

Guarantee of Enacted Executive in Iranian Criminal Policy to Support Crimes Against Properties and Ownership

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ABSTRACT

The main role and purpose of criminal policy in a society, is effective control of crime and criminal phenomena's inhibition of that community. Criminal policy is usually placed in the form of a general scheme and strategy and social policy and its tools cannot be limited only in repressive approach and punitive responses to crime in form of criminal laws and Code of Criminal Procedure, but also a preventive and proactive approach also plays a major role in explaining criminal policy to incidence the crimes.

We should investigate the conditions and features of crime against properties and ownership whether the absolute of property means any movable and immovable property, material and immaterial is placed as a subject of crime against properties, or the property must have certain conditions and features until it can be a subject of mentioned crimes al ownership.

Effects of division the properties into movable and immovable to identify the type of movable and immovable property has great importance in our law, foreigners cannot freely own the immovable properties in Iran, and they are allowed to obtain immovable properties due to treaties to live only or their occupation and industry, while there is no such limit for movable properties.

Transfer of immovable properties shall be done by official document, but official document is not necessary in the case of movable properties and also guardian cannot sell or mortgage the immovable properties of his/her ward without permission of prosecutor.

To address the claims relating to immovable, a court is competent that immovable property is situated in its domain, the other claims should be read in court of accommodation.

Easement right is for immovable properties and the use of pre-emption is also dedicated to immovable properties.

Keyword:

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INTRODUCTION

criminal strategies have been used in different laws to ensure intended supports of legislator given the importance of this legal major in criminal policy and laws of Iran notion and descriptions of property is always in change, and especially in the nineteenth century and twentieth century, with the development of the thoughts of being national the industries and properties, individual ownership limits have been changed and the rights of individuals have been limited against the public forces.

However, because these qualities must be accepted as a principle, ownership can be defined as the "ownership is permanent right, which one can allocate a property to him/herself in the limits of occupation in a property and use of all its benefits. "

In this regard, crimes against properties and ownership that constitute a significant percentage of crimes committed in different countries that the most important of these crimes include fraud, breach of trust, theft and export of unpaid cheque, that each one has many intricacies and points.

Therefore, without having a proper criminal policy, sufficient expertise and knowledge on analyze the legal criminal topics and legal subjects relating to property ownership could never can be solved cases in this area. In addition to the above cases, crimes such as vandalism, disseize and other cases are among the crimes against ownership. All the above-mentioned crimes have been indicated in the Islamic Penal Code.

Subject of the crime is different in terms of the type of crimes and in crimes against properties and ownership, ownership and financial rights and property (private or public), are the subject of crime. Property has a relative concept and features and various conditions, criminal provisions are not same compared to properties, for example, immovable properties are not subject to theft, and moveable properties are not the subject of disseize and denial of the right

Tasks have accomplished about electrical power and so on in our legal system for specific. There is no doubt about intellectual rights in their ownership, but do not include criminal provisions related to their properties.

Natural members of body and human corpse are not subject to crimes against properties. Considering that property is on the principle of civil rights subjects and terminologies and there are diverse divisions and features about property in civil rights, it is necessary to investigate the subject of crime in regard to crimes against properties or ownership in detail and carefully.

We study the conditions and features of the property, by basing criminal policy of Iran in the realm of crimes against properties and ownership in the following. Material pillar of any crime consists of a series of external and material components and conditions and providing them together causes to commit crime in the outside world.

Definition of terms and technical and specialized terminologies

1. **Policy** means enshrining property, keep, protect, maintain, protect, and rule on serf, having serf, government and the president and judgment in Persian cultures. (Dehkhoda, 1994, 12225)

2. **The criminal policy:** It means criminal deal by the government with offenders. (Lazrezh, 2011; 39).

3. **The properties:** it refers in the term to objects that transport them from one place to another place is possible without harm to the property and its location. Similarly: car (Adl, 2006; 31).

4. **Ownership:** It literally means the owner and ownership in the term is credit relationship between property ownership on the one hand and between the person (natural or legal) On the other hand, that according to it the owner can do any reasonable occupation that wants in it (Amid, 1982; 691).

5. **Crimes:** Crime literally means "sin" (Sayah, 2008; 43). Crime in legal term has been defined to act or omission the action which by law can be punished or require security and corrective measures, it means any act or omission the action in the term that violates the law and will be punished. (Approved by the Academy of Persian Language and literature, 2014; office 11).

6. **Punishment:** and so-called retribution or punishment is said to impose painful action on another person that it is outcome of action of that person. This term refers to punishments and penalties that the judicial authorities consider for people that have violated the important rules of society, means they have committed crimes. (Ardabili, 2013; 176-151)

Being Movable the property

In accordance with paragraph 1 of article 2 of the Commercial Code, only the purchase and sale of movable properties is one of business practices and who is engaged to immovable properties transactions, no matter how lucrative are the deals he is not a businessman.

In general, it appears that we should investigate and discuss the property of crime in terms of these qualities and conditions: Movable or immovable being, material or immaterial being, belong to non-involvement that we investigate only the subject of being movable the property and ownership in this article.

