

Criminal Attempt in Physician Criminal Behavior in Iran and Azerbaijan Penal Code

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ABSTRACT

Any behavior disrupting the public order in which the law determines punishment is called offence and the criminal is prosecuted. Penal code of criminal state doesn't have criminal support and the behavior between criminal state and full offence behavior being in direct connection with crime is regarded as criminal attempt and the countries rules about criminal attempt predicted special criminal reactions in their penal regime. Some of the countries such as Iran don't consider criminal attempt as a crime unless the law itself makes it a crime like murder attempt. In penal code of Azerbaijan, criminal attempt is regarded as crime and its punishment is half the punishment of that crime. Criminal act is sometimes as positive act and sometimes giving up the act. All the law theorists accept criminal attempt in positive act and they don't all agree about criminal attempt in giving up act such as criminal attempt in the physician avoidance to help the injured person and they believe that criminal attempt is not imaginable in giving up act and it is actualized in positive act deliberately and accidentally. Most of the physicals crimes are accidental crimes in healing and how criminal attempt is supported by penal code of both countries Iran and Azerbaijan in accidental crime.

KEY WORDS: Criminal attempt; punishment of criminal attempt; incomplete and impossible offense; physician criminal behavior.

INTRODUCTION

According to article 2 of Islamic penal code stating (Any act or giving up determined punishment in law is regarded as crime (1) and article 1-14 Azerbaijan penal code such as Iran penal code, risk full social acts being forbidden based on this law, whether static or mobile, is crime (2). And it is regarded as the legality of crimes and punishments principles. Medical crimes as positive act as revealing patients secret, deliberate abortion, murder and accidental maim of the patient due to inconsideration and the lack of skill and not observing governmental systems or as giving up such as not helping the injured. If we consider medical crimes done due to positive act of the physician, it is based on two principles: sometimes as deliberately and by the demand of the pregnant woman, abortion is done or secret of a patient is revealed illegally or due to Euthanasia or good death, the patient is saved from all his suffering by his death. But the law maker considers all these acts as crime and sometimes the physician due to doing a positive material act, deliberately due to inconsideration and the lack of skill and not observing governmental systems makes mistake in curing the patient and kills him or hurt him and based on the article 319 of Islamic penal code that states (a doctor, whether skillful and specialist, is responsible for all his treatments doing personally or gives order, whether by the patients agreement or his guardian, to kill or maim or financial damage) in article 616 it is stated that (when deliberate murder is occurred due to inconsideration or doing something that criminal is not skillful in it or it is occurred due to not observing rules, the guilty person is condemned to prison for 1 year and paying diyah (Blood money) in case of claim from Avenger of blood, otherwise it is complete error)(3) and also in article 1-142 Azerbaijan republic penal code is stated that (when a person kills another due to personal inconsideration, he will be sentenced to 3 years deprivation of freedom or 3 years freedom restriction)(4) it is regarded crime and in some cases the physician criminal act is considered as giving up act that is considered crime by approving penal law article of not helping the injury and removing life risk approved on June 15, 1975 and it is as follows (1- anybody who observes a person or people in danger of their life, while he can avoid by his immediate act or asking for the help of others or informing qualified authorizes about the danger or its adverse effects without facing any danger or causing any risk for the other persons and avoid helping or stating the conditions to help, is sentenced to prison to 1 year or should pay 50000 Rls. In this case if the criminal is a person who can have effective help based on this job, he will be condemned to 3 months to 2 years or cash fine of 10000 Rls to 100000 Rls..., .. clinical centers authorizes who avoid first aid helps are sentenced to maximum punishment...2- when the people who are responsible according to the duty or rule to help the injured or the people exposed to danger , avoid helping them, are sentenced to 6 months to 1 year prison (5) and article 1-142- Azerbaijan penal code states (when one of

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the medical staffs didn't help the patient without any reasonable reason and don't help their duties and hurt him and this hurt is not a lot, by determining a unit price to 300 times of it should pay fine or he should be deprived of accepting his personal duty for 2 years or is deprived of his actives or he should be involved for 1 year in corrective affairs or his freedom is limited or for 6 months is sentenced to prison (6) examples of giving up the physician criminal act are as: Criminal act is mostly forbidden legally as active act (8) and giving up act means avoiding to do act a responsibility that is the subject of lawmaker decree (8) avoiding to help the injured is of continuous act give up crimes and until the doctor doesn't help and the patient asks, this crime continues and the crime is not instant.

