Reviews on the elements of the crime of kidnapping and its difference with concealment crime

Seyed Mohammad Mousavi
Young Researchers and Elite Club; Ilam Branch; Islamic Azad University; Ilam; Iran
Corresponding author email: seydmohammad.mousavi1991@yahoo.com

Abstract

The Crime of kidnapping and the concealment are two examples of crimes against people. The freedom of people is molested and results in a loss of their freedom. The crime of "kidnapping" and "concealment" are two different offenses and they also differ material element, Therefore, specific provisions of the crime of kidnapping is not applicable to conceal the others. In this study we've done a comparative study of two concealment and kidnapping crimes In terms of the elements of the crime. And this issue was raised that there are the philosophy of crime Prohibition in both offense equally. So both offenses shall be immediately or continuing. In terms of material element, there are differences in the distinction between crime of kidnapping and concealment. One of these differences is immediately and continuous fulfillment of their time. When someone robbed and was transferred from one place to another, kidnapping occurs and no matter that the kidnappings continue or immediately discontinued and this feature is in concealment. Including other differences between the two offenses is that starting the concealment others have not punishment. Some instances of kidnapping is a specific criminal in law which removes them from the general inclusion of kidnapping. Such as the kidnapping of corpses, the abduction of newborn baby and illegal detentions of individuals by government officials.

Keywords: crime, kidnapping, concealment, material element of the crime, the spiritual element of crime.
Introduction:
Crime is a social and global phenomenon and in Arabic literally that means the sin and crime (Moein: 222, 1980).
One of the objectives of any society is social life based on order and security. In a society where social norms are broken, social cohesion disappears and chaos cause disorder in social order, distortion of the public trust and confidence sense and in some cases cause the collapse of the social system.
Crime survey at the community level shows that the crime in various aspects such as murder, robbery, kidnapping, rape and violations, fraud and ...In terms of different complexity and context of the emergence of criminology has been differently given the level of losses and social vulnerability resulting from these crimes, monitor and assess the context of these factors, Examine a range of perpetrators of crimes such as age and gender, the reasons and motives led approach to crime and... It can be effective in reducing the incidence them.
One of these major crimes that have an important role in promoting the crime in a comprehensive level is the crime of kidnapping and also concealing the people conditions has been unintentionally.
Crime of kidnapping and concealment are two examples of crimes against persons. In addition to deprivation of liberty and physical injuries May occur for the victim. More spiritual character of the victim is molested. This object, in particular, a substance and in general, more substances allocated of the Islamic Penal Code and the resources Iranian criminal laws, there are many decisions about it.
Kidnapping by definition, the transfer of a person without his consent from one place to another by force, threat or deceiving while concealment in the definition includes deprivation of liberty of another without his consent and for going illegitimate by hiding or concealing people in one place (Parsley Langroodi, 2001, 179)
In the Islamic religion, that the framework of the fundamentals of matters of faith, morality and behavior of human beings formally with the revelation of the Qur'an, has been clarified from the nature of the divine Archangel that explained some of these issues Especially in relation to questions of ethics and conduct, In terms of creating conditions ideal Islamic society have been stressed from any corruption and based on legal principles and frameworks and in relation to dealing with offenders for the freedom of people instructions have been appropriated.
According to the background and foundation of the laws of the country in question was retrieved from the Islamic religion and gathering the views and opinions of jurisprudents Shia religion, law of the country in terms of dealing with criminal offenses and the punitive, the legislator views is based on religious and legal issues.
One of the most important aspects of expression on the laws in question in the country, including the Penal Code and the new law related to it, have been the law Enforcement in terms of kidnapping and concealment and the cases lead to kidnapping and concealment And also dealing with the offenders to people's freedom.(Rezaee: 2008, 82)
In the laws of the country, especially the new Islamic Penal Code and the public, can note to the emergence of some laws with maximum penalty for conviction that in terms of public and judicial has been particularly important, And according to the severity of the offense, its dangerous effects In the society and the sentence for the offense, the importance of addressing these laws such as kidnapping and hiding has been emphasized.
The new law review of the (IPC) The Islamic Penal Code have shown in relation to the crime of kidnapping and concealment, that adherence to current legislation derived from Islamic law and there were inclusion of religious views of fully qualified jurists in it. (Ashori: 2005, 161)

Exploring the concepts and theoretical criminology:

Today, there is many different definitions of Criminology which classified them in homogeneous classes and the same is almost impossible but according to similarities and differences, they are divided into several categories.

