To commit murder in the hypnosis in Iran's criminal law

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Abstract  
Iran's legal system is based on the Islamic rules. In Islamic jurisprudence, the intention and will of people is very important in practice, as to performing of prayers without the spiritual intention is never accepted by the Lord. This rule governs all actions of Muslims, and the intention and the will are the important issues in the elements of crime in the Iranian legal system. In the meantime, spirit of justice ruling on Islamic rules, in such a way that in the occurrence of crime, all perspectives are taken into account, one of the factors that is considered close to the insanity, is to commit the illegal acts (such as murder and so on) in sleep mode (either natural or synthetic). This factor in the sight of legislator is important to the extent that the religious obligations on a person who is asleep; is void. On this basis, Iran's criminal system by following of the Islamic jurisprudence, the criminal responsibility of an asleep is removed, and his act is known as a pure fault, and it is reflected in Article 292 the Islamic Penal Code and thus in case of occurrence of murder by an asleep, his retaliation falls, however, to pay the blood money will be sustainable or rational on his obligation. This research by using the descriptive analytical method has discussed and examined this case, to examine different aspects of the murder by an asleep. Although the majority of Islamic scholars and jurists believe that if a person sleep deliberately, or to do self-hypnosis deliberately and then to commit murder, it is excluded from the pure fault, and the act attributed to him is considered as murder.

Keywords: Manslaughter, pure fault, hypnosis.
Introduction:
Sleep is a situation that negates the will of humans; in sleeping state, they have not aware from the waking world and no any power to manipulate their movements and actions. In this case, psychologists and criminologists, have considered people who have the habit of sleepwalking (somnambulism), or people who are committed actions during hypnosis, as the people close to madness (no insanity) and so they have required rules for them. In Islamic jurisprudence, the legislator view on the importance of sleep is that prevents the sleeping person from performing the religious duties and then removes his responsibility. By looking at the legislator and the legislature views can to realize that the common factor in two groups is intention and will. As in the penal system, actions that intention and will do not involve in them; include the fall of the mens rea of the crime. On the other hand, both natural and artificial sleep which leads to somnambulism or a criminal act, are among the examples that can to erode the mens rea. Accordingly, the researcher tries to discuss on the hypnosis in the jurisprudence view, which is not mentioned in the Iranian legal system.

Statement of the problem
Crimes which occur against persons' physical conditions, depending on the type, nature, developed effects and results on the body of the victim are classified into the intentional, quasi-intentional and fault injuries. In this category of crime, murder is considered as one of the most serious crimes against persons' physical integrity and in all country's laws it has been encountered with a harsh response and penalty has been determined for it and so in the Iranian legal system, this crime has a private aspect by looking at the rights of the victim's avengers, and in terms of disturbing public order has the public aspect, And God has referred it in verse 32 of Surah Maidah. Since the administration of justice is considered one of the goals in all legal systems, therefore, understanding the nature of murder crime in determining punishment for the murderer is important and this subject can be useful in the process of dealing with it. For this case, the legislator has considered features for the murder crime such as other crimes that will not be affected in the nature of the proceedings. From the important attributes in this area can to note to the legality, Actus Reus and Mens Rea components of the crime of murder that the falling or lack of proof in any above three elements can to exit the murder from intentional state and this substantive exit can also be useful in determining penalty. In this case, in some cases, some people commit crimes due to the special status without reluctance and without intent to commit murder and so merely due to some mental disorders, these situations include as hypnosis or hypnotic sleep, these cases lead to remove the mens rea, and the reasons cause the falling of original sentence in the legal system. However, with regard to the mentioned cases, question is that when a person to commit murder in the hypnosis state unintentionally, what has differences with other forms of murder in the nature of proceedings? It is hoped that an appropriate response be provided.

