

The Principals and Instances of Involuntary Manslaughter in the Law of Iran and USA

Gholamreza Rahimi¹, Hormoz Asadi Koohbad²

¹Department of Law, Bandar E Anzali International Branch, Islamic Azad University, Bandar E Anzali, Iran

²Department of Law and Humanity, Khorasgan (Isfahan) Branch, Islamic Azad University, Isfahan, Iran

Received: April 21, 2015
Accepted: August 16, 2015

ABSTRACT

Murder and its variety in legal systems has always been one of the important issues in which its practical result of the discussion is evident and tangible unlike most other theories, hence its comparative and analytical study is effective to reach an ultimate goal and purpose of criminal law. In article 616 of Islamic Penal Code, if manslaughter caused due to recklessness or negligence, the perpetrator was not skillful in doing an action, or caused due to nonconformity with systems, the committed person will convict to imprisonment from one to three years in addition to pay ransom. The aim of this study was to determine the criteria and cases for involuntary manslaughter in Iran and America's law. Driving accidents are the important examples of involuntary manslaughter. In this kind of murder, the culprit does not sentence to death but convicts to pay ransom in terms of personal rights to the heirs of the deceased, also committed the crime in general aspect for failure and can convict to penalties such as imprisonment or a fine by the verdict of judge. Manslaughter also divided into two parts of quasi-intentional and unintentional offence. The criteria and basis of this type of classification is the knowledge and the will of committed person. In addition, the kind of committed act has a major influence in determining the type of murder that is classified in the frameworks of the division resulted from the criminal motivation, but this type of classification or appellation is not reflected in penal code and might be considered only as an incentive for culprit from aggregated and mitigating factors. There are several instances of involuntary manslaughter. The present study is a descriptive and analytical research. Data collection in the study was taking notes.

KEYWORDS: Murder, Manslaughter, the Law of America, Quasi-Intentional Murder, the Elements of Manslaughter.

INTRODUCTION

Deprivation of human life is the greatest crime that disrupts social security; the holy Islam prescribed its reward and punishment the most severe in the world and afterworld. The mental element of the crime is an indicator of a dangerous state of offender and always interested by legal experts. They believe that in order to establish justice, the criminal law must be developed in such a way that criminals with dangerous state does not give up with impunity, and the people of no criminal intension do not be punished. Our country's current criminal provisions about the crime of murder is adapted from Islamic Law (Jurisprudence) and governs the country as a whole; Most of the criminal provisions enacted before the revolution was established by the inspiration of European countries' penal code. In Iranian law, murder and injuries consider intentional that person had an intention to do the action before and his action be fatal. If the act causes death or injury even if there is no intent to murder, it is an intentional murder and if his action intended to hurt not fatal but it happens to be fatal, it is a quasi-intentional murder. Under Iranian law, unintentional crime (In Islamic law, every act that harms the physical integrity of human beings called crime) divided into four "quasi-intentional", "shear error", "as quasi-intentional", "as shear error":

Driving accidents are important examples of involuntary manslaughter. In this type of murder, the guilty does not convict to retaliation but sentence to pay blood money from the aspect of individual rights to the heirs of the deceased, also in general aspect it can sentence to penalties such as imprisonment and fine by the judge verdict due to faults. (Aghaee Nia, 2011: 5).

According to article 616 of the Islamic Penal Code, if manslaughter happens due to recklessness or negligence or an action, which committed person, has no skill or caused due to non-compliance with regulations, in addition to pay blood money, the committed person will sentence to imprisonment from one to three years.

Statement of the problem

One of the major damages in all human societies is to commit murder as one of the oldest crime in the world. In fact, from the formation of human society and friction and conflict of interests between humans started, the crime of murder appeared. In general, the murder divided into two "intentionally" and "unintentionally". The basic difference between the two categories is in intent and purpose of agent or its agents. In the intentional murder, the murderer intended to kill the victim with previous intention, but in manslaughter, the killing of man caused without intention and due to lack of skill, imprudence, negligence, and non-compliance with regulations, or death caused by lack of skills or accident (Afkhani, 2013: 13).

Surely, in all normative systems, regardless of religion, race and nationality, killing is one of the most flagrant human actions, and deadliest crime of human behavior and each legal system imposes punishments in proportional to obscenity based on their criminal policy. In the Iranian legal system, and in accordance with the provisions of the penal code based on Shia jurisprudence, killing retaliation is the penalty for murder in general, but the legislator did not provide any definition of intentional murder and merely mentioned the cases of crimes under article 290 of the Islamic Penal Code.

Additional to a general crime, intentional killing considered an individual and personal crime. Intentional murder like other offenses having components and elements that creates this criminal phenomenon as a whole. The live person is from the main elements of intentional murder, and as long as this element has not achieved, the crime has not fulfilled. According to forensic experts and advices imitated from some grand jurists, the end of human life be fulfilled with brain death.

Being deadly of killer's action is not necessary for the fulfillment of premeditated murder and as the act of killing can be a material component of premeditated murder that is not often fatal, can also be a material element. In jurisprudence, it is completely agreed as material actions creates crimes, non-physical acts like scaring others also cause to fulfill the crime, and the only thing important here is to establish a relationship between fear and death of victim. There is a controversial among scholars in whether to give up action might be material element of murder or not. The source of this dispute is whether could interpret the existential act of (killing) to inexistency act of inaction or not? In order to fulfill the intentional killing, in addition to material and legal foundation, we also need psychological element, and it is that killer must have criminal intent. The intention is an intrinsic and inner deed, so it is difficult to find and inform knowledge to prove intentional killing, but sometimes the criminal truly intends to commit a crime, and sometimes the intention of the offender is not clear but we can identify the criminal intention with the device used. The name of the murder weapon first applied in the language of scholars, but scholars has not presented specific criteria in its definition and apparently not heeded in determining the customary application of weapon (E.Troy, 2013: 15). Hence, the general aim of this study was to determine the criteria and cases for involuntary manslaughter in Iran and America's rule. The determination of existing ambiguities in determining the standards and cases of manslaughter in criminal law of our country and America, setting of indicators and criteria for intentional manslaughter law in the rule of Iran & USA and setting the most important instances of involuntary manslaughter in criminal law of our country & USA have been examined in this study.