Chapter 1: Criminal path of the crime

If we imagine for the act a path from the beginning to the end, different stages are created and from the views of Iranian law theorists four stages are imagined.

1: criminal attempt

In this stage criminal act is in the mind of criminal and it cannot be punished and if he commit the crime in his mind, it is not crime again, article 41 of Islamic penal code it is stated that (When a person attempts to do crime and tries to do it, but it is not considered crime, when the actions are considered crime, he will be condemned to the punishment of that crime. Note 1- The criminal has tried to do the crime and the operations that was only the introduction of a crime and it didn't have direct connection with crime occurrence and tries to start the crime and give it up deliberately and the action is crime, his punishment will be reduced). (9).

In Iran law as Azerbaijan law criminal attempt is not crime but some of Iranian law theorists believe that sometimes due to this criminal decision, great corruption goes into the society such as the crimes against the country's security and penal code of Iran decides to commit the mentioned crime in article 610 of Islamic penal code as (when two people or more collaborate with each other to commit crimes against local and international security or provide its commitment tools, when the title of Mahareb is not correct about them they are sentenced to 2 to 5 years prison) it can be punished or threatening to murder is a kind of internal intention to commit crime but penal code consider it as crime in article 669 Islamic penal code. (10).

2: Preparation

According to article 41 of Islamic penal code preparation is like the introduction of crime and if it doesn't have direct connection with crime occurrence, it is not criminal attempt for example, buying knife and rope for murder is preparation of the crime and it is not crime.

Article 1-28 of Azerbaijan penal code states that (If the murderer provide some equipments for his act or make himself prepared or for doing his act link with others, or tries to make new conditions and tries to create the actions depending upon to his will, it is called being prepared for crime) and article 2.28 states that (only preparation and providing equipments about heavy crimes is called crime)(11) thus, providing the preparation and providing equipments about heavy crimes is called crime and in article 4-15 of the mentioned law it is stated that (the crime occurring due to inconsideration or deliberately, and due to this crime is sentenced to at most 12 years of prison, his action is called heavy crime) it is worth to mention that according to article 1-15 of Azerbaijan penal code, the crimes are divided into light, a little heavy, heavy and very heavy, in Iran penal code according to article 41 some of Iran law theorists believe that according to article 664 of Islamic penal code being approved 5 years after article 41 of the mentioned law and it is stated that (...or makes any tools to commit crime or provide it, is contradictory with article 41 of the mentioned law and article 414 and abolish this code that states preparing crime is not crime and providing preparation of the crime is called crime for all the crimes (12).

3: Criminal commitment

Passing from the criminal intention and introductory operation and entering in execution stage of the crime as the actions done are related to the crime, are criminal attempt on condition that delinquency is not done completely and it is not included under the title of crime (13).

Crime or positive act or giving up the act is the crime of deliberate positive act or accidental act but in accidental crimes there is no intention and assumption of criminal attempt is not regarded in them however, some of the law theorists know predictable error close to the intention that is being discussed (14) according to this theory if a doctor do criminal attempt of Euthanasia or kill a person deliberately, criminal attempt is correct but in treatment, a mistake made on the patient as it is not done deliberately , in this case criminal attempt is null and void.

And in giving up act as starting to do requires doing material action, so criminal attempt in the crimes in which its material element is giving up act, is not proved (giving up act means giving up the duty determined by the lawmaker on people and as soon as this duty is given up, the crime is proved) (15). this Iranian law theorists believes

that if the physician avoids healing the patient, the crime is proved but avoid helping the patient is not believed and according to article 29 of Azerbaijan penal code it seems that criminal attempt shows positive criminal act but the author believes that criminal attempt is referred in giving up act. For example, if a doctor quarrels a lot with his wife, and in the clinic, he found that his ex-wife came to his clinic, the doctor says to the nurse that he won't help his ex-wife and has prepared himself not to help her in the hospital and when the ex-wife comes to the hospital, before asking for help with the close distance, the head of the hospital asks the doctor to help her and oblige him to cure her. Here ex-wife without knowing this asks for help and the doctor helps and here the order of the head of hospital to cure is an external barrier out of the doctor control and it caused that the doctor don't to that crime and thus, criminal attempt is true in giving up the act.

