



## Features and Conditions of Crimes Against Properties and Ownership and Strategies

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### **Original Article:**

Received 10 Aug. 2016 Accepted 10 Sep 2016 Published 5 Oct. 2016

### **ABSTRACT**

Issues related to crime against properties or ownership have been concerned by criminologists from ancient times. The objective of this study is to investigate crimes against properties and ownership by studying legal articles. sometimes legislator has used the word of properties alone and sometimes he/she has used other term with this term.

Thus, we first study the concept and structure of criminal policy in criminal laws then we deal with investigation and implementation it in crimes against properties or ownership, and is concluded that there is a relationship between the property and the owner that it is a credit relationship.

For example, in Article 267 of Islamic criminal law theft is defined as stealing property belonging to the other, as is noticeable, the term of property has been used alone and without limitation in the legal regulation. In addition to terms of property, other terms such as funds, documents, transfers, bills and etc have been also used in Article 674 of Islamic criminal law (about breach of trust), or in Article 1 of the law of severe punishments for perpetrators of corruption and financial embezzlement and fraud.

Also, numerous other factors such as poverty, unemployment, inequality in income distribution and urbanization phenomenon are effective on committing the crime and its effects have been also measured in Iran, even economists have measured the degree of influence of other social factors such as education, preventive punishments on committing the crime

In this study, it has been tried to investigate the effect of any factors of poverty, unemployment and urbanization on crimes against properties include issuing unpaid cheque, theft and embezzlement, bribery, with motivation of knowing economic factors affecting on crimes against properties in Iran.

### **Keyword:**

Properties  
Ownership  
Crimes  
Punishment  
Law

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Peer review under responsibility of **Iranian Journal of Social Sciences and Humanities Research**

## INTRODUCTION

In recent years, due to the importance of crime, extensive studies have been conducted on the field of factors affecting on crimes against properties and persons. Economists approach to crime is from the perspective of the cost-benefit. Therefore, a person commits a crime at time that its benefits are more than its expenses.

Among the conditions necessary for the realization of property acquired crime through, illicit, illegal and illegitimate way is means and how to commit in order to obtain funds or property.

So if at the beginning of the matter, property or fund is given a person in the right way, and then do ill behavior that is indicative of its takeover, so this is not a crime subject and according to certain conditions of action and committed person, may be include in the form of other crimes such as embezzlement or breach of trust.

Also, in the opinion of writer and according to top iconic examples of Article 2 of the law of severe punishments for perpetrators of bribery, embezzlement, fraud, the realization of this crime is only on obtaining the property or fund through abuse of special privileges and licenses and economic rent-seeking that the public interest has a role in it.

Therefore, it cannot be put and punished any raised issue between real individuals that may have their own legal solutions in certain form of this crime.

**1. Properties:** The term refers to objects that transport them from one place to another is possible without harm to the property and its location. Such as: car (Adl, 2006; 31).

**2 .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).

**3. 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).

**4. 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)

**5. Law:** general order and sometimes detailed that it is read by the competent authority and approved by legislatures and then to be signed by the competent authority. (Jafari Langroodi, 2009; 517).

**6. Punishment:** It means in a word retribution and punishment that are given to those who act contrary to law or morality or common law and committed the bad action. (Jafari Langroodi, 2009; 579)

## Being bound of crimes against properties and ownership

One of the classifications of crimes is their classification in absolute and bound. Bound crime is a crime which the legislator puts result of the crime committed and damage to the victim as one of the constitutive elements of crime and in contrast, absolute crime, is a crime that the legislator considers it to be done before achieve the result. Property acquire crime through illegal mentioned in Article 2 of the law of severe punishments for perpetrators of bribery, embezzlement and fraud, are considered including bound crimes that to fulfill it, make criminal result is necessary.

Criminal result in this crime, is acquiring money or property through criminal behavior of this crime means possess properties and only resort to equipments and facilities necessary to this crime, without obtaining result or money or property is not cause to the realization the crime.

Fraud and theft or murder are considered as categories of bound crimes, because to fulfill each one in order, taking someone else's property and deprivation of life as a result of physical behavior is necessary, but in such crime such as insult once a committed person insults to person, the crime is realized and there is no need to effect of insult and discomfort in victim person.

So, it is clear that the element of result is a factor for creation the difference between the crimes because the two crimes, one is absolute and the other is bound, element of result causes natural difference in their physical element and once it is created, the natural difference can be considered distinguish among them.

In other words, the realization of the bound crime is subject to the outcome of criminal result and the result has been regarded in the description of its material element, but in absolute crime, criminal description of crime is such that result has not been considered in achieving its material element. (Shukri, 2010; 21)

These two criminal descriptions can be the main cause of creation the essential difference between material elements of bound and absolute crime. The condition for realization the robbery is this; stolen property belongs to other person. Thus, if the property subject of the crime, does not belong to other: Material pillar of crime of theft does not occur.

