

Analyzing the Provisions of the Realization and Identification of Impossible Crime in the Legal System of Iran (With Emphasis on the Islamic Penal Code 2013)

Kioumars Kalantari and Ramezan Abdi

Faculty of Law and Political Science, University of Mazandaran, Mazandaran, Iran

Abstract: In some of the legal systems, impossible crime is discussed and recognized as a crime independently of attempt and others consider it under the crime of attempt. Explaining the process of committing a crime and the necessary conditions for the realization of the impossible crime is effective in clearing the approach of Iran's criminal law system towards it. The impossibility of crime's perpetration at the moment (begin to commit a crime) is considered as one of the most prominent conditions of the realization of the impossible crime. In the Legislative Penal Policy of Iran, there is no explicit approach towards the impossible crime. However, in the note of Article 123 of the Islamic Penal law enacted on 1392, the criminalization action entitled "Tantamount to an Attempt" (has been criminalized that is unprecedented in previous criminal laws (except the Penal Code 1352). In this study, we have used library and analytical-descriptive method and in addition to providing the realization of the impossible crime and analysis of the criminal laws texts of Iran and lawyer's opinions, we have considered the position of this crime in Iran's criminal laws, researches in this study have shown, the content of the aforementioned note is essentially in accordance with the impossible crime.

Key words: Impossible crime, tantamount to an attempt, attempt, Islamic penal law, legal systems, Iran

INTRODUCTION

Crimes are divided into two groups due to the result of physical action. A group of crimes in which the result of criminal action is not considered as the components of *actus reus* (strict liability offence) and the mere committing of action that the legislator has forbidden, it is complete in a bunch of other crimes that are idiomatic as (result crimes), the result is considered as one of the components of the *actus reus* and only if the result is achieved, the crime is considered complete and the punishment predicted in the criminal law will find the enforcement capability (Ali, 2013) such as deliberate murder (Article 290 BC Act 1392). In the result crimes, the criminal actions should go through an apparent route that includes; the criminal idea and deciding to commit the plan malice, the preliminary actions such as preparing the necessary gadgets to commit the crime, the executive operations and guilty result. Sometimes, the perpetrator in spite of passing all the stages, his criminal effort remains futile because of involvement of some factors including; cancelled or lack of issue or defects and inefficiency of gadgets whose occurrence was not due to the will of perpetrator and basically he is unaware of the agents in this case, the perpetrated action is considered within the framework of the impossible crime. In Iran's Penal Laws, since, 1304-1392, attempt is considered as an independent

crime but there is no explicit and transparent approach about the impossible crime. However, the legislator twice during the years 1352 and 1392 has criminalized the act that is essentially similar to the impossible crime, however, he has not mentioned the impossible crime. So, it seems that, it is necessary to perform some researches to clarify the approach of legal system in Iran about the "impossible" crime. In this regard, in the present study, we have investigated the impossible crime and the view point of legal system in Iran. In this issue, some questions have been raised: first, what kind of crime is the impossible crime? Second, can we consider the impossible crime as "an attempt"? Third, whether in the legal system of (Iran) the impossible crime has been mainly accepted? If we can find an answer to these questions, we shall be able to achieve the approach of Iran's legal system and the strengths and weaknesses of the new Islamic Penal Code and provide a possible solution to tackle the weaknesses. The hypothesis of research include: firstly, the impossible crime is strict liability offence but in connection with the result crime, the perpetrator is the purpose. Secondly, the impossible crime is not the same attempt, since in the impossible crime, the implement operations are going to the end but the aimed result is not achievable. Thirdly, the legal system in Iran, once in the year 1352 and once again in the year 1392 has accepted the nature of impossible crime though implicitly and not

explicitly but the punishment is considered to the extent of the punishment of attempt. The current study has been organized as library method using internal and external sources and analysis of juridical and criminal laws texts and comments of jurists in the form of descriptive analysis in two parts. First, to clarify the issue, we explain the concept and conditions of realization of the impossible crime and in the second part, we have investigated the approach of criminal policy in Iran about the impossible crime.

