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## **Crime Danger Management in Iran's Criminal Law and Islam's Legal Instructions**

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### **Abstract**

Crime danger management is one of the new concepts of the criminal justice domain which has been introduced since the beginning of the 1990s. After the possibility of achievement of the remedial goals of punishments was questioned and the necessity of criminal justice system's expense control was clear, the atmosphere for the appearance of the administrative approaches in criminal justice domain was prepared. In this approach, the crime is considered a common and normal behavior in the society and the criminals are categorized and managed based on the danger rate and the crime repetition possibility. Iran's criminal legislation system, in spite of the lack of the necessary infrastructures for evaluation and management of the crime danger in different rules and regulations, has approached the issue unsystematically. The dangerous state possesses two aspects: the criminal aspect which implies condition produced in the person by the coincidence of the crime factors, and the social compatibility which means one's compatibility and sociability level. But, recently, what inferred from the rules and regulations is the change of the dangerous state concept and act upon this concept in order to manage the crime commitment danger in the different levels of the criminal justice system which intends to manage and control the endangered groups and supply the public security putting aside the diagnosis and treatment of the positivist approach. In Islam's criminal jurisprudence like the other criminal systems, concerning the crime danger management, solutions like increased penalties in case of the reoffending or determining debilitating punishments like execution or life sentence have been predicted.

**Keywords:** Dangerous state, Crime danger management, Islamic law, Supervision on dangerous criminals.

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## **1. Introduction**

The dangerous state is a sensitive and considerable issue which is analyzed and explained in different sciences like criminology especially clinical criminology, penal psychiatry, and penal law. These sciences have discussed the definition, attributes, discrimination, aspects, elements, reasons and dangerous state, and have advised the necessity to treat the issue. The term of the dangerous state introduced in the development process of the psychiatry while keeping the patients with mental illness in the hospital for unspecific periods from the beginning of the 19th century (Danesh, 2007). According to the regulations legislated in France in 1813, the governor could order to keep every person whose mental and psychological state is dangerous for the public security in mental institutes for an unspecific period of time. The mentioned order would be reviewed every 6 months (Keinia, 1967).

Internationally, the treatment of dangerous state first discussed in the international criminal law assembly in 1910 and gradually entered into the different countries' criminal regulations (Gassin,1991). The mentioned assembly provided a solution in this regard that the legislator must establish a specific provision for the dangerous criminal in case of reoffending or recidivism or genetic history of the criminal "which is manifested by the misdemeanor or crime commitment to secure the public security" (Amini, 1967).

Later in the criminal regulations of some of the countries, the dangerous state was implied, but "its consideration and the reaction of the society toward the issue was analyzed and discussed in the 2nd International Criminology Assembly in Paris on September 1953" (Sedarat 1961: 137-138). Concerning the laws and the regulations of the countries in the last 3 decades, it is concluded that the change of the dangerous state concept and following provisions are toward the management of crime commitment dangers and crime reoffending in the framework of the penal system which has put the treatment of the criminals aside and more than ever prioritized the public security and management and control of the groups at risk of delinquency.

## **2. The concept of the dangerous state in the criminal science**

The concept of the dangerous state in psychology is known. It was first entered into the field by Raffaele Garofalo. Criminal capacity and potential and the compatibility are two factors of the dangerous state which change independently from each other (Najafi Abrandabadi and Hashembeigi, 2011). The law of security and training provisions legislated in 1960, inspired by the instructions of the positivist approach, had defined the dangerous criminals. According to the 1st clause of this act "... the dangerous criminals are those whose mental and

behavioral histories and the quality of commitment and the committed crime keep them suspected of committing a crime in the future, whether they are responsible or not legally." This law had mentioned 5 factors for evaluation of the criminal personality and dangerous state of a delinquent which of them 3 factors meaning crime history, mental attributes and behavioral attributes required medical, psychiatric and casework examinations and tests (Babaei, 2011).

In this clause, some factors had been determined in order to identify a dangerous criminal which their authentication was by the judicial authority. So, it is not possible to account the reoffending as the legal factor for determining a dangerous criminal. Although the concept of dangerous criminal in the security and corrective measures acts is different from the today's concept of the dangerous criminal, but from clause 1 of this act some notes can be achieved in order to redefine the concept of the dangerous criminals.