An important point that should be noted about element of result is that some bound crimes are committed in two forms of action and omission the commit act. Since in these crimes, the only achieve the results is necessary and way of committing the crime is not considered, commit that crime cannot be considered the action and omission the action as multiplicity of similar material.

In other words, crimes of destruction or murder are committed in different ways of action and omission the action. It is clear that the physical behavior of actions and omission that are different. But since realization the result is from any way in bound crimes, it is necessary, this status cannot be considered cause of differences in physical behavior of bound crimes.

Therefore, if (a) the first time with the burning the book (b) the attempt to destroy it and other times by failing to

take care of the trust property by bad faith(c) destroy it, condemned the multiplicity of the material of the same type.

**Instantaneous or continuous crime of breach of trust**

Mir Mohammad Sadeghi says about Instantaneous or continuous crime of breach of trust: "This crime is an instantaneous crime, not continuous, in other words this crime is committed in same moment that one of four actions stipulated in law are done on the trusted property and its realization does not need to continue. " And Bahman Kesghavarz respects to the instantaneous nature of this crime. In one of the Supreme Court decisions has been mentioned "Breach of trust, whether occupation or lose or unauthorized possession in trusted property had not been of continuous crimes."

But according to some lawyers, use the trusted property had been an example of continuous crime and in other mentioned cases this crime will be of Instantaneous crimes in four cases that have been mentioned as material element of crime of treason in Trust in Article 674 of the Islamic Penal Code

Because use has relation with time, while appropriating and wasting and missing it will be realized, hence breach of trust is a criminal that the material element of it may be instantaneously or continuously.

What punishment has been determined to start the crime in the law of 2013?

The feature of new law is calibration the punishments, which in fact is the adoption of the law in 1973. Article 20 of this law has been revived again by literally changes that are applied in it.

Article 122 of the new Penal Code declares punishment of start to crimes that their legal punishment is deprivation of life; (deprivation of life means taking life by way of retaliation or execution) is life imprisonment of 1 to 3 degree will be fourth grade of punitive imprisonment

According to this article of Islamic Penal Code, adopted in 2013, which gradually reduces the importance of crime and severe of punishment, legislator reduces the punishment of start to crime.

If we needed a law for start to crime in former rule, Thus, in any crime, it must be clarified about to start its crime that what are its punishments. But in the new Islamic Penal Code of start to crime is general, Therefore, any crime can have an independent start to crime and punishment, other than those that have been stipulated in the law.

Paragraphs a, b and c, means third paragraph in below of Article 122, Legislation and criminalization have been done to start the crime. Start committing crime person in crimes that their legal punishment is deprivation of life, is condemned life imprisonment or punitive imprisonment of one to three degrees, is condemned to imprisonment of four degree, in crimes that their legal punishment is amputation, or punitive imprisonment of the fourth degree, the punitive imprisonment of fifth degree and In those that their legal punishment is bound flogging or punitive imprisonment of fifth degree, is condemned to punitive imprisonment or flogging or a cash fine of sixth grade .

Although our current law apparently has been adapted from the law of 1973 but this law has been taken of

French Penal Code, in this law, all educations of schools of criminal law, were regarded until that day. This means that we can see the effect of the new social defense school, So It can be said that the law is considered progressive, although it must be said that these 40 years of criminal law changes means further schools of criminal laws do not exist in this law.

Another positive feature of new Islamic Penal Code is that the judge is free in the issue of start to crime to prosecute the start to crime in order to that many professional perpetrators of various crimes can escape thereby and say that we do not have a law in this area and can be free of law also the system of being grading and being gradual of punishment is also important point of course , it should be said about the intricacies of this law that during the time and place of implementation it is determined what problems can be have or not. (Legal and Parliamentary Affairs site, <http://www.hvm.ir>)

**The necessity of rooting the criminal and violent behaviors in crimes against properties and ownership**

Crimes in different rules are divided based on different criteria in several types: crimes against ownership and properties, crimes against persons and crimes against public security and safety. In the Sharia laws, crimes have been divided based on values of religious, property, life and soul. Resorting to violence in crimes is considered associated with human nature and his/her natural behavior in violation of the rights of others.

Resorting to violence, whether illegitimate in invasion of values or legitimate at odds with illegal attacks, ever days, not only had been customary but also they were not considered at no point in the history at its height means war and physical attack to justice, on stage of private revenge.

Violence is simple and non-sophisticated kind of instinctive acts and reminiscent of the animal dimension of human. Dimension that has been emerged instinctively in cases of necessity and urgency and in order to meet the needs of sensuality.

Gradually crimes became more complex by transmutation of human life, and the use of design and thinking and inquiry were placed rather than resorting to force and physical confrontations and criminal violence. In fact, traditional and instinctive violence has become violence's of the new type of intellectual, economic, emotional, ideological, political.