The effective concept and conditions in realization of impossible crime: The explanation of legal concept of impossible crime can help to clear its legal concept which has possibly considered it under other titles and show that whether the legal systems believe in recognizing this crime in the criminal laws or not. On the basis that, recognizing and analyzing the conditions of the realization of the impossible crime is necessary.

The concept of the impossible crime: The process of committing a crime passes through the stage of thinking about committing the crime and the malice enters the phase of preparations such as providing furniture and means of committing a crime. The mere malice without any physical action does not lead to a Criminal Act that is why, in most legal systems, it has no criminal description and it is not reprehensible for penal punishment. The preliminary stage or preliminary operations in which the perpetrator provides the means to commit the crime is though considered as the physical and objective actions but it still doesn't approve the malice and at this stage, the individual or society has not been injured and harmed, so if it often doesn't have the certain criminal title (like carrying or maintaining unauthorized weapons), it will not be qualified for penal punishment. The important point in this stage is its diagnosis and separation from the phase of begin to commit a crime or executive actions. Beginning to commit a crime is the next stage after the preparations for committing the crime or preliminary actions, during which the perpetrator begins to use the furniture and tools that has previously prepared. For example, he lurks to kill someone or he enters his house for murder or he goes up from the wall of his house for robbery or he opens the door of his house (Morteza, 2003). However, with the realization of begin to commit a crime and completing the executive actions in case the strict liability offence is verified (it has a certain penalty anticipated in criminal laws) or may be it is not verified. Sometimes, the lack of realization of complete crime is related to the deterioration of the legal element (kidnapping his own property imagining that it belongs to the other) in this case,

if the perpetrated action does not have any criminal title, it is not considered as a crime but if the intended crime is receivable in normal conditions but at the current situations due to physical aspect about which the perpetrator is unaware, its realization is impossible, the perpetrated action is considered in the form of impossible crime. The realization of the impossible crime is possible under some conditions which will be analyzed in the following.

Necessary conditions for the realization of the impossible crime: The impossibility of the realization of complete crime, always doesn't mean the commitment of the impossible crime but it is possibly considered as the impossible crime under some circumstances. The realization of beginning to commit a crime, observing the impossibility of realization of the crime when begin to commit a crime, lack of crime's issue and the lack of relative sufficiency of action are conditions that should be verified in the realization of impossible crime.

The condition of the realization of beginning to commit a crime: The realization of each of the inchoate crimes (attempt, failed crime and impossible crime) are subject to that the perpetrator enters the stage of executive actions and beginning to commit a crime is practically realized but due to the events and matters which are not affected by the volition of perpetrator, the intended result of perpetrator will not be achieved (Morteza, 2003). If the futile actions has entered the stage of executive actions along with the execute of a specific crime should be qualified for criminal title free from the penalty amount because the perpetrator has shown his dangerous state with the same amount of action. Accordingly predicting the nature of impossible crime in note of Article 122 of the Islamic Penal Law Act 1392 while solving the ambiguity provided in Article 41 of the same law enacted on 1370 and somehow with return to Article 25 of Penal Code Act 1352, under the title "Tantamount to Attempt" has been restored and the punishment of attempt is considered for it. But, since in the impossible crime, despite the realization of the executive actions, the malice of perpetrator is not achievable, this failure to achieve the result is may be for two reasons; either for cancel of issue or due to the insufficiency of applied means or tools (Baheri, 2002). Examining each of these factors could be illustrative in identifying the impossible crime.