### **3. The changes on the dangerous state concept**

The criminologists have provided different definitions of the dangerous state which in spite of the slight differences in surface, they are similar conceptually. Here are the instances: "the dangerous state is the possible temptation in a criminal that will cause criminal to commit a crime" (Amini 1967: 123). In this definition, this state puts the person in a situation that drives the person to commit a crime and finally will commit that. The appellation of dangerous state term originates from here (Ghasemi, 1995). Also, it has been referred to as a state produced by the coincidence of the personal and social crime-inducing factors and its effect on a specific person who will be suspected to commit a crime. This definition which is related to clinical criminology states that the effect of the crime-inducing factors on every person is not the same.

In order to determine the delinquency and evaluate it, the criminal potential of the person should be considered. Whenever it is inferred from the mental and physical condition of the criminal that a normal penalty would not prevent the person from committing the criminal actions, then the criminal has a dangerous state. This state can be available even when the person has not committed a crime yet. The dangerous state is a possible state in the person provided that the person could commit an anti-social action which is considered a crime in the law.

The above definitions show that the dangerous state case has properties like the attention to the criminal's specific mental and physical state, the effect of the penalty in preventing the person from committing the crime and attention to the availability of the dangerous state in

the potential criminals. From some of the definitions it is concluded that with the mere availability of dangerous state even without any commitment by the person, it is possible to execute the criminal sanctions about the person. This instruction, due to the possible abuses, did not get any approval and instead of that, the concept of the dangerous crime was accepted meaning a criminal with dangerous state based on some legal and clinical factors.

The recent definitions, due to the appearance of concepts like crime control culture, criminal control, risks-oriented criminal policies, and security demands and so on are not acceptable. Therefore, the dangerous state is a relative concept and has been inferred differently concerning the political and judicial goals and this way the dangerous concept is rooted in risk discourse and dangerous persons are those who are considered unacceptable risks (Paknahad, 2009).

With right understanding of the dangerous state concept, it is possible to provide appropriate criminal sanctions to prevent the criminal potential of such a person based on the amount of the danger that person can pose to the society in the future. In other words, in the process of determining the penalty type, the role of the prediction of the dangerous state has been recognized. It is in a way that all the members of the U.S. Supreme Court in a case announced their agreement with the court's decision. According to this decision, the authority must determine the penalties based on the possible future behavior of the person (Morris and Miller, 1985).

In such a condition, the concept of the dangerous would change. In dangerous state management, the main subject is the criminal and in Iran's law, the dangerous state concept has been agreed upon under the term of the dangerous criminal. Therefore, we try to define the dangerous criminals based on the crime risk management theory and accordingly a dangerous criminal is a person whose mental and moral history and attributes and the quality of the intensity of the committed crime, keeps him/her suspected of reoffending in the future and hence the court, in order to manage the crime risk and its repetition, to control the crime and reduce the dangers and criminal threats or their prevalence, adopts measures according to the amount of criminal risk which fluctuates in different levels from removal of the criminal from the community to rejection and neutralization and permanent or temporal prevention of the offender's harms to the community.

#### **4. The position of management-based approaches in penal law**

In the late decades, the structural and management problems have caused the public service organizations a series of problems such as lack of the efficiency and effectiveness of the long-

term and short-term programs. Consequently, solving the complex and multi-dimensional problems of this domain has turned into one of the main concerns and priorities of the theorists and scholars of the state managers and officials and agents of the politics. The process of problem-solving in this domain which has been based on the firm theoretical foundations and convincing justifications of the policymakers resulted in the gradual formation of the Managerialism or New Public Management model that to some scholars' view has been turned into a state management paradigm (Hood, 1991).