4: Complete execution of the crime

Article 41 of Islamic penal code in Iran only the 3 first stages are determined and if the criminal of execution operation finishes 3 states are crated.

1. Full offence

Full offence is that the crime is done outside and robbery or murder is done and the criminal is entitled to legal penalty at the crime level 916).

2. Incomplete offence

The criminal by the lack of skill or unpredicted accidental reason doesn't come to a conclusion for example, the person that in spite of providing the preparations and shooting due to sight problem or the lack of skill cannot kill the person (17). The actor does his best to get a good conclusion but it is not possible. About the punishing or not punishing of incomplete crime in Iran, there are different ideas about law theorists.

3. Impossible crime

The actor takes all four paths of crime but doesn't get any conclusion from his attempts such a person to kill another person pour some powder believing it to be poison but later it is defined that this power was not lethal and it was not effective (18).

Chapter 2: Criminal attempt punishments in the physician criminal behavior

First stage: In penal code of Iran

Considering article 41 of Iran Islamic code, normally criminal attempts not a crime in Iran unless the law knows criminal attempt as crime or the actions are done and then stopped and in the law independently is will be crime for example, a person is intended to break down by gun another person's car, he is arrested before breaking down and his charge is illegal gun otherwise, criminal attempt is not crime unless the law knows it independently as crime and a number of criminal attempts being punished in Iran are mentioned as follows:

1. Forgery attempt (article 542 Islamic penal code)
2. Murder attempt (article 613 Islamic penal code)
3. Sever robbery attempt (article 655 Islamic penal code)
4. Kidnapping attempt (article 631 Islamic penal code)
5. Fraud attempt
6. Bribery attempt
7. Pouring Acid attempt
8. Hunting wild animal- article 15 of correction law of hunting

If the lawmaker of criminal attempt does not state, criminal attempt in Iran is not crime and there is no punishment for it, thus criminal attempt in accidental murder due to the doctor treatment is not crime in Iran. Criminal attempt is avoid helping to the injured and the patient by the physician is not crime because the law doesn't consider this criminal attempt as crime. If the doctor tries to kill his patient by his approval that is called Euthanasia and according to medical commitment voluntarily ignore his crime and according to note 2, article 41 of Islamic penal code, his punishment is reduced by the judge of the court.

Second: In Azerbaijan criminal code

According to article 29, criminal code of Azerbaijan is stated that (the action done for a crime and for reasons that are not done out of a person's will, is called crime and it is of criminal act intention) (19) criminal attempt is considered crime and in positive criminal act anybody who attempts to do crime like deliberate murder (Euthanasia) by doctor is considered crime and according to article 2-63 the mentioned law is condemned to the half of the punishment in that crime while in Iran criminal code, criminal attempt is not crime unless the law states that how is the punishment of criminal attempt of that act and in each crime. It is possible that according to

punishment law, it is different. It seems that in avoiding helping the injured by the doctor as it is giving up the act is not considered crime and in accidental crimes of the physician due to curing the patient, criminal attempt is not correct and if the physician avoid doing the criminal act by his intention in deliberate actions, according to article 2-30 of Azerbaijan penal code it doesn't have criminal responsibility.

Conclusion

Criminal attempt in criminal behavior of the doctor between two countries, Iran and Azerbaijan law is similarity. If the doctor tries to commit crime in deliberate medical crimes as his criminal behavior is deliberate. Azerbaijan and Iran criminal act accepted criminal attempt and if the mentioned criminal attempt is a crime in the law, criminal attempt is considered to be punished otherwise, deliberate criminal attempts are not crime in Iran while this legal problem is not present in Azerbaijan penal code and anybody who do criminal attempt deliberately, half of the punishment of that crime is considered for the person who attempts to do crime. And if criminal attempt of Euthanasia is done by the doctor, in both laws this is murder attempt and is followed by punishment and if the doctor voluntarily refuses to do it, in Iran penal code, his punishment is reduced but in Azerbaijan penal code, its criminal responsibility is void.

Criminal attempt in accidental crimes of the doctor and criminal attempt in medical crimes whose material element is giving up the act in penal code of both countries they are not discussed and according to the law theorists criminal attempt in positive accidental act and deliberate giving up of the act is not imagined and is not considered as crime.

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