Provisions and Cases of Unintentional Killing

Killing is the removal of the soul from the body (Khodarahmi, p. 42). In Arabic resources, killing of retribution has used instead of the word murder that claims that retaliation means seeking and following the signs and effects of something and to retaliate means to go for the blood with penalty (Nokandei, p.12). The killing considering its literal meaning of gerund to murder (killing) is like to expel soul from body with the intention and will. In contrast, manslaughter is a murder that the intention of committed person has no role, in other words; a killing committed out of will. In contrast, in American language states murder as homicide that this word in American and English language are equivalent which murder is the act of death to a human phenomenon which can be with the intention of life deprivation and emerges through clumsiness, carelessness, negligence or failure to comply with regulations (Javanmard, 2013: 69).

Legal Definition

In Iranian criminal law, before and after the revolution, there is no definition of the word killing and Iranian Islamic Penal Code did not provide a definition of murder but article 289, has divided murder in three types, and article 290 of mentioned law has stated the penalty of intentional killing. In terminology of law, the definition of murder is to harm another's life, whether through physical or material action, or through leaving action. With regard to the above, we can describe as the deprivation of life from other living person or create a situation in which cause to stroke (Masoudi, p. 20). Since the main source of Iranian rights is the law, no legal definition of the article 290 enacted in 2013 considering deliberate murder is not applicable (Golduzyan, p. 153). Under this article, murder is

intentional in the following cases: (a) when the killer to do something, to kill a certain person or non-specified person or members, whether it is the typical "fatal or not, but results in death practically. (b) The cases where the murderer intentionally do something which is typically fatal, although not intend to kill the person. C) When the killer has not intended to kill, and what to do is not typically fatal, but it is deadly to the person because of illness. Old age, disability or a childhood, and the like and killer is aware of that.

However, Iranian legislator does not define manslaughter and given a legal material, we can define it: any type of injury leading to death of driving a motor vehicle that caused from its committed called manslaughter. Although, the manslaughter may not occur as a result of traffic accidents, article 616 of IPC stipulates: "in case of manslaughter by negligence or recklessness or an action in which committed person did not have skill or cause due to failure to observe regulations, the causer convicts to imprisonment from one to three years and also to pay blood money in the event of a claim from the victim's family". In contrast, American legislator stipulates in article 221-1: an action that leads to death of another one considered a crime of murder that the definition of murder in America is the same definition of manslaughter. In addition, prof. Garo Falo in his book "America's criminal law" states in definition of murder: manslaughter is an intentional deprivation of life of a living person by another person without legal authorization and the legislator paid attention to the definition of murder presented by Garo as well. American legislator stipulates about the manslaughter in the article of 6-221: If lack of skill, imprudence, carelessness, negligence or violation of a safety or precaution required by law or regulation in accordance with conditions cause to death of another one, it would be manslaughter(Hejazian, 2011: 22) .

The Variety of Involuntary Manslaughter in the Islamic Penal Code

The variety of Islamic Penal Code in 1925 third chapter of former Iranian public penal code , the committed crimes dedicated to explain criminal offenses in ratio to people , the kinds of murder in mentioned law is as follows (Bazgiri, 1997: 19).Intentional Killing

Article 282 of mentioned act sets about anticipated murder: the penalty of committed intentional killing is execution unless there is legal exception. As you can see, the legislator has not defined murder, so the criminal lawyers define the intentional killing using the spirit of law and the rules of law as a deliberate deprivation of human life (Kheirkhah, 2012: 76).

Killing as Intentional

The mentioned murder is anticipated under Article 171. The above murder says that anyone intentionally inflicted injury or beating leading to the victim's death without intention to kill is condemned to three to ten years of hard labor provided that applied weapon is not murder weapon, if it is weapon, the committed act is as an intentional killing.

Also, the definition of murder is true in this case. Finally, the use of murder weapon is raised as an alternative to kill or intent (Kheirkhah, 2012: 15).

Quasi-Intentional Murder

According to the top of the mentioned article, the murder is considered quasi-intentional that committed person has a public ill will (the intention of wounding and assault) on the body of the victim, but without existing the intention of a result (deprivation of life) and wounding and assault be typically fatal, it practically leads to his death. Therefore, the committed act must be unjust, illegal or violent otherwise the murder is not realized quasi-intentional. The penalty of such crime is appointed by three to ten years of imprisonment (Rahmdel, 2005).

Unintentional Killing

Unintentional killing is predicted in the article 177 and stipulates: In the case, the murder occurs by negligence or carelessness or an attempt which committed person has not skill or non-compliance with government regulations, it condemns to disciplinary imprisonment from one to three years. In addition, the offender shall be sentenced from fifty to five hundred dollars in compensation. From the provisions of the article, it is known that committed in intentional killing lack an intention of act and result to the victim but treat so that is inconsistent with precision and care and the murder is the result of such treatment. So mentally, the spiritual element of unintentional killing is carelessness or lack of thought (E. Troy, 2012: 26).