Ultra bureaucratic paradigm or state management based on market, opposing the Weber bureaucracy, as the solution to exit the crisis of the state organizations, first was used in countries like England and the U.S.A. and later in other countries like Iran favored by the authorities and policymakers and managers and soon, after the other state departments, penetrated criminal justice system and affected the whole criminal process, from the pursuit to the execution, through the instructions of the managerialism. The influence of the managerialism in the criminal justice system was slower than the other sections. This could be for two reasons: first reason was the radical attention of the conservative party to law and order approach until 1979. The other reason was the organizational backgrounds and cultural differences in the criminal justice system's institutes. The courts, following the central and hierarchical system, rejected the management-oriented instructions (Frieberg, 2005). But, gradually, with intensifying the pressures due to the delay and obstruction originated from the judicial systems' failure in controlling the crime and receiving the public confidence, increasing crime rate and the following fear, prolongation of the procedure, unconventional costs of the criminal investigations and so on, the managerialism model ruled over the criminal justice system.

It is possible to say that one of the important managerialism challenges in the criminal procedure which has attracted the attention of the scholars and policymakers both theoretically and practically, is the justice and efficiency challenge. The modernism criminal project, which in its most important part applying the managerialism instructions tries to increase the judicial efficiency, more than anything requires reduction of the cost, dissipation, and duplication which dominate the criminal justice institutes. In a broad vision, increasing the judicial efficiency requires the efficient use of the limited resources and time for organizing a large volume of criminal cases. The essential question pertaining to the importance of the efficiency in the criminal justice system's correctional programs is about the goals of the criminal justice system. In other words, is it possible to claim the redefinition of the criminal justice system's goal meaning realization of justice in recent decades with the dominance of the concepts of prudence, efficiency, and effectiveness in the criminal

procedures or not? The importance of this question is due to the fact that, in theory, domain, some theorists following the classic concept of justice, have a solid belief in the contradiction between efficiency and justice, hence rigidly criticize the instructions of the managerialism. For example, Jones states that one of the potential damages of the managerialism is the serious damage to the right of fair trial and sees that as an injustice because the goals of effectiveness, efficiency, and prudence are against the essential justice. In his belief, the vague and awkward terminology of the managerialism can result in ignoring the essential concepts of the criminal justice system. Where the concepts like charge transaction criminalize the England criminal system, its wisdom should be found only in the managerialism terminology, not in a legal doctrine or theory. While the upgrade of the services in the public domain in a condition where the resources are finite is an acceptable issue but in in the criminal justice domain which the main goal is the punishment of the criminal and exonerating the innocent, increasing the efficiency cannot be accounted for as the sublime goal of this system (Moisidis, 2008).

In opposition, some scholars with a redefinition of the justice elements mention the managerialism as an appropriate instrument to achieve the sublime goal of justice. For example, Heydebrand and Seron describe the managerialism as an instrument for rationalization of justice applying the principles of management and economy in managing the courts instead of applying the abstract and unreachable concepts of justice (Brown, 2009). Surely, in accordance with these agreeable and disagreeable approaches toward the managerialism from the point of view of a fair trial, some modern models have been suggested as the instrument for criminal processes analysis. These model are in fact reflections of the criminal justice values. Herbert Paker's model in identifying two patterns of criminal procedures under the title of the crime control model and fair trial model is the most common theoretical attempt in drawing relatively exact boundaries between the contradictory values meaning managerialism and fair trial. Although, practically, separation of the function of criminal trial systems is not the exact, but this model in the available theoretical literature creates a common base for the other theorists

## **5. Crime danger management, crime fighting approaches**

Nowadays, the criminal science witnesses the appearance of a modern penology which focuses on limiting the use of prison for dangerous criminals and applying social capacities for the treatment of the non-dangerous correctable criminals. This penology is based on the crime danger management approach. In danger management view, the conviction is adjudicated not according to the crime or criminal's personality but according to the

availability of the danger which provides the possibility of the dual control. First is the intensified low-cost supervision (like a care period) in the case of the less dangerous criminals. Therefore, the constant correction gives way to the constant control. Therefore, a new generation of penalties titled society-centered penalties was created and received a particular importance. The main property of these penalties is that they do not separate the criminal from the society context, but follow the criminal's correction and rehabilitation through required supervisory and control mechanisms in the society context and nowadays the different legal systems in order to correct and review the implementation and goals of the society-based penalties evaluate (the process of examination of a design or a policy, in a particular point in time, in order to meet the objectives) the amount of their effectiveness. "In the definition of the society-centered penalties, properties like the convict's attachment to social context, the community's partnership in the implementation, punishment fitness with crime and criminal, supervision and care in order to prevent reoffending and making sure of restorative quality of the implementation process are emphasized" (Ghasemi 2008: 131-135).