Criminology is the science of investigating and studying the phenomenon of crime. In other words, proponents of this definition called criminology the science of crime. And this definition is based more on its own axis criminology word. (Kay Nia, 1991, 29)

The above definition and interpretation of Criminology totally is Influenced by the insights of sociology scholar that the experts after him placed his influence. Zlyng, the professor of University of Starlings in Austria defines Criminology: "Criminology" As it is clear from its title is the Science of Crime.

In this regard, Henrique Ferry the nineteenth-century Italian sociologist believes that (forensic science to the study of crime such as human, natural and social action nor should be designated as a single judicial practice.

The above definitions despite the simplicity and homogeneity with the literal meaning of the word of criminology cannot be indicative of the extent and confines of this science, and by accepting them criminology is removed from the dynamic mode and our evolving and it is limited to examining a single concept. In which case the criminology has not been able to accomplish the mission is laid to his charge (Mousavi, 2010, 15).

Criminology is studied in three stages.

The first step is legislation although the law in a society is an expression of the general will, but always a part of society sees their interests in its violation. Secondly, the enacted laws is abused by a part of society and crime takes place, and legislators, who predict such events remedies in order to prevent the spread of offense designs. This Enforcement is allowed in his classic criminal law. Looking studies, criminology, in different rules in addition to penalties we are witnessing Security and Corrective Measures as well. Of course, sanctions, especially imprisonment, always have not the prevention and correction of offenders. For this reason, the legislator has observed the inapplicability of prison, remove the prison for lesser crimes and other punishments are predicted which they are famous alternative measures. In this way, the legislator is forced again to prevent crime, He proceeded to lay out new rules which the third step arises (Tryf, 2009, 100)

The first step is generally regulations and laws (criminalization)

Second, happening the offense or crime (crime)

Third stage: the sanction of the crime or misdemeanor (social reaction against crime)

Three stages has long spinning and the speed and quality depend on the degree of transformation of society. For example, in industrial societies, Victims are against industrial action and in the traditional societies are against moral values and religious.

In This cycle, criminology is located in the second phase. The subject of criminology is the study of crime in its various forms, such as crimes against persons, property, public order and security and....
Crime of kidnapping:
Kidnapping concept of freedom body so you first need to know the meaning of freedom of which it is stated that (parsley Langroodi, 1384, 177), physical freedom of the individual so that he/she can Travel or move anywhere in the country to the other point or outside of your country and he/she return to it. And the detention without to be protected and safeguarded as a result this release of the abolition of slavery, the prohibition of arrest and detention without a license individuals.
According to the Iranian penal law, Kidnapping is divided into several categories. Two kinds of simple and aggravated kidnapping each of which are twofold.
In simple kidnapping if someone Kidnap and hide a newborn child or rather consider threatening another child he has committed the offense article 631 of the Penal Code that based on the matter if the child (infant) is abducted alive, the offender shall be sentenced to six months to three years in prison and if was dead he will be fined from 100 thousand to 500 thousand Rials. The second form of simple kidnapping is dedicated to people 15 years and older. In this case, Article 621 of the Penal Code,considered5 to 15 years imprisonment penalty for offenders but the kidnapping "aggravated" that is either general (because of recidivism) or specific (due to the characteristics of the crime), kidnapping is becomes exaggerated. (Gentleman, 2013, 5)   

History of legislative approach has shown to the crime of kidnapping which became obsolete in Articles 202 and 203 Penal Code subsequently, the single article of legislation for more severe penalties for offending drivers in 1335 adopted in 1353 with the abolition of 202 and 203 BC. The law was enacted severe penalties for person’s kidnappers in accordance with Article 12 of this Law the materials 202 and 203 is canceled. And right now with the approval of 621 BC. D. 1, we must abolish law limiting individual’s punishment for kidnappers because of the scope of Article 621, Judiciary and the Legal Department according to the 1208/7 14/05/1997 believes that the law is obsolete. (Beret, 2011, 7)

Review the elements of crime of kidnapping:
The consent of a person having been kidnapped is one of the conditions of guilty of the kidnapping. This condition can be considered an important element in the realization of the crime of kidnapping; because it means the act of kidnapping should be done without the consent of the person kidnapped and with the consent of the person robbed.

