. Therefore, with a view to being legal principle of the crime and punishments and refusal of wide comment of criminal laws, there isn't special order for abortive crime in Islamic Punishment Code. (Ardebili, previous: 335).

Conclusion:

In Iran current case law, not only beginning the crime except several stipulated proofs in major crimes against public welfare and security, has been known punishable but also perpetrators punishment of impossible crime and abortive crime also in important crimes like murder and .... in spite of going through criminal path on behalf of perpetrator, in the light that doesn't occur criminal result, substantially is impossible. By survey the generalities related to beginning the crime , abortive crime and impossible crime and case provisions in Islamic punishment Code is specified that Article 41 above - mentioned Code , not only deficiencies and objections of Articles 15 to 18 of Islamic punishment Code approved 1361 about being without punishment of beginning the crime in many of the crimes against society interests and public order has not promoted but also by omitting the subject of intervention of doer will, in not occurring intended crime - as a substantial and previous condition of idiomatic beginning the crime - and also omission of expression - eminent won't be chastised - the Article 15 of previous Code and only emphasized on possibility of perpetrator punishment of in the case of being crime the action have been taken -the nature of beginning the crime and its consisted elements in spite of years background of being subject in internal rules and judicial procedures have been neglected as if with incorrect definition of being beginning the crime and efface its concept , punishment of several existed proofs has been difficult

Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018

. So that can be said by effacing idiomatic concept of beginning the crime and emphasizing on its perpetrator punishment provided that being crime of his measures without requiring to existing Article 41 approved Code 1370, its crime is punishable, from the beginning the crime, only the title in three chapters of the Code has been remained. With changes which legislator exerted in Islamic Punishment Code approved 1392 in this subject, it can be said that achievements and innovations of the Code approved 1392 in relation to the Codes of beginning the crime, impossible crime and abortive crime are as following:

The first - achievements and innovations in punishment Code approved 1392 about beginning the crime: Islamic punishment Code 1392 is in this case that expresses everyone who intends to commit the crime and begin to execute it but because of existing one agent out of will, his intention remained suspended, he is punished as following that expressed in the continuation of punishment, Therefore, it should be said that is existed the punishment for it. While the Article 41 of punishment Code 1370 that is equivalent of Article 122 of current punishment Code, said that if action has been taken, is the crime, is sentenced to punishment of the same crime. In the code approved 1392 of Islamic punishment about beginning the crime, the principle is being crime.

The second - being systematic of beginning the crime in the Code approved 1392: In part of beginning the crime have been made two major changes in the Code approved 1392 of Islamic punishment.

One is that the definition of the beginning the crime has been based on scientific measures and the other one is that its punishment has been graduated.

The third - Achievements and innovations of the Code 1392 in impossible crimes: With respect of the note of Article 122 GH.M. A, impossible crime in some cases, will be considered in the order of beginning the crime. With respect of the note of Article 122 GH.M. A, impossible crime is versus the criminal prosecution. The bond of direct relation with crime commitment

in this note, observer of material act is impossible crime that executed and for this respect, is terminated and completed but due to profit of issue like beginning the crime is not achieved to the result.

The fourth - Achievements and innovations of the Code approved 1392 in abortive crimes: in punishment Code 1392 considering that the note of Article 122, legislator has known abortive crime in the order of beginning the crime and has considered the punishment of beginning the crime for it. Also, one of the innovations of the Code approved 1392, is deciding of abortive crime that old Code has not pointed to it.

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Received:4 July 2018/Accepted:19 October 2018/Published:24 December 2018