## **6. Behavioral management and supervision on the dangerous criminals**

Supervising the dangerous criminals is one of the important subjects of the criminal justice. Some of the concerns available in supervising the criminal sometimes are of such an importance that make criminal policymakers doubtful predicting the supervisory measures in the law and sometimes accepting them provides grounds for various legal executive problems. The issue of the supervision on the criminals, the barriers and the implementation concerns, which have a long history in most of the countries, has been taken into consideration with the recent law and criminology studies. Legislation of the clause 48 the adoption of the Islamic punishment law in 2008 indicates the attention of criminal policymakers to the importance of the supervision on the dangerous criminals in the criminal justice. But this clause, notwithstanding the related serious objections due to the various reasons, including the lack of appropriate preparation, the unfamiliarity of the criminal justice executors with essentials and challenges of the supervision on dangerous criminals and so on, was not implemented which is noteworthy itself. Although, using the supervisory measures even limitedly (supervising those subject to probation) in the clause 62 of the new Islamic punishment law and extensive prediction of the electronic supervision on the reprieves' beneficiaries, delayed sentencing, semi-freedom system and parole in the criminal trial law indicate the new approach of the policymakers to apply the supervisory measures. But the requirement for the efficient use of the supervisory measures in controlling the delinquency, in addition to the

comprehensiveness, is the familiarity with problems and barriers standing in the way of supervising criminals and providing a logical approach for removing them.

Nowadays, due to the political, economic and other changes in the criminal policy of some countries, a new management approach toward the criminal, especially dangerous criminals is being formed. In this approach, with the goal of controlling the delinquency and reducing it to tolerable level and to protect and defend the society, dangerous criminals must be subject to the penal supervisory and debilitating measures and other criminals must be subject to the non-penal debilitating measures and situational preventive measures (Paknahad, 2009). In this view, supervision is emphasized as a security measure or action. Therefore, it is possible to distinguish it from the other similar concepts using the discussed policies in this approach.

## **7. Crime danger management challenges in Iran's criminal law**

The supervision on dangerous criminal in Iran's legal system encounters shortcomings, barriers, limitations and a lot of concerns. Some of these shortcomings are related to the legislation context and others are related to the other contexts like executive ones.

### **7.1. Dangerous crimes and criminal, lack of the criteria and instances**

The safest method to identify the dangerous criminals from the other is the identification of these criminals by the legislator. Sometimes the legislator may provide to distinguish these crimes from the other crimes determining a criteria or standard or sometimes through extracting some crimes out of criminal law reckon the instances of the dangerous crimes. Determining a criterion to determine the dangerous crimes requires the exact identification of the related values of the society and the dangerous actions which damage them and consequently the security of the society. A criterion provided by the legislator makes it possible to find the instances of the dangerous crime in the criminal law. But due to the difficulty in determining the criterion by the legislator, the easiest way is to reckon every dangerous crime one by one by the legislator. So, the decision-making judge will act according to the circumstantial evidence delivered to him by the legislator as the dangerous factors, and the executors will not wonder identifying the instances of the dangerous crimes while dealing with actors of such crimes. The lack of determination of the exact criteria for the dangerous crimes sometimes results in subjective judgments and "it is the violation of the principle of the equality before the law and the general principle of indiscrimination predicted in the 2nd clause of the universal declaration of human rights" (Rezvani 2012: 50).



In Iran's criminal law, on the one hand, there are no criteria or standards to determine the dangerous crime or criminal and on the other hand, the legislator has not reckoned the instances of dangerous crimes. The past related acts like the security and corrective measures act, although determined some criteria to identify the dangerous criminal, but cannot be used as a legal criterion to identify the dangerous criminals. In Iran, concerning the lack of a certain law considering the dangerous crimes and criminals, inevitably the related rule and regulations must be probed and exploited to achieve a criterion to be possibly used in the future legislation. These regulations include the procedural and substantive rules, the dominant and old-fashioned rules, plans, bills and regulations and so on.