A) The physical element:
1. Subject crime of kidnapping simple: Alive human who have at least 15 years and otherwise may be subject to aggravated kidnapping, and the kidnapping of newborn child or concealing the dead.
2. Criminal behavior: The transfer of the body victim from one place to another by threat of force and deception so that the victim does not have a will of their own.
3. The offender and form of offense: Anyone can be achievable as a stewardship or indirect intervention that the stewardship of the company and vice arises.
4. Dissatisfaction with the victim is a necessary condition and it cannot be realized without crime.
5. Criminal consequences: It is true in article 621 BC. D. 1 hasn’t spoken about the outcome but kidnapping is a crime committed and the result of the deprivation of liberty of a person is kidnapped.
B) The spiritual element:

1. The general intent: In addition to the knowledge of the subject of the offense the offender and describing that the alive human must be operating in action and knowledge of the victim is not required the offender to the dissatisfaction. This is an absolute crime and does not require specific intent and premises after stealing zombie who is sleeping or unconscious is subject to this order.

2. The cause of the perpetrators: In principle, the legislator's motives as one of the components of the mental element of the crime does not count and an honorable motive is considered in the discretionary and crime deterrent aspects of mitigation. However, the motivation as one of the components of the crime of kidnapping is considered the spiritual element.

Although the legislator in Article 621 (Penal Code) the word plan is used but the term implies that motivation and does not indicate a specific intent and the kidnapper must have a first-degree kidnapping and according to the result of the crime of kidnapping is not separated from the act. Therefore, the specific intent in the general intent is implicit the offender and someone who has no intention of kidnapping. In addition, he is also going to deprivation of liberty. (Jaafari Langroodi, 2005, 172)

C) Legal elements:

Article 621 of the Penal Code is a legal element of the crime. Article 209 of the General Penal Code 1304:

(A) Whoever by force or threat or trick him for acts incompatible with chastity or to compel to kidnap or hide the action, sentenced to imprisonment of two years will be from 2 to 5; unless it is to your liking and before the issuance of the crime and without prejudice to the victim committed adultery, and take him home where he kidnapped her or the home of his relatives or to the place to make that available to him, in which case the offender shall be sentenced to one to six months in prison for a misdemeanor. In this case the existence of one aggravating circumstance, in counts 1, 2, 3, 4, 5 and 6, paragraph (a) of Article 207 the offender shall be sentenced to the maximum punishment above.

(B) Whoever by force or threat or deception in person or by other means steals or conceal a woman to marry will be sentenced to imprisonment of one to three years; unless they are committed to your liking and before the issuance of the crime without the victim to commit adultery to be inconsistent, since kidnapped her home to his family or home or to a place accessible to those who know him, in which case his misdemeanor sentence of 11 days to two months to be sentenced. In this case with one of these aggravating circumstance in counts 1, 2, 3, 4, 5 and 6, paragraph (a) article 207 shall be sentenced to the maximum penalty prescribed.

(C) If a person, a person who has more than 15 years, but has not reached the age of 18 years, kidnap or hide someone with his consent to marry him, he will be sentenced for misdemeanors imprisonment of three months to one year.

A law is adopted in 04/11/1974 for intensification of punishments of the kidnappers, which contains 11 articles. At first it may seem obvious the copies of this particular law under Article 621 of the Penal Code. Because the law was valid until he Penal Code and the Penal Code (sanctions)had not expressed the certain rules about the kidnapping (ie until 1996), But when the legislator Predicted this crime in the 1375 reform of the Penal Code, other rules including substantive the law was abrogated.
This claim is absolutely not acceptable; but must pay to survey every single articles of this law until its relationship with Article 621 of the Penal Code becomes clear and it is necessary to set forth the text of the law, Article 621 of the Penal Code also explains:
"Everyone in order to demand for payment or property or to seek revenge or to any other order rape threat, or deceit or in any other manner, personally or by another person to steal or hide, shall be sentenced to imprisonment of five to fifteen years.
Clause - the punishment of beginning the kidnapping is three to five years imprisonment. ".
(Zera’at, 2006, 95)