The Kinds of Murder in Iranian Criminal Law

In the Iranian law, murder is divided into intentional and unintentional. In this way, the Iranian legislator to comply with legal entries, firstly divided murder in Article 289 IPC into three types, namely, intentional, quasi-intentional and pure error. The instances of intentional murder is stated under Article 290 of mentioned act, and articles 291 and 292, 302 and 349 and 450 mentioned the cases of unintentional killing (quasi-intentional and pure error). The criterion for intentional murder in Iranian law is set in article 289 IPC that is already stated in this article. In contrast, manslaughter is manifold and various. Although the legislator in article 289 as the expression of different murders just mentioned two types of unintentional killings, according to other materials of aforementioned act, the latter law, manslaughter may act in two cases as a quasi-intentional and pure error in which the division taken based on the features and components of the psychological element of each murder. Conducting a murder, a crime that is not the purpose of life, although action has been going on Mjnylyh (Shambayati, 2/136). The quasi murder is a crime that the intention was not criminal while the action is occurred on the victim (Shambayati, 2/136). For example, to beat another person with the intent of discipline in a way that is typically not caused to a crime, accidentally caused to crime. The murder of pure error is a crime that committed has no intention in the action and result and not committed to a mistake that is punishable because of this. Also, quasi-intentional is a crime with a blend of intention and pure error but legislator associated the effects of the resulting quasi-intentional crime on that because of certain circumstances. Like the mistake in character that criminal was mistaken in identifying the personality of victim and because of the personal similarity, someone else is killed or articles 616 and 714 IPC which lawmaker already mentioned in the Article 616, it identified the task of manslaughter in non-traffic accidents and article 714 states: If the negligence or recklessness or failure to comply with government regulations or lack of skill in driver or operator of a motor vehicle, leading to manslaughter, the committed is convicted to imprisonment from six months to three years and also sentenced to pay compensation in case of a claim from the victim's family. Furthermore, crime as the pure error is a crime according to the rules, intentionally or quasi-intentional. But legislative decree for unknown reasons put it in the absolute error that two clear examples are crimes committed by the insane and child. In this case, the intent and error of insane, because of the effect of insane will from psychological stress will be identical and lack of credibility of his intention, a crime committed by him is as a pure error. Furthermore, the crimes committed by children, lacking the features that can thereby justify the enforcement of punishment, given the specific circumstances of children's mental health, crimes committed by children, even though they have the appearance of intentional or semi-intentional, the penalty is regarded as pure error.

Spiritual Element of Quasi-Intentional Murder

Knowledge of the Subject:

In this type of murder, according to the uttered phrase "semi- intentionally" and the necessity of its similarity with deliberate murder, the committed must be sure to the surviving of the party. generally necessary in all instances of intentional crimes, knowing the subject described is essential and being deliberately is not realized whether it is purely intentional, premeditated act or semi-intentional. in the mentioned note b , the legislator with referring to treat the "intent of discipline" or disease ... emphasize the necessity of implicit knowledge of committed to survival human . So if committed has intention in carrying out an action, but to imagine that the related party is not human or is dead led to murder, the committed murder will not be semi-intentional.

Murder as Quasi-Intentional

This crime is predicted in notes 2 and 3 of article 291 IPL .The nature of the act in note 2 of the mentioned act of manslaughter, it means the actor plans and intents to kill, but as the murder of victim is permissible, targeted to kill the victim and it clears that victim was under legal protection and is not entitled to kill, in this case the nature of the action is intentional, but the punishment will be quasi-intentional. Sahib Javaher says in this regard: "In cases where the subject of the action plans and intends to kill the victim suspecting that it is permissible, but after the action it is clear that the victim was enlightened to blood, in this case the committed crime is quasi-intentional. The nature of above murder referred to in note 3 of mentioned law in accordance with Islamic criminal law gets the pure error because the agent does not have the intention to act and the intention of causing damage to the victim, but as due to the criminal fault , his action caused to deprive of victim's life, therefore, his behavior is in terms of criminal responsibility and punishment will be as quasi-intentional murder, and the murderer must pay blood money by itself. With the adoption of article 616 IPC, it seems that the clause 3 of article 296 of the mentioned act is outdated (Kiai, 2012: 16).

Spiritual Element of Pure Error of Murder

According to paragraph 2 of article 292 of the IPC as well as legal articles, spiritual element of pure error of murder including the following components:

Error in Act and the Result

The term pure error generally means that the committed person is guilty against the victim and the result, not only there is an intention against the victim but also not committed any fault against him. In the article 616 IPC, after defining manslaughter, which requires a proof of fault to the victim and given the determination of punishment for the guilty, "unless the error is pure," which means that in murder the pure error, the subject of committed fault to the victim is violated.

The Voluntariness of Action

The pure error in murder like premeditated murder and semi-intentional, the committed person should have will in committing the action otherwise the occurred murder is excluded from the recent titles (Mousavi, 2011, 18).

Lack of Intention of Action

Although, in the pure error of killing the committed should have a will in doing action and may even be intentional, it is essential that have no intention to victim. In other words, being intentional act and being intentional in action to the victim are two different debates. A person may be intentional, but the the action may hit to another target that he not intended to act. The stipulation of legislator to the phrase "is not committed an act on it", confirms this point. This condition is interpreted in three ways:

The first phase is for the wrong in purpose; it means the same given in the context of paragraph A of article: "like an arrow to the target of hunting and hit to a persona." In this instance, the arrow does not hit to the target and hit to a human being in another distance. In other words, in this example, the first target has a different geographic status with the human being killed. In fact, the legislator citing this example wants to say that the error in identity is excluded from the pure error of murder.¹

The second case is the mistake of committed in being human of target. This means that the shooter intended to fire toward the target, but in his imagine, this is not human. Suppose A to prey animal shoot it and the bullets shot exactly to the animal, but it was later revealed a man to get close to the animals, made like their animals. In this example, the committed had no intention against the victim and no mistake is in the identity, in fact, this case is also an example of the law context that provides ".not going to actually act on him."