## **7.2. Inconsistency of the police supervisory policy in Iran with the modern crime management**

The modern dangerous criminal concept and the issue of supervision on this kind of criminals is a new approach which nowadays is called crime management policy and the purpose of its application by the countries is to achieve a tolerable crime rate in the society. Implementation of risk management policy in Iran due to its inconsistency with the main concerns of the police in controlling the specific criminals is doubtful. It seems that, concerning the supervision on the criminals, the most important concern of the police is the thieves with history who appropriate a lot of crime statistics to themselves. All the criminals are accounted for in the risk management approach in a way.

Considering the history of legal bills sent in this regard proves the mentioned claim. For example, on August 2009 police sent a bill through the interior ministry titled “Supervision on the Criminals” to the parliament and in this bill the possibility of the direct supervision without the judicial order and independently had been predicted for the police. But this bill did not get the chance to plan in the parliament and the legislator passed the article (article 48 adoption of the past) without considering the lack of the required contexts to supervise the dangerous criminals. In spite of the related objections its scope was very wide because based on this article, the supervision included not only the thieves with history but also all the criminals with history, and the supervising authority was not only the police but also the prisons and welfare organization as well, and the supervision besides the function of security possessed the correction and treatment function as well.

### **7.3. Registration of the dangerous criminals' information**

One of the main concerns of the policymakers in the criminal domain is how to manage dangerous criminals in the society. Registration of the dangerous criminals' information by the police system and other authorities is an important instrument to control these criminals at the community level. The purpose of the registration of the dangerous criminals' information is the information dominance of the police on the residence and current location of these persons and upgrading the cases, faster identification of the suspects and prevention from reoffending by the police, which finally registration of the dangerous criminals' information can ensure the social security. The importance of registration of the dangerous criminals and creation of a registration system to control these bunch of criminals is clear to everybody because with creation of the database, the information of the residence, exact detailed profile and the type of criminal activity of the criminals will be available for the legal exploitation by the security and judicial forces. For this reason, the judicial authorities always have discussed the necessity of establishing more advanced systems to control the criminals and consider the creation of the database and justice ID for the professional criminals necessary.

The registration of the dangerous sexual criminals has been applied in countries like the U.S.A. since long as a powerful instrument in controlling the dangerous sexual male criminals. French legislator also has tried to manage the risk, meaning the possibility of reoffending a crime by the criminals through legislating various rules about recidivism and considering programs like social-judicial cares, registering the names of the rough sexual criminals in the automatic national justice IDs and through mobile electronic supervision on the released dangerous criminals since a decade earlier (Najafi Abranabadi, 2009). In Iran, although the existence of such system seems necessary but it has encountered some problems and barriers yet including the fact that whenever the registration of the sexual criminals is proposed, often with a protective and rehabilitating approach, it is the female gender that receives the attention and instead of the sexual criminal the term "street women" is used, and the police plans to identify them with specific IDs.

One of the other barriers in Iran in the registration of the dangerous sexual criminal is the incorrect image of the public and some individuals who think it is not necessary to take supervisory and controlling measures in relation to the dangerous sexual criminals. These people may think that because the committers of some actions incompatible with chastity and adultery including the sexual criminals will get religiously and legally a death sentence, if proved, then the supervisory measures are not implemented for them at all.

#### **7.4. Intensifying the punishment**

In Islam's criminal jurisprudence like the other criminal systems, concerning the crime danger management, mechanisms like punishment intensification in the case of reoffending, or determining rehabilitating punishments like execution or life sentence have been predicted.

The factors in punishment intensification are of different types and can be classified from different aspects:

- Factors which are related to the victim of the crime like age, physical condition, family state, and the affinity. In the religious book it has been emphasized that the punishment for the incest is death (Shahid Sani, 1991).
- Factors which are related to the criminal itself like the material incentives or adultery which involves a death sentence (Shahid Aval, 1989).
- The factors which are related to the crime itself like committing the crime with a gun or overnight theft whose actor is considered "mohareb" (Mohaghegh Helli, 1987).