Conceal crime: Conceal meaning is veiled and covered, this means to keep the victim without his will where there is no movement and the ability to get out of there. Of course, In this regard, it should be noted that concealing is a common sense and may be the place where the victim is kept in it are a lot of people. But the title does not conceal truth; such as how many people surrounded to work in a place like mine or farm, where he maintained. It is possible that kidnapping ended to concealing. Means the kidnapper cover up their action to conceal the victim in a local. In this case, the two offenses have not been realized so that the penalty imposed on it; but here concealing is the logical conclusion of kidnapping and it is a crime. The hiding location, it is not necessary to be a locally owned to the conceiver or someone else; but if a committer conceal the owner of a house in his own home, this will be subject to criminal.

The concealing crime elements:
The material element of concealing:
In terms of material element, another resolution that has been done between the crime of kidnapping and concealing other is the instant and continuous fulfillment of their time:
“The abduction of human essentially deprives getting a temporary release of the victim that is a momentary crime, while hiding is a continuous crime and may the place is a locked, protected and out of sight place.(Goldoozyan, 2008, 199) The objections that could be entered, to this separation is the method of crime, for this reason in both cases is the same”.
When someone was kidnapped and was transferred from one place to another, crime of kidnapping can be fulfilled and no matter that this abduction continues or immediately discontinued and this feature is in concealing, this means that when a person, conceal another, the crime of concealing can be fulfilled, whether concealing continues, or be discontinued after a short time.

Philosophy of prohibition of the crime that is preventing from stripping of others, both is equally the crime. So both the offenses should be immediate or continuous. In response to this objection may, to be told discriminating criteria of immediate and continuous offenses is the necessary time to fulfill material element of the crime. Means in the immediate offenses, a short time is enough to achieve the mass.
But to achieve continuous offenses, long time is required and the crime of kidnapping and concealing, have these differences together; because the crime of kidnapping is realized as soon as a person was kidnapped, although that is a short time; but if a person conceal someone for a few minutes at a place and then release him, the title of concealing does not apply his action. (Zera’at, 2006, 97)This explanation is untenable and as a result, the crime of kidnapping, it is a subject to regulations of immediate crimes. So if a person is kidnapped in Tehran and then transferred to Qom, the Crime’s investigating will be in the sphere of competence of the Tehran Judiciary. May the kidnapping, is accompanied by hiding, for
example, a truck driver, lock the truck door on a person at the back of the truck, and that person, stay in that place for hours and then he take him to another jurisdiction area.

In this case which title, has been achieved? If the title of concealing is true, this is a continuous crime that the court will have jurisdiction based on both the jurisdiction thereof; but if we know it kidnapping, the local court where the person was abducted, is authorized.

If this assumption, the two actions discussed, carried by two people, means someone lock the truck door and conceal someone inside and then another person transfer him to another location, this question arises whether both have participated in a crime or the mass of each one has its own title? It may be said: here we should pay attention to them, if criminals intent, is that to hide the victim for hours in an area until then take to another location, kidnapping title applies; because the undercover operation, was a preliminary operations for kidnapping. But if the first person’s goal is concealing, and the second person’s goal is kidnapping, the act of each one will be subject to its own title. (Shahidi, 2001, 275)

The critical that enters to this view is that, in distinguishing between instant and continuous crimes, the mens rea and criminal intent is not effective; it should be noted to the material element of the crime. Material element of the crime of kidnapping and concealing another usually occurs for positive material act; but the probability of its realization with the omission is not either insignificant, for example someone is caught in elevator and inform to the responsible for impaired elevator and he refuse to help him for the purpose of concealing the person caught. But if we know the physical element of these two offenses exclusively on the action positive, such an act will not be applicable for concealing.