The impossibility of the realization of complete crime while beginning to commit a crime (the futile actions): Another condition of realization of the impossible crime is the impossibility of realization of complete crime at the

beginning of committing the crime. Thus, from the early part of beginning to commit a crime, it is clear that the purpose of the strict liability offence will not be achieved but the perpetrator is still unaware of it and he is yet trying to accomplish his malice. Some lawyers have named these perpetrated actions as “the futile criminal actions”. The futile criminal acts are beginning to commit the criminal executive actions whose realization is impossible but the perpetrator is unaware of it; for example, sometimes it is possible when one is shooting to kill the victim (the alive human being target) but he cannot commit the crime due to some factors including the involvement of police, so, the crime doesn't realized in such cases, the possibility of realization of crime has been possible when beginning to commit the crime but the involvement of the external factor has stopped it in this case, the perpetrated action has the criminal title of attempt. To verify the impossible crime, it is necessary that the possibility crime realization would be impossible at the moment of beginning to commit a crime for instance, the perpetrator is shooting towards the room where is the residence place of victim to kill him, unaware that victims had previously exited the room and the possibility of killing him at that moment is not possible. In this example, from the early part of beginning to commit the crime, the commitment of murder has been impossible, so, the individual has committed the impossible crime. If, at the moment of shot, the victim is in the room but the shot doesn't hit him and the malice action of the perpetrator is not committed, it cannot be said the impossible crime has been committed because in this case, the possibility of the commitment of murder at the moment of begin to commit the crime has been possible.

To cease the matter: The issue of crime is one of the components of the act us rues of all crimes and when no subject is the target of the malice action, no crime will be realized in the world. For example, the issue of murder is human and the issue of robbery is money. Indeed, the case of crime is someone or something, against which a person is committing an action (George, 2010). So, the murder of someone who does not exist or stealing the money which is not available does not have the possibility to be realized. So, may be one despite finishing the criminal route has failed to realize complete crime offence for failing or cancelling the issue of crime and there for he has committed the impossible crime (Raza, 2007). So, sometime sit is possible that the impossibility of achieving the result is related to the 3 lack or cease of the issue of crime. The lack of crime's issue and the ignorance of its perpetrator and the impossibility of achieving the intended result is considered one of the most prominent evidences of the impossible crime. In this regard, observing this point is essential that with the lack

of crime's issue at the moment of attempt, just for this reason, the executive actions should be ended futile and no other factor other than being ceased of the issue has not involved in the failure of the executive actions. Thus, sometimes the issue of crime doesn't exist; for example, take your hand in another empty pockets to rob the money in this case by taking the hand in the pocket of another person, the executive actions of crime has been realized but due to the lack of the crime's issue namely the money, the perpetrator has achieved no result. In this example, the impossibility of achieving the result from the moment of attempt is related to the absence of crime's issue. So, in case that the realization of crime is impossible due to a lack of crime's issue, two conditions are necessary; one, entering the executive actions for the realization of the specific crime intended by the perpetrator (so, kidnapping one's own property does not realized the crime of robbery because the perpetrated action is not related to the property of another individual and so, the perpetrator has not entered an executive action phase of crime to commit a crime) and the other factor is the lack or cease of the crime's issue provided that the perpetrator is unaware of it.

The existence of previous barrier: The existence of barrier is different from creating the barrier. The existence of barrier isthatsince the beginning of committing the crime or even before it, the possibility to commit the realization of complete crime has been impossible due to an obstacle. So, in such circumstances, there is the possibility to commit the realization of complete crime. For example, due to being bullet-proof of the victim's machine, killing the victim with gunfire is impossible. But when after beginning to commit the crime, a barrier is created that stops the executive actions in this case, the issue of attempt is mentioned. Like a state that, after entering the executive actions of crimes such as robbery, the perpetrator was not successful due to an obstacle like waking up of the owner of the property, realization of complete crime of robbery is not realized. For the realization of “an attempt”, the lack of voluntary cancelling and the occurrence of barrier should happen after entering the executive actions. While for verifying the impossible crime due to existence of barrier, the aforementioned barrier should exist before beginning the executive actions or at the moment of beginning to commit a crime and the perpetrator should be unaware of it.