In crimes that are done in the world, including our country, like many white-collar crimes and golden collar crimes that by committing the crimes such as the battery, fraud, breach of trust, issuing unpaid cheque, abuse of office situation, bribery, embezzlement and bribery, computer crimes and similar crimes, though seemingly there is no violence, but in fact, illegal assault on the rights of others, is a form of violence.

But this violence forms sometimes in the form of words, affection and material issues. These types of intellectual crimes that is with the expertise, has background of violence, means the aggression against the rights of others by itself.

We have crimes that it is clear the violence in then in contrast. Crimes against properties of others or crimes against the lives of others, even crimes against dignity

and thoughts of others, such as insults, etc. are with violence. (NajafiTavana, the newspaper of Hemayat; 8)

In the meantime, however, there are a number of crimes that as street crimes are associated with violence uncommon actions, armed robbery, extortion, intimidation; sexual harassment should be considered of this kind.

The extortion so-called common-law is robbery with threats to life, financial, honor, is a kind of aggravated robbery that a person tries to take the property of others by cold or warm arms or his physical strength.

In fact, violence is a platform to facilitate robbery. Unfortunately, this type of violence has mostly a simple form, a sign of mental conditions of delinquent and is a reflection of his non-complex character. Because the skilled individuals are trying to act in a manner that cannot be known in robbery either in real space or in cyber space, do not be at risk and with a minimum of cost have maximum revenue and income.

So first, our analysis of these crimes must be in a form that are composed of people that have no sufficient intellectual and abilities and expertise and their complexity of the crime is usually very weak.

In terms of criminal psychology, these people are usually people who for having criminal income are considered impatient and hasty and in terms of personality people basically that use guns are usually timid and vulnerable in terms of psychological and personality threshold.

A field survey of the crimes committed in recent years show that the desire for violent crimes, especially among young people is increasing about the theft despite police reactions and retaliation.

In fact, among the few several features, being group of crime and have experiences the criminals and the use of violence which sometimes leads to mayhem and murder, along with physical and sexual abuse in our country is gradually becoming a feature of theft.

Although today we can avoid crime committing against properties and ownership in area of home or work place by applying a kind of situational preventive measures, namely the use of CCTV, alarm, metal panels, appointing the guardians, using protection,

But this situation prevention has been led to displacement of crime from the homes and businesses in the streets, alleys and neighborhoods and for this reason in the cities that use situational prevention measures commonly to steal from homes has been less, has been dragged into the streets.

However, since there is no possibility of traditional burglary of houses, recently by transforming, burglary is done with threats; people under the worker titles, beggar or an officer of electricity, gas or even the police come to the house and after opening the door of house and apartment, threaten the residents with guns and they attempt burglary with this trick that samples of it are visible at least in many media. (NajafiTavana, the newspaper of Hemayat; 9)

### **Being material the property**

The mean of being material of the property of subject of crimes against properties is this have tangible and concrete existence in the external world, or in other words

it should be a thing that has had objectivity and determination in outside, and we can touch and see it, So anything that lacks these characteristics and attributes, cannot be among these crimes.

Accordingly, also about power and so that their effects that can be seen and observed, not themselves, and humanitarian thoughts and initiatives which have purely spiritual aspects and as well as the incremental benefits of receiving and services whose existence can be fulfilled in the future, it is doubtful whether the issue of crimes are against properties or not and we will discuss about each of the above cases in separate and in the required extent . (Mansour. Abadi, 2013; 116)

### **Result**

Punishment is a social reaction against the action that annoys it and this concept in terms of level of cultures, is different. The role of punishment was Intimidation and retribution and revenge, in ancient societies but in contemporary societies provide offenders return to society and is trying on his rehabilitation, means that also were used in the past societies for this purpose were very varied and intense similarly execution in different ways, prison, exile, corporal punishments, and ... (gosón, 2013; 28)

In modern societies and other developed countries, there is no expectation of revenge of punishment but the main goal is rehabilitation and make social the criminal, Therefore, it is necessary legislator pays attention in determining the performance guarantees and penalties to new approaches and select the most effective way in restoring peace and order to society to be more successful. (Department of Legal and Parliamentary Affairs; <http://www.hvm.ir>)

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

There is disagreement on civil rights and trade, but in terms of criminal although it demands a detailed discussion but in brief they can be considered as property and thus are subject to crimes against properties and ownership.

Undoubtedly, human organs that are transplanted into the human body, the human rights and freedoms, are subject of crimes against persons. But there is doubt the inclusion of any of the provisions relating to crimes against persons and properties in aggression in a natural human skepticism and dismissed members and It is essential that, a special legal regime is set for them in terms of civil and criminal

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.

Unfortunately, in legislation crimes against properties and ownership of criminal policy adoption which is

dominated by the views of Western jurists and their writings, more than what is required, it is tangible and evidence for most of our lawyers and is concepts taken from Western literatures and highlighted translation of internal findings and local information.

The expectation is that in domestic investigations and studies pays more attention to local information and internal experiences, so that can adopt criminal policy appropriate to the situation of country in the realm of crimes against properties and ownership.

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