

## Investigating and evaluating the status of victims in the criminal procedure codes of Iran and France

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### **Abstract**

The study of the role of the victim and its supportive position in the Criminal Procedure Code of Iran and its comparison with the French Criminal Procedure Code manifests the deficiencies in the Criminal Procedure Code of Iran in terms of support of victims on the one hand and shows the necessity of forecasting special establishments in this area on the other hand. Another point is that the study of the rules in the Iranian Criminal Procedure Code clarifies the capabilities of this law from the scientific victimological perspective, and specifies the main position of these rules in the Iranian law. In French criminal law, the victim is more likely to enter a criminal proceeding as a private claimant, and it is the government that has the right to seek punishment. In addition, associations formed on specific grounds, such as associations for the protection of children or women, which have developed for five years can also enter the criminal process to seek redress for damage and loss as the representative of the victim.

**Keywords:** crime, victim, criminal procedure code, Iranian and French Legal Systems

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## **Introduction**

One of the fundamental rights of victims is to provide them with security in the criminal proceedings, hence measures should be taken to reduce the suffering and troubles of the victims, protect their private lives when necessary and guarantee their own, their families and their witnesses' safety against threats and revenge. Under the French Criminal Procedure Law, criminal proceeding is a combination of public and private prosecution. Each crime causes a lawsuit against the perpetrator, which is called public prosecution. However, in most cases, a crime brings about physical, material and spiritual damages to the victim in addition to disturbing the social order. In this case, in addition to public prosecution the purpose of which is to punish the perpetrator, a private action is also raised to compensate for the damage, and thus convict the offender or a third party who has civil liability for the offense. The victim's claim has a peripheral and secondary aspect. In accordance with the French criminal procedure law, a victim can bring an action at all stages of the investigation and even on the day of the trial as a private claimant and have a written or oral request for the compensation of the damage (Abdolfattah, 2014, p. 2).

Articles 1-2 to 2-21 of the French Criminal Procedure of 2012 have stated this point. The victim could ask for prosecution in two ways: 1. through a simple complaint against a known or unknown person sent to the court or the police unit. In this case, the court will be responsible for prosecution. 2. via a complaint together with bringing a private action. This can be used by the victim when research is required (crimes) or requested (minor offenses).

The solution to this problem is one of the important approaches to the new criminal procedure law, and Article 97 of the new Criminal Procedure Code has focused on the security of the victims: (The investigator orders certain precautionary measures to executive officers of the court in order to protect the victim, witness, crime announcer or their family, as well as the family of the accused person against threats. The court officers are required to perform the orders and submit the report to the prosecutor (Abdulali Tavajohi, 2012 p. 32).

## **Definition of victim:**

Victimology is a new branch of criminology that deals with the direct victims of crimes. So the knowledge of the victims and what is related to them is the concern of this new branch. Hans von Henning believes that a victim of crime is like someone who has formed the body of a criminal act (Khaleghi, 2014).

## **Definition of victimology:**

"Victimology is undoubtedly considered a branch of criminology. It considers any issue relating to the victim: the victim's personality, his biological, psychological and moral characteristics, his socio-cultural characteristics, his relationships with the offender and finally his participation in the crime" (Abdolfattah, 2014, p. 5).

## **Protection of social rights**

### **Prohibition of military activity**

In Iran, according to Article 2 of the Military Service Act (1984), it is forbidden to use in the military service those under 19 years of age and the international standards have been complied with since only those above 19 years of are called to military service.

## Prohibition of schooling

### **Prohibition of school deprivation**

As for the protection of the children's right for education, the only law existing before the year 2002 was Law for the Provision of Educational Facilities for Iranian Children and Youths (adopted in 1974). The article emphasized the right of all Iranian children to study, and prevented from depriving them of education unless with legal permission, if the parents prevented the child from studying (Khaleghi, 2014)

### **Protection against sexual crimes**

Iran's laws not only has not provided adequate protection for children against sexual crimes, they have in some cases adopted a reverse policy in this respect, as in the case of women, where the legislature has adopted a reverse policy instead of adoption of a differential policy for the protection of women. For example, the sexual intercourse of males with female children has the same punishment as the relationship between him and an adult female. According to the Note under Article 83 of the Islamic Penal Code, if a married woman has sexual intercourse with an immature boy, the woman will receive punishment by the lash. However, according to the clause above, the adultery of a married women with a mature man lead to her stoning! Despite the fact that the sexual relationship with children causes injury to them, the legislator has reduced the punishment regardless of this important issue (Karkheiran, 2014)