The third case is a condition that the convicted person is alive, but he did not intend to act on but the murder is achieved because of mistake in using murder weapon. Suppose person A with the knowledge that his gun is empty target to their friends who are nearby, and pull the trigger, incidentally shot, and killed his friend and result in the killing. Can the murder name as pure error with reference to paragraph A of article 291 "does not intend to act on him"? In my opinion, if it is proved that the committed is not under any of the instances referred in the note of article 336 of the IPC, the committed crime is not known as intentional.²

Lack of Planning Results

At the top of paragraph c of article 292 IPC given, "the crime that committed has no intention of crime against the victim and not the intention of act on" this explicit emphasis on lack of intention to kill is in pure error. The word of crime in this sentence is the same result, which means murder in this case. It is obvious that in the absence of intentional action to the victim, the cannot reasonably consider offender as an intended in result. However, the pure error is that the subject has not an intention of action to victim and its murder in any way or another (originally, partially or in general)³. In the following, we discuss on the effect of mistake in identity of the murder of pure error: In the murder of pure error as briefly mentioned, the mistake on identity is negated by subject, and this is clear from the negation of action to the above victim in paragraph A of mentioned article and is clearly obvious from the following example of paragraph c: " like to release an arrow for hunting and hit to someone. "The legislator's stipulation to the word action does not mean unlimited expression. "With regards to the constituent elements of the

¹ Aghayee Nia, Hussein, Former, p 176

² ibid

³ Marashi, Seyed Mohammad Hassan, new approaches to Islamic penal code, p 106.

murder addressed in Article 2 of Diyat (291 IPC), and the intention of action on the same matter whether positive or negative action"⁴. The common aspect of premeditated murder with pure error is a lack of result, and the different aspect is in the intention of action to the victim in the former and absence of it in the latter. If the intention of action is negated to the victim and be inevitably fatal or the committed act also had no effect will in the title of murder (Najafi Tavana, 2005: 26).

The Difference of Quasi-Intentional Murder with Pure Error

In the quasi-intentional murder, the behavior of committed person, whether authorized or unauthorized, is facing the victim while in the pure error of murder, the act of agent is the faced to the victim. The mental element of semi-intentional killing is in a way that the intention of act to the victim is not lethal and the occurred damage resulted to the killing of victim due to various reasons such as criminal offense, whether through carelessness, recklessness, lack of compliance with government regulations and systems. While in the murder of pure error, the agent has not conscious will to harm the victim (Najafi, 2003: 96).

Kinds of Murder in the USA criminal law

In America's criminal law, the murder is divided into two intentional and unintentional and intentional murder is also divided on two simple manslaughter (normal) and aggravated that article 221-1 IPC, as expressed earlier is as an intentional murder. This kind of murder is not with aggravating quality and committed had not planned to doing it already, it is on ignorance and excitement and intellectual, that is, intentional murder in the strict sense. In contrast, aggravated intentional murder having several examples:(1) murder with former decision that under article 132-71 IPC, the former decision, the planning before committing a crime is determined. Therefore, a murder of a predetermined plan is aggravated murder. 2. The characteristics of the victim (Article 221-4 IPC) that refers to persons who have special protection include: (1) children under the age of fifteen 2. One of the predecessors, it means the parent, including legitimate or natural, godfather or godmother, 3. the sick people, the people with poor physical or mental disability and women who their pregnancy is clear or steward is aware of this 4. Judges, juries, prosecutors, all judicial authorities, etc., provided that their position is apparent or steward is aware of this (Robert, 2012: 19).

The degrees of murder in terms of American criminal law

Degrees in the sample Criminal law

In the United States, in addition to sample criminal law and Federal Penal Code, each States of America also has a set of their own rules. The US sample Penal Code is one of the important rules of countries, which are mandatory for the states to observe. Article 210-1 of the Criminal Code, divides the murder in US in terms of mental element into the three following types:

Unintentional Killing (With Negligence)

The penalty of unintentional killing is predicted in fourth paragraph of part 210 of sample Penal Code of America is considered as a third-degree crime and it is fulfilled when the subject committed the crime on the negligent or carelessness.

Involuntary Manslaughter

Involuntary manslaughter occurs when the defendant has a material and psychological element is necessary for murder but there are hidden ways of providing possible incomplete defense and therefore mitigates (the amount) of responsibility to the (amount) of the responsibility in involuntary manslaughter. (This type of defense is called a partial defense to make a distinction between it and other defenses that abrogate the responsibility as a whole). Therefore it is not possible to condemn a person for an involuntary manslaughter. The persons are firstly charged with intentional murder and then during the trial should ask their defense.

There are three partial defenses as provocation, mitigated responsibility and contract of suicide. Which is defined in the articles 2, 3 and 4 of the code passed in 1917 America's manslaughter. The successful defense of each mentioned three types mean that sentence to penalties in the discretion of the judge, depending on the circumstances of the case, everything from life imprisonment to complete acquittal and this is unlike intentional murder that a life sentence is mandatory (Robert, 2011: 13) .