The relative in sufficiency of the action: One of the conditions of the realization of the impossible crime is entering the executive actions of the intended crime. The seactions should have the power to realize the complete crime. So, committing the action that doesn't have naturally the power to realize the intended result is not

considered the executive actions of the impossible crime and therefore, the impossible crime is not realized. It is not possible; for example, with pouring some materials such as salt or sugar in the food of a person assuming that is a poison an impossible crime of murder happens because salt or sugar don't have naturally the power to realize the murder. Sometimes, the applied executive actions have essentially the power for the realization of the intended crime while actually, it is impossible to imagine the crime will happen such as applying an inadequate amount of toxic material for the murder of the other person. In this example, poison is essentially killing and it is essentially different from the assumption that sugar was used instead of poison for the murder of the other individual, though in both cases, the realization of the result is impossible.

In the condition of the lack of relative efficiency, the individual has virtually entered the action that inherently has the power to realize the result and the executive actions have begun but in terms of the intended crime, the action applied for the realization of complete crime is inadequate. For example, one pours poison into the drink of another person to kill him but due to the inadequate amount of poison, the intended result is not realized. In this example, poison has essentially the power to kill a man but the perpetrator has not succeeded in killing him due to his own ignorance about the necessary amount of poison. Because using the insufficient amount of poison does not realize the murder and so, achieving the purpose is impossible (Tehrani and Javad, 1987). In this example, the thing that causes the impossibility of the realization of the crime is the perpetrated action not merely the means used in the crime. Because the perpetrator has been unaware that applying the sprinkling of poison makes the achievement to the result impossible.

THE APPROACH OF LEGISLATIVE PENAL POLICY OF IRAN IN ACCORDANCE WITH THE IMPOSSIBLE CRIME

According to the realization of the conditions of the impossible crime and its characteristics, the legislator of Iran has different approaches toward it, since, the enactment of the Penal Code in 1304 so far. The Article 20 of the Penal Code enacted on 1304, prescribes: "Whenever one has a malice and has begun to commit the crime but his intent remains conducted or suspended by Foreign barriers that were out of his control and the intended crime is not committed, the perpetrator will be condemned to the minimum penalty, that is prescribed to the crime". The provisions of this study only included the crime of "beginning to commit the crime" because even, if we consider the impossible crime as a part of the crime

of beginning to commit the crime, we cannot infer the achievement conditions of the impossible crime from the mentioned material. Since, one of the conditions of the realization of the impossible crime is to assume the impossibility of the realization of the crime at the time of beginning to commit the crime that, this condition is not inferred from the provisions of the mentioned Article in 1352, following the performed reforms in the previous Penal Code in addition to the prediction of "begin to commit the crime" in Article 25 of the Penal Code enacted on 1352 in the note of the mentioned article, a new crime was predicted under the title of "Tantamount to Begin Committing the Crime". The note of this study prescribes "in case, the executed actions have been directly linked to committing a crime but due to the physical aspects from which the perpetrator is unaware, the occurrence of crime will be impossible, the action is considered as tantamount to begin committing the crime". The mentioned note has implicitly recognized the nature of the impossible crime that in terms of physical aspect such as the inadequacy of the means of committing the crime in achieving the intended result, makes the realization of the intended crime impossible but lawmaker considers it as cantonment to begin committing the crime and assumes the punishment of "begin to commit a crime inserted in the five-clauses of this study.

After the Islamic revolution, Iran's Penal Code was exposed to changes. With the enactment of the Law on the Islamic Penal in 1361, crimes were divided into *intentional*, *blood-money* and *canonical punishment*. This law in addition to eliminating the Article 25 of Penal Code in 1352 and its note and cancelling the conditions and the nature of the impossible crime, created some changes in terms of the realization of beginning to commit the crime. Article 18 of the Islamic Penal Code in 1361 considered "beginning to commit the crime" as a crime (of course) in case of prediction in the law. Thus, the impossible crime that had been predicted in the form of "tantamount to begin committing a crime" in Penal Code in 1352 was eliminated after the adoption of the law on the Islamic Penal Code in 1361.