### **Scientific Victimology:**

It should be acknowledged that victimology is primarily focused on blaming the victim, for which it is referred to as "scientific or primary victimology". Scientific victimology attempts to explain the sociological and ethnological components of the problem of victimization. To achieve this, it not only focuses on the role played by the victim in the crime and his degree of liability, but it also attempts to protect the victim against damages due to the victim's position which exposes him to victimization (Abdolali Tavajohi, 2012 p. 32)

### **Supportive Victimology**

Since the beginning of the 1970s, the ideological-religious currents spurred the support and protection of victims by criticizing the views of scientific victimology. Arguing that the victim or his or her relatives have experienced victimization and encountered economical, spiritual, psychological and emotional problems, the advocates of victimology believe that the criminal system should consider in its legislative-judicial policy making the interests and benefits of the victim more than before, and should not suffice with compensating for their material damage and punishment of the perpetrator to relieve the victims. The government and civil society should in some way help meet the material, spiritual and psychological needs of the victims (Jina Philosola, 2013)

### **Compensation for the victims' damage by the government in Iranian and French laws**

The government's compensation for the damage incurred to victims is faced with serious challenges in practice, one of which is the imposition of a large financial burden on the government. For each of these challenges, there are solutions which can help us overcome the barriers. The government's compensation for the damage incurred to victims has not been accepted as a principle in Iran's law and only few case

examples of this mechanism are observed in Iranian law. Nevertheless, there are potential talents and capacities in Islamic jurisprudence and the Constitution of the Islamic Republic of Iran, which can be used to enforce the system of compensation by the government in Iran. One of the countries that has taken significant steps in the area of the government's compensation for the damage incurred to victims is France, which has put forward this mechanism as a principle in its criminal justice system based on the theoretical foundations of social welfare and social solidarity, and by employing the restorative justice models relating to compensation of the victims' damages and drawing up special laws in this regard. ...

Since the Iranian Criminal Code is almost an adaptation of the French method and practice, the policies and mechanisms predicted in the French Criminal Procedure Code in the area of the government's compensation for the damage incurred to victims can be used to develop this mechanism in the legislative system of Iran (Fallahi, 2010: 2)

### **Victims in French Criminal Law**

Investigating the role of victims since the late nineteenth century, criminologists gradually found that in order to provide a complete and comprehensive study of crimes, they should simultaneously investigate the offender, the victim, and the situation before occurrence of the crime. This is why criminological studies turned to victim and their personality traits. However, the year 1948 plays a special role in these recent developments. The reason for choosing this year is that the book "The Criminal and his Victim" by Hans von Hentig was published in this year, and this year is considered to be the year of the emergence of scientific victimology. Research in the victim's realm before 1948 was the starting point for protection of victims and attention to compensation for the damages incurred to them during the 1880s in French law, in which the victim could bring a claim for damage compensation before a criminal judge, although s/he did not have an attorney (Ashouri et al., 2013: 54).

### **Conclusion**

Under the French Criminal Procedure Law, criminal proceeding is a combination of public and private prosecution. Each crime causes a lawsuit against the perpetrator, which is called public prosecution. However, in most cases, a crime brings about physical, material and spiritual damages to the victim in addition to disturbing the social order. In this case, in addition to public prosecution the purpose of which is to punish the perpetrator, a private action is also raised to compensate for the damage, and thus convict the offender or a third party who has civil liability for the offense. The victim's claim has a peripheral and secondary aspect. According to the French criminal procedure law, a victim can bring an action at all stages of the investigation and even on the day of the trial as a private claimant and have a written or oral request for the compensation of the damage. In French criminal law, the victim is more likely to enter a criminal proceeding as a private claimant, and it is the government that has the right to seek punishment. In addition, associations formed on specific grounds, such as associations for the protection of children or women, which have developed for five years can also enter the criminal process to seek redress for damage and loss as the representative of the victim. Articles 1-2 to 2-21 of the French Criminal Procedure of 2012 have stated this point. The victim could ask for prosecution in two ways: 1. through a simple complaint against a known or unknown person sent to the court or the police unit. In this case, the court will be responsible for prosecution. 2. via a complaint together with bringing a private action. This can be used by the victim when research is required (crimes) or requested (minor offenses). Amendment 5 of

March 2007 added a condition to Articles 85 to 88 of the French Criminal Procedure Code, which could, to a large extent, limit the use of the second method by the victim. In fact, according to this amendment, the acceptance of a criminal proceeding along with private prosecution is subject to conditions in one of which, the prosecutor can, in accordance with Article 88, oblige the victim to deposit an earnest in order to guarantee the payment of a pecuniary punishment up to 15,000 EUR, depending on his or her financial power, in the case of issuance of the verdict for confirmation of the action, and the victim will have to pay that amount to the defendant in case of issuance of the verdict for staying the proceeding.

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