The spiritual element for concealing

The concealing crime as well as other intentional crimes, requires criminal intent and the intent and criminal intent, with the conscious is a violation of criminal law, meaning the committer knows the act that he is doing, according to the law, is a crime and yet deliberately do it. If we know trying to kidnap and concealing a specific intent, this crime requires a specific intent as well. (Shamloo, Ahmadi, 2001, 178)

But if the plan of kidnapping and concealing is a part of the ecumenical intent, this mass does not require a specific intent that the latter possibility seems more plausible. It is sometimes possible that the perpetrator has motivated benevolent; for example, he kidnap a girl who is at the risk of rape and the violation of dignity, not to let anyone touch her, or concealing a person who is wanted by criminals that his life is in danger without the awareness and satisfaction of the kidnapped or hidden person. Or a man conceals and Arrests his wife that goes to inappropriate places without his permission, or a father who hide son in the basement because he is disturbing the neighbors. (Aghaai Nia, 2006, 212)

Legal elements of the concealing crime:

Newborn child abduction

The Article 631 of the Penal Code refers to kidnapping and concealing and moving the newborn child, which is a crime similar to kidnapping. If he kidnaps or conceals every child that is born or consider him instead of other children or belonging to another woman other than mother of the child, Will be sentenced to six months to three years in prison and if it is established that the child was dead. The offender will be condemned to one hundred thousand to five hundred thousand Rials.
Concealing the dead
The Article 635 of the Penal Code states a particular crime similar to concealing: "Anyone without a system observance relating to the burial of the dead, bury a dead or cause the burial of the dead or concealing the dead he will be condemned to a fine of one hundred thousand to one million Rials"
The dead man is also considered as human, so concealing the dead is concealing the human but the legislator, has predicted this offense individually and with much lower penalty than concealing a alive human; because concealing the dead man has not the result of trauma and deprivation of freedom of people.

Concealing the criminals
The Article 553 of the Penal Code, states a certain kind of concealing the others. "Whoever conceal a person who has been lawfully arrested and fled or someone who is accused of a crime and legally given a warrant to his arrest or provide the equipment of his escape, will be punished as follows: If someone who fled is sentenced to death by stoning or rigid or around or cut and iodine, the punishment of hid concealer and helper in escape is imprisonment of one to three years and if sentenced to imprisonment life or charged with a crime that is punishable by death or rigid, he Will be sentenced to six months to two years in prison. And in other cases, the punishment of the offender is one month to one year imprisonment.

Abduction of Iranian nationals:
The intensification law of terrorist acts against the US government, Adopted on 3/9/1989Abduction of Iranian nationals abroad has been predicted particular:
"Single article - to retaliate against acts of the US government, president is obliged to arrest and punish Americans and their direct or indirect factors in the courts have sentenced to provide the necessary measures.
Note 1 - All States which directly or indirectly with the United States in the abduction of Iranian citizens, or cooperate in the plot against their lives, are subject to this single article.
Clause 2 - US citizens and US agents and countries that cooperate in kidnapping and conspiracy against the life of Iranian citizens and the interests of the Islamic Republic of Iran, in the domestic courts of the country will be prosecuted based on the Islamic jurisprudence.
Clause 2 - this law, from the date of approval as long as the US president have the authority to take the anti-man actions against the lives and interests of Iranian citizens and do not try to revoke accreditation is valid and enforceable. "

Illegal detentions
Illegal detentions and arrests also such as kidnappings resulting in the denial of freedom of the body and in this respect and some other respects is like the kidnapping; but there are also differences between these two offenses which should be considered, and before saying this differences is necessary that Legal element of arresting for the crime be explained. This offense in Articles 575 and 583 of the Penal Code has been predicted.
The article 575: “If judicial or other competent authorities against the law export, detention or detention order or prosecution or the guilt of a person shall be sentenced to permanent dismissal from the judicial and exclusion from government jobs for five years.”
Article 583:
"Whoever from the authorities or government official or armed forces or other prescribe without an order from the authorities in other cases in the law, arrest or detains persons,
A comparative study of two concealing and kidnapping crime in terms of elements of the crime:

In this research we conducted a comparative study of two mass kidnappings and concealing. In terms of elements of the crime, it was acknowledged that there are differences between the crime of kidnapping and hiding. One of these differences is realizing immediate and continuous time: "The abduction of human nature deprive temporary release of the victim that the offense is instantaneous, while concealing is a continuous crime and may the place is somewhere locked, reserved and out of sight."(Goldoozyan: 199)