⁴ Bazgir, Islamic penal code in virtue of national supreme court, semi-intentional murder and pure error p 26

Stimulation and Similar Instances (Close Instances and Related to Psychological Element of Steward)

In the system of America's criminal law, implied two approximately equal instances, this is similar to the four first instances of Article 126 and 127 of the Islamic Penal Code in Iran. With an explaining that simultaneous stimulation take with crime committed and in the crime scene which determine it with a term or an instance and if the previous stimulation or outside of scene occurred, the instance or advising are applied. However, contrary to this division in the past in courts, the USA issued different rulings. In the claim of Gamble in 1959, for example, the rule is issued against this classification. According to this case, the scale operator of the coal complex was condemned due to allowing and bill out to the truck containing additional burden on the public highway, as stimulator and contributing to the accomplice (driving with extra cargo). In fact, because the accomplice in coincide with the occurrence of crime was not in the crime scene, it is considered as a complicity with crime. However, the courts of America are committed to this division now.

Typical and Personal Criteria

In previous part, one of the criteria for the classification was known the type, scope to stimulate, and reaction of ordinary people of community. This standard named a provocation excuse. Along with the typical criteria, there is a personal criterion, which evaluates the motivation of accused person in any case. In other words; two issues are considered in studying an excuse of stimulation: (1) whether the motivated person actually reached to motivation mood? (Personal criterion) 2. Do the general people of society stimulate in that position also? (a typical criterion). The typical criteria in common law is used in the form of so-called "reasonable man" and intended to restrict the scope of reaction.

When people are stimulated in such a way that only the reaction is justified for most people in society enters in the scope of stimulated excuse. The judge of Devlin in the case of Duffy 4 summarized the Rule 3 in the common law defense of provocation as follows and until 1956, the explanation of the criteria for triggering defense was the same way:

"Provocation is an act or series of acts committed from the victim on perpetrator and in addition to deprive its control, it caused that offender is influenced by emotions so that does not dominant on its behavior in a moment, and can cause every wise individual loses control of his behavior temporarily and suddenly."

The use of so-called "rational human being" in the state of arousal in power, the power of its control is lost and commits a crime is not void of fault. In fact, the purpose of developers of this standard clearly refers to the ordinary people of the community that based on human nature may lead to stimulation in conditions and violate Social norms. This is why that Article 23 of the Criminal Act of new south Welsh of the term that used a more obvious concept in proportion of "reasonable person. In any case, in the words of Judge Devlin is not exactly specified the meaning of rational human being and it is not clear that the defendant's character and personality are considered or not.

In Americas' law, the provocation defense applied only about the intentional killing, which has a stable life imprisonment and mitigated the responsibility of committed crime to unintentional killing. About other crimes, as only the maximum punishment is determined, the court effects the motivation of person in the intensity of punishment applicable to him which the effect of provocative statements or actions are different for everyone and people according to gender, age, race and mental structure themselves against provocations and different reactions. Therefore, given that all the individual characteristics of stimulation are influenced by the stimulation effect, we should consider an ordinary person of society with all mental characteristics such as being harsh, or not, introvert or extrovert.

In America, the convicted Merhal a drug addict to a kind of narcotic named the glue sniffing⁵ was humiliated because of addiction by the victim and attacked him with a knife. The court of Appeals ruled that in the evaluation of typical criterion, the jury should direct in such a way so that illicit features like drug addiction are not considered. The House of Lords objected with this view that the jury must investigate every subject, which relates to stimulating power in a way. In New Zealand, a different approach has been adopted and stated that only the permanent characteristics of individual such as race, disability and possibly religion may take into account. While unstable and transient conditions such as drunkenness and fatigue not are included.⁶ High Court of Australia in the case Stingle

⁵Glue sniffing

⁶ Mc Gragor

maintains that a lesser degree of control behavior intended for young people, but the case is not different for women or ethnic minorities.⁷

Manslaughter and Aggravated Assault in Similar Crimes

Manslaughter as unintentional and unintentional murder resulted from guilt is generally crimes, although they are not simple assault, in principle they are not more than an offence. But the aggravated type is usually crime. The unintentional murder as a crime applied in the course of doctrine criminal assassination.

Unintentional killing is basically a middle criminal, between the way that one side is murder, and the other side is justified killing or including exempted excuses that is not criminal in any way. However, the unintentional killing of a spectrum including murders although not enough for manslaughter, but it is so obscene that cannot be ignored from being these crimes. Nevertheless, the common law between the intentional murder and manslaughter caused by fault is interpreted based on the different types of behavior.

At present, many of American jurisdictions maintain the old distinctions between the two and usually for intentional murder resulted from guilty compared to manslaughter as unintentional determine the lowest punishment. Manslaughter is a crime distinct from the crime of intentional murder and something more than one degree of difference with it (Husserl, 2007: 67).

Unintentional Murder Because of Sudden Anger

The intentional killing as unintentional in most jurisdictions is a murder with an intention occurs in the secret conditions and mitigating the penalties of murder. The main secretive circumstances in this case means being furiously in time of killing the victim stimulated by enough provocation ,it means a provocation that makes a conventional human being, lose its normal control.

Most intentional killings as unintentional act are from a deliberate murder with intention of murder, and this is mostly because that deliberate killing as unintentional defines in a way that murder is the necessary element of it.

Murder in sudden furious resulted from conventional stimulation, is an unintentional killing, not because the law assumes anger separates the killing action from the committed intention. However, because the law assumes, the anger, dominate and influence on mind. In fact, intentional killing equivalent to unintentional murder is with an intention influenced by to outrage.

The most common type of intentional murder as manslaughter meanwhile the sudden conventional anger ", accused mainly kills someone who has created such anger at him.

The cases that decline the intentional deprivation of life of another from intentional murder as intentional are:

- There should be a common provocation.
- The defendant must be stimulated in practice.