There is no doubt and no dispute on the property of subject of stolen must be movable, however, there is difference about the inclusion of the crime of breach of trust and fraud on immovable properties. It should be accepted that the breach of trust, movable and to be included in our rights according to explicit of article 674 of the Islamic Punishment Code and in terms of fraud stronger view is that immovable properties are the subject of this crime.

Criminal behavior of theft is stealing, therefore, property is subject of theft that can be stolen and only movable property has this feature.

But the real purpose of movable in the criminal laws and in regard to crimes against properties especially theft as they have said:

It is anything that it's transferring and handling is possible. So there is a clear difference between the moveable concept in criminal laws and civil laws. It is worth noting that There is doubt about whether the water flowing in streams is the subject of theft or not?

Because the flowing water in streams followed by this that the stream is natural movable and permanent dependence of water flowing into it, never gets outside of immovable state and is not subject the immovable property. But given

that the legislator in some cases, including Article 684 IPC has reminded the stealing water, it can be inferred that running water in the streams, can be the subject of theft.

Moreover, as mentioned above legislator in some of the articles concerning crimes against properties such as theft has just reminded of property and in some other articles, such as breach of trust and fraud has also reminded the documents.

So the role of documents in crimes against properties should be studied here in a general attitude, moreover about each of the offenses mentioned, certain subjects may be raised that, they should be examined in their place.

Documents, is plural form of document and in accordance with Article 1284 of Civil Law: document means any written which is invoked as proof of claim or defense. This definition includes only certain category of documents that have legal value. Therefore, in order to implement the punitive regulations on properties on the documents and papers should divide them into the following way:

A - Documents that are considered intrinsically property, such as banknotes, traveler Cheque, guaranteed Jack and the like them.

B - documents that have legal values as a certificate, birth certificate, marriage certificate, education qualifications and many similar documents.

C - Documents that have financial compensation or in other words they are tools to obtain property, such as documents and securities and commercial securities

The first batch of documents is undoubtedly subject of crimes against properties and second batch also is not undoubtedly the subject of crimes against properties

But if that particular criminal sentence was set for the manipulation in this type of documentation, such as Article 545 and 546 IPC or 681 and 682 of the same law, are subject to this sentence, otherwise they are outside the scope of criminal provisions.

But on the third batch documents should be noted that today many lawyers believe the documents and securities (and documents bearer) not only represents the right but also this right was combined with the document, the document has a special value, so that securities independently regardless of the rights that represent it, are considered movable property.

In contrast, others believe that property should indicate the fact, that fact is property not indicator. So securities and payment orders (like Czech, promissory notes, etc.) indicate the debt and debt is property not securities and payment orders. The companies' stock also suggests property, itself is not property however, that is tradable, because if we be more careful about this, we can see that financial goal are beyond these shares.

Therefore on the first view, this batch of documents and papers as well as other movable properties, are subject of crimes against properties but according to a second opinion, if these documents are the subject of crimes against properties in the case that lead to occupation in property and right contained in them and accordingly take such documents could be considered as the start of one of the crimes against property. (Mansour. Abadi, 2003; 112)

Ownership and check it in criminal laws

As you know, at the Faculties of Law, first criminal laws is relating to crimes against the physical integrity and character of the people and second criminal laws is

relating to crimes against property. So, it must first understand the notion of property given the close relationship of these types of crimes with civil rights,

"Legally, the property is said something that has two basic conditions:

1) be useful and meet the need, whether it is material or spiritual.

2) be allocated to a certain person or nation.

It is common in definition of property that say, it is something that has the value of trade and money or property is given against it. "And it should be ratable to money, such as books, pamphlets, cars, mobiles, cell phones and more. . .

Some objects may not be considered property. That object that has been under the aggression should have this feature means "having ownership" in financial crimes.

This financial value is relative and it is criteria for the owner of the property. For example, medicine is a famous example which some has attributed it to the doctor Katouzian but according to conducted researches is related to a legal theory, a family photo that has value only for owner of it and other members of society may not consider value for it.

Therefore, just because something is valuable even for one person can call it property and no one is allowed to interrupt this equity relationship for example, rubbles from a building have no value for its owner but to assume that if the neighbor needs them to fill his/her well, then these objects have been turned away and they are useful even for a single person, then it is property. (Katouziyan, 2013; 109)

Property that is discussed in this type of crimes may be movable or immovable, which based on the nature of that crime can be recognized that it is movable or immovable in relation to the property. For example, in the case of theft is clear that it can be imagined only in the case of movable properties, because the two pillars of the realization of stealing means the "removal" and "take" cannot be imagined in any way in the case of immovable properties. Subject of theft should be the movable property. Immovable properties due to the impossibility of abduction cannot be stolen. (Goldoziyan, 2012; 350)

In criminal laws, immovable property is anything that cannot be stolen and moved. Thus, contrary to Article 17 of the Civil Code, that in which agricultural tools and implements in certain circumstances are deemed immovable, such devices irrespective of the civil laws can be subject to theft. (Goldoziyan, 2012; 351)

A series of properties with the title of "immovable verdict properties" and a series of other properties that because "it's transfer requires the destruction or mutilation of the property or its location " like painting picture that has been mounted and embedded on the wall and are among immovable properties and can be stolen because after removing it of the wall can take it that it should be discussed in separate discussions , which it also involves the study of civil law.