In other classification, the intensifying factors of the punishments are divided into the legal and non-legal factors. The legal reasons are those predicted by the law and the judge is responsible for executing them. Non-legal reasons are those which are not specific to a particular crime and coming true in each crime would intensify the punishment like crime frequency and reoccurrence.

##### **7.4.1. The debilitating punishments**

Debilitating punishments have different types which life deprivation and freedom deprivation are some of them.

###### **7.4.1.1. The life deprivation punishments**

Human life means he has a right to live and his right depends on it. Execution is a life deprivation punishment. Islam's law system and Shia jurisprudence approve the life deprivation penalties in some cases and give the criminal a death penalty (Hor Amoli, 1988; Toosi, 1996).

#### **7.4.1.2. The freedom deprivation penalties**

The freedom deprivation penalties or imprisonment is one of the common punishments in the world and in Iran which have been adopted following the criminal law changes (penalties) by the legislator. It has properties and specific descriptions in comparison to the other punishments which make the study of its role so important in the criminals' correction. According to the failure of the freedom deprivation penalties in social rehabilitation of the criminals and in order to reduce the criminal population of the prisons and prevent reoffending and reduce the costs of implementing the freedom deprivation penalties, the policy of the substitution of the freedom deprivation penalties has been attended by Iran's criminal system since the recent decades. In Islamic punishments law adopted in 2013, the substitutions for the freedom deprivation penalties have been mentioned which include: care period, free public services, fines, daily fines and deprivation of the social rights.

### **8. Findings of the study**

One of the criminological factors effective in redefining the goals of the punishments is the change of the danger state concept. Consistent with the recent changes, the dangerous state now is the state of a person who consciously and deliberately commits a crime. This concept of the dangerous state is different from what existed already in the positivist approach. In danger management approach, attention to the dangerous state revives again, but this time, the examination and treatment of the criminal is for determining the punishment meaning that in the new approach, the criminals based on the scale of their danger are classified into two groups of high dangerous and low dangerous and accordingly the measures of the court of criminal justice would be different. The base for these reactions is the management of the criminal risk and controlling and minimizing the crime rate. Hence, the historical concept of the dangerous crime or criminal has been revived again and has been attended by the police, justice and security organizations. Today, more accurate and reliable criteria have been accessed in comparison to the traditional method which based on the sensation and personal understanding of the judge applying the modern evaluation and management instruments.

### **9. Conclusion**

With the appearance of the modern penology and development of the danger management and evaluation, the models of crime control redirected from identification of crime rate and criminal's moral responsibility scale and the methods of correction and treatment toward the classification and management of the criminal's danger. In this approach, the danger is more a

management phenomenon than a subject related to the correction and treatment domain. The danger management is not about to eliminate the crime or deviation but its goal is to reduce the damages of the crime and deviation through taking supervisory and controlling measures based on the prediction of the possibility of the crime occurrence by the criminal. With the entry of the danger factor in the punishment determining theory, the wisdom and logic dominant in the punishment domain will be increased. The danger management approach provides appropriate capabilities and capacities to create integrity in the judicial decisions and prevents from issuing disproportionate discriminating sentences. The data and the knowledge produced in this approach enable the criminal justice institutes, along with the management of their equipment and resources, use them in an efficient way to control the dangerous criminals. In this regard, using different aspects of the supervisory measures on the dangerous criminals has accompanied with various challenges in the criminal justice court. The origin of some of the existing challenges is the mixture of supervision concept with the other similar concepts and the lack of the appropriate demarcation of this concept by the writers and scholars in the criminal policy domain. Therefore, the focus of the criminal justice organization on the most important challenges pertaining to the supervision on the dangerous criminals, of which some have been inspired, through comparative studies, from the pioneer countries' regulations, is helpful in taking the appropriate criminal policy and developing efficient regulations, a policy that along removing the legal gap in the context of the supervision on the dangerous criminals, can provide the necessary grounds for implementing such a law.

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