With the approval of the Islamic Penal Code in 1370, particular complexity was created in the conditions of the realization of beginning to commit the crime, the impossible crime and failed crime. Article 41 of this law had prescribed that "if one has a malice plan and begins to commit a crime but the intended crime does not happen, if the executed actions are crime, they will be sentenced to the punishment of the same crime "in this study, it appears that by eliminating the obligation of "the involuntary entrance of Foreign barriers" this possibility has been prepared that beginning to commit a crime, the

failed crime and the impossible crime would be considered as a crime. In this study, also the obligation of “but the intended crime would not happen” could mention this notion that if the intended crime is not realized due to the barriers and factors that are out of the control of the perpetrator can include some hypothesis: first, the intended crime has basically, the capability to be committed but it is not realized due to the interfere of a Foreign barrier that is out of the control of the perpetrator, so the executive actions are stopped in the middle of the road. In such case, the assumption of crime “begin to commit a crime” is mentioned. Second, the intended crime is not realized in spite of the possibility of the realization of crime at the moment of beginning to executed because of personal factors that are out of the control of the perpetrator such as the lack of skill, inaccuracy, like that; one shoots to kill someone else but due to the lack of skill in shooting, the shot doesn't hit the goal. This is the case, that is in accordance with the idiomatic concept of “failed crime”. The third assumption is that the crime could not be committed at the beginning to commit a crime but the perpetrator is unaware of it; like someone who shoots to kill the victim and is unaware that he was dead before. Or someone gives non-toxic food to victim to kill him and he was not killed. This case is also in accordance with the idiomatic concept of “the impossible crime”. Some lawmakers have considered the failed crime and the impossible crime under the title of futile crime because the perpetrator has performed the stage of executive actions of the crime and has completed it but he has not achieved his intended result (Hassan, 2009) this is while that on the basis of the mentioned argument, we can assume beginning to commit the crime as the futile crimes. However, with respect to there centpart of Article 41 that prescribes: “if the performed actions are crime, they are sentenced to the punishment of the same crime” it cannot be said that the Islamic Penal Code of 1370 had also anticipated the impossible crime and failed crime. Given that, the difficulties of the Islamic Penal Code of 1370, the legislator with the approval of the new Islamic Penal Code in 1392, during the Article 122 and its note that in addition to identify explicitly the beginning to commit the crime has performed a new criminalization that had not been expected informer Islamic Penal Code. The legislator with this criminalisation has removed the complexities of the Article 41 of the Islamic Penal Code in 1370 and has compensated the criticisms toward it.

In the note of Article 122 of the Islamic Penal Code in 1392, a crime has been predicted entitled “Tantamount to Beginning to Commit a Crime” that is an expression of legislators' determination to recognize another aspect of

futile crimes except the crime of “begin to commit the crime”. According to the provisions of Article 122: the crime of “tantamount to begin committing a crime” is one of those actions which are directly linked to commit a crime but due to physical aspects from which the perpetrator is unaware, the occurrence of crime is impossible.

With regard to the process of Iran's Penal Policy, since, 1352, so far, when confronting the inchoate crimes, it is clear what has been considered in the note of Article 122 of the Islamic Penal Code enacted on 1392 has not been the innovation of legislator but it has been there turn to note of Article 25 of Penal Code in 1352. Anyway the crime of “tantamount to begin committing a crime” prescribed in the note of Article 122 has a physical nature, since with regard to the emphasis of note, it has been made up of action which is directly linked with the crime's commitment. So, the physical element of crime is “tantamount to begin to commita crime” of preliminary actions connected to the realization of the crime that has the power to realize complete crime but if the realization of crime is impossible, it will fulfil there alization of the crime of “antamount to begin committing the crime” provided that the perpetrator is unaware of the impossibility of the realization of the crime.