A common person that triggers in this way, and does not return to calmness in the interval between stimulation and importing fatal blow, the defendant should not be soothed actually in that intervals (White, 2006: 46).

Reasonable Time to Return to Peace

There is a dispute about the conventional time to allay the anger when there is an interval between stimulation and entered a fatal injury.

From the perspective of the majority, the stimulated accused could not have committed the murder in a case that the time between motivation and lethal beat is enough to allay every common human being, turn into intentional murder as unintentional. And this rule even though the accused is slower in returning back to peace than a normal person and in practice, it is true until not returned to calm after fatal beat. For example, a husband informed of his wife's adultery killed her a few days later according to the issued judgment; his sentencing to first-grade killing was confirmed.

However, minority views to spend a reasonable time scale states that if there is a true and common stimulation, the offense of defender is unintentional killing provided that in terms of special mood, he does not return to calmness. Although, anger of a normal human being have relieved, to achieve to some reasonable time to return peace in each case depends on the nature and circumstances triggering the occurrence of that rule, an issue determined by the jury as a question. However, in a limited number of jurisdictions, a reasonable time to return to calm is a legal matter, in which the decision-making is in the authority of court. But if the time is too short or too

⁷ op.citp 281. J.Herring;Provocation and Ethnicit]1996[Crime I.R 490 cited in Ashworth

long the court will issue a ruling, in the case of conventional or unconventional that no longer requires the decision of the jury (Husserl, 2007: 92).

Conclusions

There are some differences and similarities among the rules of unintentional killing in Iran and America, which can refer. Basically, the separation of murder and its division into two processes of intentional and unintentional killing is an old establishment that originates from fundamental resources of Iranian criminal law on the books and traditions.

When in America's law we face with an expression "intentional killing as unintentional", it really manifests different points of two laws. The presence of Jury and the attitude of this board in the process leading up to the murder as "intentional killing as unintentional" it is not even accepted informally in Iran.

In this type of murder, it has tried to study to behavioral layers of committed and even the victim. The phrase "common man" is a keyword in this establishment and it is studied in this way that how the person is passive against this provocation and when it should and could have shown abnormal behavior to be subject to this establishment.

Nevertheless, when in the rights of America, we encounter with phrases such as criminal negligence, fault, unlawful act and breach to the law, in fact there are the same established rights with those in Iran, although we face with some differences in the matching layer to layer.

Hence, more studies carried out on the analysis of the behavior of people and adapting it to practice recognized in law and in fact, applied at least one-step in the theoretical science of law. It hoped that law professors, scientists and researchers apply more efforts in this regards to achieve the result of more powerful justice.

Types of murder considered based on the mental element in Iran's rights with investigation on the contents of Islamic penal code approved in 2011 and 2012 observed that listed the criminal murders below: (1) intentional killing 2. a quasi-intentional murder 3 – pure error of murder 4-murder as an involuntary manslaughter 5.Unintentional murder 6. Murder as pure error. 7. Murder during the conflict, the crime of killings during the conflict having criminal independent titles and certain characteristics that are discussed separately, and the other mentioned killings in terms of mental element including one of the following two titles: (a) deliberate killing b (quasi-intentional or mere error); So, according to above materials , it can be inferred that the crime of murder in the Iranian law, is divided based on the mental element of the intentional and unintentional murder and intentional murder in legislative system has a different cases and using lethal weapon to damage is replaced by the criminal intent or evidence of criminal intent of agent. But the kinds of murder based on mental element and its constituent components in the criminal law of America (which has been analyzed as a case of Iran's penal provisions of the Islamic Penal Code enacted in 2011 and 2012,) like the rules of Iran divided into intentional and unintentional murder, but all kinds of murder in the legislative system of America's law is different from the rules of Iran, so that the offense of intentional murder in America's right is divided into intentional murder together with former plan and simple intentional murder. So, it can be inferred from the murder of America's rule, the offence of murder in America is divided like Iran's rights to intentional and unintentional killing but kinds of intentional murder in the legislative system is different with the rights of Iran.

The title of murder as semi-intentional in the fatwas jurists and former public penal code which has not recorded set in the penal code for the first time after Islamic revolution in note 3 clause J article 291 of Islamic penal code in 2011. The aim of legislator from setting the above law is to get rid of the problem of paying blood money required by wise person as well as the necessity of committed persons to unintentional killing with penal offense, and consideration and the precautions in hazardous actions and payment of blood money by them.

The murder as semi-intentional is conceptually adapted with alleged unintentional killing in article 177 of the former public Penal Code.in terms of spiritual element, it obtains with criminal offense in terms of mental and realization of the causality relationship between obtained murder and above offense from the committed person and if the committed has no criminal offense and murder is resulted from its direct action, the murder is considered mere offence and the blood money must be paid by the wise committed.

The lawmaker has not predicted mandatory reactions that can direct him in the requirement of people to consider cautious and care about hazardous actions according to Islamic penal code in 2011 in the semi-intentional killings except from murders resulted from driving violations but with ratification of the fifth book of Islamic criminal law under the sanctions law and deterrent penalties in 2012. Fortunately, the sanctions law and irreversible stipulated over the above killing in which consider the appropriate and remarkable measure. In the legal system of Iran clause A of article 290 IPC sets: "where murderer wanted to kill someone by doing something specific or non-specific person or in a congregation whether it is lethal or not in typical but not caused to death in practice".