In the case of fraud and crime of breach of trust, the realization of these crimes can be attributed also to movable property, and immovable property . Crime of unpaid cheque is related to the movable property, property that is discussed here may be the same property, or financial rights; some crimes are committed only to the

same property like robbery that is realized towards a tangible and available property.

It can be said about Financial rights such as easement, usufruct and patent rights that we do not have a crime of stealing to financial rights in our rules because although these cases are crimes but cannot say them stealing in a case of encroach to above cases.

The same property can be under the fraud in the case of fraud crime and also may be occur about a series of financial rights and privileges that are called "Intellectual Ownership Rights" . Discuss the different aspects of these crimes is that all these crimes that are mentioned above are single or dual aspects.

When crime in addition to that criminal punishment has been determined for it, by assumption that public order has been disturbed, Compensation for damage has been considered for them that this compensation is due to violation of a private person.

These crimes are dual crimes means that losses and damages have been entered to the person that say that this crime has private aspect and also that caused to disturb in public order say that this crime has public aspect.

Therefore, these punishments are public aspect of crime because they have entered losses to society and have caused disturbance in security system in society. Besides the compensation of damage entered to people that is private aspect of these crimes because no crime can be assumed that has no aspect of public Therefore consequently, it can be said that "all crimes have public aspects " and private crimes can have both private and public aspects . (Official Gazette, 18/07/2000; 15911) and crimes against properties and ownership are dual aspects because property legitimately be attacked.

In some public crimes, priority is private aspect, these crimes so-called crimes with private aspect. Private aspect of crimes is important. For example, in the case of unpaid cheque, purpose of legislature of calculating the criminal offense is to punish the exporter of cheque that causes to protect the right, rights and interests of individuals with regard legal penalties for trespassing, injured person has his/her right and makes society to somehow far from of these crimes.

In some of the crimes because the legislator knows that in the case of occurring a series of crimes like robbery and fraud, all people will be affected by them and everyone would be damaged and as well as the comfort and security of the community will be disturbed. But in the case of unpaid cheque, if the victim passed of the crime, the wanted person will be forgiven because in this case by private prosecution the order and peace of society is removed from disturbing.

How to detect the superior of crimes with private aspects and crimes with public aspect to one another: Sometimes the legislator states clearly and sometimes can be understood implicitly that intended crime has the private aspect or not.

For example, the legislator has said that if the plaintiff has passed then prosecution will be stopped that here public aspect of crime has been considered. But on the contrary, sometimes forgiveness of plaintiff does not affect and just

punishment may be less that here the public aspect of the crime is more and is preferred.

Three crimes have public aspect among four crimes of discussion of the crimes against properties and ownership:

1. R

Robbery crime 2. Fraud crime 3 - treason on trust crime
Robbery crime may be Hadi or Taziri that Hadi robbery has private aspect and Taziri robbery has public aspect. Issue the unpaid cheque has private aspect and if the plaintiff forgives the chase stops.

It is obvious that the injured individual is in crimes that are dual aspects and injured person necessarily must sue to authorities to start an investigation.

Because these crimes against properties of a person, property or personal should have an owner, and are deprived a person of his /her property until includes in the proposed definitions, otherwise, aggression the properties that do not have owner is not subject to these crimes.

Result

On crimes against properties and ownership, objects and properties that do not have special owner, cannot be exchanged-traded and are not considered as property according to the civil rights, but in terms of criminal, there is no hesitation in including criminal provisions related to crimes against properties on them.

On the other hand, intellectual ownerships and rights make a major part of the properties and assets of the entities in today's world, and are the subject of crimes against properties and ownership. Accordingly, our legislation has set and predicted certain provisions in order to further support for this category of properties and ownership and Of course, these mentioned rules are not sufficient to reach to goal.

About encroachment on things such as drugs or alcohol, whether in the possession of persons or in the possession of the government, there is no doubt that the subject of crimes is not against properties and the case is subject to the smuggling.

There is no doubt in the non-inclusion of provisions related to crimes against properties, especially occupational crimes on documents that have legal value, but In that the documents have difference per, are considered as financial, property or not?

There is disagreement on civil rights and trade but in terms of criminal although it wants a detailed discussion but in a brief they can be considered as property, and as a result are subjects of crimes against properties and ownership. Undoubtedly, human organs that are transplanted into the human body, the human rights and freedoms, are subjects of crimes against persons

But there is doubt in the inclusion of any of these provisions relating to crimes against persons and properties in the aggression in the dismissed natural members of human and it is needed which in terms of criminal and civil, special legal regime is set for them.

However, in this aspect of criminal policy using indirect methods, based on management and governance mechanisms are effective. Increase the costs committing the crime in the properties and ownership sector and prevent to create fields of crime and the use of social and

criminology sciences in this regard can be effective in advancement of criminal policy.

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