With regard tothe conditions of the realization of thecrime of “tantamount to begin committing the crime” in the note of Article 122 and comparing its legal concept with the juridical sense of the impossible crime, it can be said that, the crime of “tantamount to begin committing a crime” is essentially the same impossible crime. According to the conditions of attaining the crime of “tantamount to begin committinga crime” that was previously described, the legal concept of “the crime of tantamount to begin committing a crime” (the issue of note of Article 123 of the recently mentioned penal code) is in accordance with the juridical sense of impossible crime. So, the Islamic Penal Code enacted on 1392 like the Penal Code enacted on 1352 has also implicitly recognized the nature of the impossible crime and considered it in the form of the crime of “tantamount to begin committing the crime”. In fact, it seems that the lawmaker by applying the title of “Crime of Tantamount to Begin Committing the Crime” has purely wanted to determine the type and punishment of the impossible crime. So, the criminal title of the prescribed offence in the note of Article 122 is not the crime of “tantamount to begin committing the crime” but it is the same impossible crime.

Given the record of the prescribed verdict in the note of Article 122 of the Islamic Penal Code in 1392 in the Penal Code in 1352 and the opinions of lawyer sabout it, a group of lawyers regarding the record of this verdict

believe that the legislator in 1352 has not believed inseparating the absolute and relative impossible crime and thus the verdict of the article includes both types of impossible crimes, their reasoning is that a crime is either possible or impossible and dividing the impossible crime in to absolute and relative does not mean (Raza, 2007). It seems that when a person begins to execute a physical action with the malice plan of committing a crime and providing the necessary tools and furniture, that not only reveals his malice plan but also it is enough for the realization of complete crime but due to the interference of some factors that are out of control, he will not achieve his intended result such a person has not only demonstrated his dangerous state but also he creates insecurity in the society. So, he deserves punishment and proportionate response to prevent a repetition of criminal action and he would be set as an example for other people, however with a view to the context of the note of Article 122 and the emphasis of legislator on the physical factor that makes the crime impossible and the necessity of direct connection of the perpetrated action with "the intended crime", springs this impression to the mind that the legislator has paid attention to the physical or real impossible crime and this hypothesis in which the crime is legally ceased has not been observed and so, he cannot be considered as the subject of the verdict of the note of the Article 122 because in this case such action is not regarded as the style of the note of the mentioned article.

CONCLUSION

With regard to the characteristics and the conditions of the realization of the impossible crime and with a view to the legislation process and the submitted issues, it can be said that: first, about the impossible crime it is clear that the Legislator of the Penal Code in 1352 has been the main guide legislator in the act of note of Article 122 of the Islamic Penal Code in 1392. Second, the impossible crime is a strict liability offence but to comply with the intended strict liability offence, it is considered a crime. Thirdly, begin to commit the crime and the impossibility of the realization of complete crime due to the occurrence of some factors relating to the issue or gadgets of crime from which the perpetrator is unaware is one of the essential provisions of the impossible crime. Fourthly, although in terms of the oretical issues and its symbols, we can classify the impossible crime into either the absolute and relative impossible crime or decree and the matic categories but it seems that the legislator in the note of Article 122 of the Islamic Penal Code in 1392 and its record in the Penal Code in 1352 has not believed in this

classification. Fifthly, although the legislator has used the title of "Tantamount to Begin Committing the Crime" in the verdict of the note of Article 122 but the concept of note is in accordance with the idiomatic concept of the impossible crime and it seems that by applying the phrase "Tantamount to Begin Committing the Crime" has wanted to determine the punishment for the impossible crime.

SUGGESTIONS

It is suggested that the title of first quarter of the third section of the Islamic Penal Code of 1392 changes "begin to commit the crime" to the futile criminal actions or the inchoate crimes. Since, this chapter in addition to a crime of "begin to commit a crime" includes the impossible crime and failed crime in case of changing the title of section to the proposed one, the aim of legislator would be revealed better.

It is proposed that in a note of Article 122 the title of "Impossible Crime" is used except the title of "Tantamount to Begin Committing the Crime" and in "determining the punishment" it is referred to "the punishment of begin to commit a crime".

The legislator should mention a sense of the impossible crime to make the sense of impossible crime clearer according to the decree or topic and put an end to the ambiguities related to the categories of impossible crime, so firstly, it prevents the broad interpretation and secondly, the nature of the impossible crime intended by the legislator would be clearer as well.

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