According to clause A of mentioned Article it is inferred that there is no difference between the intentional crime with former plan (aggravated murder) and intentional killing without previous decision (simple intentional killing) in the legislative system of Iran and both of crimes have the same punishments. In case of meeting the requirements of intentional killing cause to retaliation, under Article 290 of IPC, the retaliation penalty is predicted. Former legislator also in IPC ratified in 1973 and 1925 has not distinguished between the kinds of intentional murder together with former decision and simple intentional killing and according to the article 107 of Islamic public law for committing the crime of intentional killing, the retaliation punishment is predicted. But in America's Statutory Law about the intentional murder with previous decisions and the intentional killing by ambush or provisions (aggravated murder) by virtue of Article 230 IPC, is death penalty predicted for the killer and for intentional murder without former decision (simple murder) by virtue of Article 234 IPC predicted life imprisonment or strict imprisonment. American's legislators maintain about belonging determinant bad intention to unknown persons from a congregation: "If a person shoot to a certain gathering of people or hand grenade at a special gathering of people and does not make difference to him who kills and the character of the victim is not known to the killer, in this case, such an act called with non-specified action or unlimited intention. Therefore, in American law, the former decision or notion of killer in committing murder consider the aspects of punishment.

In Iran's legal system, clause B of Article 290 IPC stipulates: "When the murderer intentionally do something that is typically fatal, although not intend to kill the person. In legal system of USA similar to Iran's legal system, the murder as the fatal imply as an example of intentional murder, but the murder by poison is different in America's legislative system. In the IPC, an independent offense has not predicted under giving poison. Courts in proceedings of proposed cases, include murder by poison in clause B of Article 290 IPC, so in the perspectives of jurists, the material element of deliberate killing might be may Belmobashera or Betasbib, the intentional murder by poison named as one part of Betasbib.

In America's criminal, giving poison resulted into death predicted as an independent crime set the death penalty for the committed person under the Article 233 of IPC⁸. In comparison of article 176 of former penal code with article 233 of American penal code seen, seen: the crime of poisoning leading to death in terms of mental element and the amount of penalties in these two articles are quite similar. In addition, in America's legal system similar to Iran, the agent must have an intention to commit murder and injury or its action be typically fatal to consider its murder as a crime. The crime of murder by poison is predicted in law of the French Penal Code (Article 5-221) in particular, but it is not a specific crime in the law of Lebanon and Jordan similar to Iran, and article 233 of American law and article 379 of Belgian law have stated it separately.⁹

Paragraph C of Article 290 stipulates that: "When the murderer does not intend to kill and what he is doing is typically fatal, but it is deadly in relation to the person from disease or old age or disability or a child, and so on, it is typically lethal and the killer is aware of this. In Iran's legal system, the above clause has been implied as one examples of article 290 IPC while in America's legal system; such a case is not expressed at all but in tolerance can put it inside the simple intentional murder, and the cause of paragraph (c) of article 290 IPC. As previously mentioned, the legislator in this part of the article to conform to the legal texts, take into account the situation of the victim.

REFERENCES

* Quran

1. Aghae Nia, crimes against people, Volume I, Tehran, Fifth Edition, published in 2009.
2. Afkhami, the study of legal and penal aspects of murder, MA thesis in criminal law and criminology, Tehran University in 2008.
3. E.Troy, B, drawing the criminal character, Akbar Steraki translations, publications of deputy of police department, Tehran 2009.
4. Bazgir, Y, the IPC in virtue of the Supreme Court voting 2, premeditated murder and pure offense, Tehran, first edition, published by Phoenix in 1997.

⁸ Article 233 of American Penalties states: everyone in any case deliberately cause to the death of another one with chemical substance in the short or long term, the murderer is recognized by poison and the penalty of killer is execution.