Objections to this separation can be entered, is the way of happening the crime. And it is the same in both cases. When someone robbed and was transferred from the one place to another, kidnapping occurs and no matter that this abduction continues or immediately discontinued and there is this properties in concealing, this means that when a person conceal another, the concealing crime achieve including the concealing, be continued or discontinued after a short time. The philosophy of offense prohibition which prevents the stripping of another, in both offenses is equally guilty. So both offenses must be instantaneous or continuous offense. In response to this objection may be told the criterion of distinction is immediate and continuous offense is the required time for fulfilling the material element of the crime. That in the immediate offense time is short to achieve sufficient mass. But in the continuing offense, a long time is required and the crime of kidnapping and concealing have these differences together, because the crime of kidnapping achieves as soon as the man was kidnapped, although it be during a short period of time; but if a person, conceal another for a few minutes in a local and then release him, the title (concealing another) does not apply to his action. This explanation is untenable and therefore, the crime of kidnapping, subject to the rules instantaneous crimes. So the investigating of the offense will be in the competence of the Tehran jurisdiction if someone has been abducted in Tehran and transferred to Qom. It may kidnapping be with concealing. The similarity of the crime of kidnapping to hide the offense specified through the review of the rules. According to Article 631 of the Penal Code that refers to kidnapping, concealing and hiding anew-born child, which is similar to the crime of kidnapping that the offender will be sentenced to six months to three years in prison.

One of the differences raised is connection relation to the crime of concealing with kidnapping that in the crime of concealing, to conceal the dead man was also under consideration, and in the views of legislator the dead man, is considered as a human, and it is anticipated in Article 635 of the Penal Code that concealing the dead is such as concealing the alive man. Nevertheless, legislator, in this regard has predicted much lower penalty.

The research conclusions:

In the Penal Code kidnapping is considered as a crime and everyone for the purpose of payment or property or to seek revenge or to any other order by force, threat, or deception or in any other manner personally or by others to kidnap or to conceal someone shall be sentenced to imprisonment from five to 15 years. Kidnapping is a major problem that unfortunately there is in our country and the abduction of girls by boys in today's society is increasing day by day. And people with different motivations such as financial, revenge, rape, extermination and mass works... kidnap victim and exclude his freedom.
The crime of kidnapping and concealment are two examples of crimes against individuals that the freedom of individuals is molested and cause to deprive the freedom of others. These crimes in addition to deny the freedom of individuals, in most cases, will enter bodily harm (assault and murder) and damage to honor (honor, dignity and rape) to the people that is irreversible and often are associated with some kind of force and coercion or deception motivated by abuse.

From what has been said, we conclude that although many courts when handling the crime of kidnapping and hide other only rely to Article 621 of the Penal Code, but it should be noted that the law more severe penalties for kidnappers persons, adopted 12/18/2004 has not been repealed completely, And some of its provisions still remained valid and the courts to act upon them that the relationship of this law and Article 623 of the Penal Code, is the main part of the present article.

You should also note that the crime of "kidnapping" and "Concealing others" are two different offenses and they also have different material elements. Therefore, specific provisions of the crime of concealment is not applicable to conceal others; For example: Punishment of the Crime of concealment is suspended, and starting to conceal others has no punishment and.... Some instances of kidnapping in law has specific title as criminal, that they would be outside the scope of the public kidnapping, such as the kidnapping of corpses and the abduction of newborn baby and illegal detentions of persons by government officials.

In terms of jurisprudence, the crime of kidnapping and hiding others must be known from the instances of punished crimes that there is no special punishable by law with regard to social and legislative materials, and it may consider appropriate for penalties.
Persian sources
3. Ashorii, Mohammed, criminal procedure, Tehran, the publisher, 2005
4. Kay Nia, M., Criminal Law and Criminology, Tehran, Tehran University Press
5. MousaviSeyed Mehdi, changes in the law of criminal responsibility of individuals, Tehran, The, 2010
6. HosseiniAghaiiNia, crimes against persons (against the physical and moral integrity) Tehran, Tehran University Press, 2013
9. Moahed, Ali, criminology and social fields kidnapping, scientific management, Tehran, magazine (SID), 2011, No. 68
13. Safai, SH, civil rights, obligations and, c 2, emission amount, Tehran, 2003