⁹ Zeraat, Abbas, special compatible penal code, volume 1, p 28

5. Javanmard, a comparative study of the zero tolerance policy on criminal law in Iran and America, first edition, Mizan legal foundation, Tehran, 2009
6. Hajarian, the Penal Code, Tehran, first edition, published in 2014, a new plan Pub.
7. Khansari, S, Jameato al Madarek fi sharh al Mokhtasar Almanafeh, Almkhtsr, Qom, second edition, Sedoogh school, 1985.
8. Khoi, the foundations of Takmalat al Manhej, Volume II, Qom, Imam Khomeini institute of restoration works in 1422.
9. Kheirkhah, the legal study and murder and its instances in criminal law, MA thesis in criminal justice and criminology, University of Qom, 2007.
10. Robert R, d. V. T-Costa, the characters in adulthood, translation of Mirtaghi Garooci and Farhad Mohammadi, Friday Publication, Tehran, 2002.
11. Dalir, H, discussion of Article 269 of the Islamic Penal Code, legal magazine in Judiciary of Islamic Republic of Iran, No. 5, 1992.
- 12-Rahmdel, M, the investigation of involuntary manslaughter concept in Iranian law and jurisprudence, publication of Research Faculty of Law And Political Science, winter 2005, No. 90 Page 119 to 146, 2005.
13. Zeraat, A, Comparative Special criminal law, Volume I, Tehran, first volume, Phoenix publication, 2006.
- 14-Sepahvand, or, specific criminal law (1), crimes against persons, in collaboration with Hamid Askari pour, Majd publication, first edition, 2007.
15. Avaz Mohammad, A.E. A, M, manslaughter from a legal perspective, justice magazine, Issue 134, 2010.
16. Avaz, Mohammed, the law of Alqobat (Alqsm Aam), listed on the Web www.hvm.ir
- 17.Freud, psychological defense mechanisms, translated by Mohammad Javadi and Habib Gohryrad Rad, publishing Rod Mehr, Tehran, 2007.
- 18-law Alqobat, Alomodel Balqanoon 97 in 1992 Vqfa Lahds Altdylat 1994, scool of Alalfy Alqanvnyh Balmnya, with translation: Hajjarian, Mohammad Hossein (with cooperation and advice of doctor Iraj. Golduzyan), Penal Code in Egypt, Tehran, first printing, publishing initiative, spring 2011.
- 19-Gharamaleki, the analysis of legal jurisprudence elements of murder, criminal law and criminology MA thesis, Tehran University, Pardis Qom, 2009.
- 20-Kiai, we investigate damage caused by the crime of involuntary manslaughter in the criminal law of spiritual, MA thesis of Islamic Studies and Law, University of Imam Sadiq (PBUH), 1997.
21. Kei Nia, M., Principles of Criminology, 3 volumes, Seventh Edition, Tehran University Press, 2005.
22. Set of the IPC, theory no 1069/7-1/5/1379 A.h.q, President, Department of Research Publisher, Sixth Edition, and Fifth Edition, refined and compiled by Abbas Ali Rahimi Esfahani, Tehran, 2005.
- 23.Mohaghegh Heli (laws of Islam), Shahid Sani(masalek Alafham), criminal law of Islam, Tehran, first edition, translated by Hasan Mohammadi, University Publishing Centre, 1995
- 24.Marashi, new views on Islamic criminal law, Tehran, first edition, Mizan publication, 1921.
- 25.Mousavi, the rules of intentional murder in Islamic jurisprudence, Journal of Legal Studies, University of Allameh Tabatabaee, third year, Issue 9, pp. 78-86, 2007.
- 26-Mousavi Bojnoordi, comparative jurisprudence, Rahneemoon Quarterly, published by the School of Shahid Motahari, No. 3 and 2, 1992.
- 27.Najafi Abrand Abadi, novel criminology, an introduction to risk management based on criminal policy, new Criminal Sciences (collection of articles), Mizan legal Foundation, First Edition, Tehran, 2009.
28. fair prediction of crime, criminal science (Proceedings in cherishment of doctor Mohammed Ashorian), first edition, SAMT Publication, Tehran 2004.
- 29.Najafi Tavana, criminology, education and evaluation Publication, third edition, Qom, 2005.
30. Noorbaha, in the backyards of thinking, the news of Criminal Sciences (Proceedings), first edition, Mizan legal foundation, Tehran, 2009.
- 31.Najafi, Mohammad Hassan, Javaher al-Kalam, Volume 41, Tehran, Third Edition, Maktabat al Islami, 1988.

- 32..... , The field of criminology, Third Edition, Ganje Danesh Publication, Tehran, 2007.
- 33..... General criminal law, the twenty-fourth edition, Ganjeh Danesh Publication, Tehran, 2005.
34. The history of understanding criminology..... Kit Soil et al, Mir Roh Al Allah Sediqh translation, first edition, Dadgostar publication, Tehran, 2003.
35. White, Haynes, crime and criminology, translated by Ali Salimi, Second Edition, published by the Areas Institute and Azad University of Mashhad, 2005.
36. Weld, Bernard,SNPs, theoretical criminology, translated by Ali Shojaee, first edition, SAMT publication, Tehran, 2001.
- 37.Husserl, Cartesian Meditations: An Introduction to phenomenology, Karim Rashidians translation, first edition, Nashre Nei, Tehran, 2007.
- 38.Hammett, M., mistake in the identity of victim in intentional murder in jurisprudence and Iranian law, MA thesis in criminal law and criminology, University of Qom , 2008.
39. Erica, supt, la donna beaty,2006, Woeld records for how quick they NAB serial killers, kocsis book, what makes a serial killers? Sinclair community college Dayton, ohio.
40. Laurance, j. a, 2004, alison, Emily, the organized or disorganized typology of serial murder, myth or model.
41. Fox, j. a Levin, j,2007 ,overkill: serial and mass exposed, journal of legal psychology.
42. Canter, d, 2001, Criminal shadow: the inner narratives of evil, authrolink press.
43. Ressler, r. k, 1986, Burgess. A. W. douglas, j. e. sexual killing and their victims, identifying patterns through crime scens analysis. journal of interpersonal violence.
44. Salfati, C.G,2002, Canter, D., “Differentiating stranger murders: Profiling offender characteristics from Bihavioral styles”. Journal of behavioral sciences and the law.
45. Hare, R.D,1986 “without conscience, The disturbing world of the Psychopaths Journal of clinical Psychology
46. Lifton, R.J,1986, Medical killing and the Psychology, New York, Basic books, Palgrave.
47. Turco, R.N,1990, “Psychological profiling”, international journal of offenddor Therapy and comparative criminology.
48. Blackburn, R., 2002, The Psychology of Criminal conduct”, journal of criminal psychology.
49. Lifton, R.L, 2005, Palermo, J.B., “ Offender profiling: An introduction to the socio psychological analysis of violent crimes”, New York, Bantam books.
50. Helibrum, A.B ,1982, “Cognitive models of criminal violence based upon intelligence and psychopathy levels”, journal of consulting and clinical psychology
51. Mead, J.H, 2005, Exterme killing: Understanding serial and mass murder, thousand Daks “ , CA: sage.
52. Levin, J., Fox, J.A, 1999, Mass murder: America`s growing menace, New York Press.
53. Canter, D, 2000, “Offender Profiling and Psychological differentiation”, journal of criminal and legal Psychology, 5, p. 26.
54. Blackburn, R,2002, The Psychology of Criminal conduct, journal of crimiinal psychology.
55. Hare, R.D,1986, without conscience: The disturbing world of the Psychopaths, Journall of clinical Psychology
56. Lifton, R.J,1986, Medical killing and the Psychology, New York, Basic books, Palgrave.