1.1- criminal liability
Criminal liability as a prerequisite for punishment, has always been considered lawyers and legislators, however, so far there is no consensus in defining the institution, and not in determining the components of that principle. The issue on influence of mind and recognition is unequivocal in the criminal liability. However, determining its exact position initially requires exact knowledge of the institution and its cope.
Penal system not only deals with criminal acts, but the actor of action, plays a fundamental role in the penal system, and when a court convict someone for committing a crime, in fact, he is responsible. The concept of criminal liability in the criminal justice system has been a priority and is accompanied by a variety of responses including the social and emotional response which expect from a person in relation to an action, criticisms or feeling. Liability is also accompanied for the answers that others show in relation to their opinion and feeling, whether the responsibility is as punishment, apology, correction or at least remorse and shame. However, even if the individual is responsible for what he has done, maybe not correct that we always consider the criminal responsibility for him. Persons who have criminal liability for their actions that their responsibility affect on the criminal justice system, i.e., it was followed with conviction of the criminal court. Criminal liability stems from crime, in other words, when the criminal liability can be fulfilled that commit one of the crimes stipulated in the law. Meanwhile, to prove the criminal liability a person, who has committed a crime, should exist the causality relationship between the offense and its actor. Proponents of the neoclassical school and positivism school disagree on the criminal liability of offender. For the proponents of the neoclassical school, the criminal liability originates from the human determinism, is on the moral responsibility. In the positivism school, social responsibility is imposed on the offender. In other words, criminal liability is a legal responsibility that is completely distinct and independent from the false belief of the human determinism and the outcome of the criminal liability is offender's liberation from any sense of blame and shame.

1-1-1- The abstract notion of criminal liability:
The abstract aspect of liability refers to the particular situation and trait in a person that finds the capacity and capability whereby it, when to commit the criminal behavior, suffer its consequences. In other words, the concept of criminal liability in the sense of criminal capacity is used. The concept considers the step before crime committing and it is independent of whether or not crime was committed and considers the person potential capacity in the development of community reaction to the criminal behavior.

1-1-2- The objective concept of criminal liability:
The objective concept of criminal liability includes the coercion to tolerate consequences of criminal acts committed after criminal behavior and in fact is special for the offender. In other words, the perpetrator has the de facto criminal liability. The de facto or objective aspects of criminal liability are subordinate to the potential and abstract aspect. But abstract responsibility is not necessarily as a de facto liability. So, when we talk on elements of criminal liability, and only characteristics and capacity of the offender is considered and when we speak on the criminal responsibility, its abstract concept is considered, unless the objective meaning was expressly indicated.

1-1-3- The criminal fault and its components:
The criminal fault means the intentional, knowingly or by mistake commission of a criminal prohibited behavior. This definition has three parts: the will (desire), composed of consciousness and criminal fault.
1-2-1: will:
The will is the foundation of any criminal fault. The will is a carnal act with intelligence in the criminal law that is a source of criminal behavior directly. The will is the soul movement toward the certain work after its supposed benefit. The will is the spiritual essence of human action that has not legal and criminal effect without it. In all crimes, having the will or freely behavior on the will and resulting from the active mental system in human beings is necessary. Conditional and incidental behaviors attributable to force majeure or attributed to the will of another person would not consider as intentional. If the accused behaviour is not under conscious control, or is under pressure and impact, is an unintentional. If human beings feel needs, they measure different ways to meet them that in the meantime there may be legitimate and illegitimate ways, in fact, organs are mobilized to do it on the will.
The second phase of the will is to operate the act that does its own navigation and sovereignty over the desired behavior and action by the end of the operation. In this case, the will as the mens rea is the same as Actus Reus of crime. When a person commits the act, while is lack of consciousness, or his consciousness is altered or defective, such an act is referred to as the involuntary action. In such circumstances, movement of individual body parts is involuntary. What is essential is that accuser’s mind and thought may not operate properly to control the body organs.
A person should be known as the responsible qualitatively that when has the ability to understand their actions and in other words the ability to understand the nature of their actions and the conditions under which the act is committed, and the ability to understand the results and consequences of their actions and to understand how to control his actions. Morally, someone who is not able to understand the above cases at the time of his criminal act or omission can not be known as the responsible and so can not be punished. So when any act is on the will, it would have the criminal responsibility and where a person commits an act without consciousness or in state of incomplete consciousness, is known as the harrowed-will one.
The essence of acts which are done without free will is that the action carried out by human members and organs, but these actions take place without one's direct control or consciousness. This case is called as the automatism in the England legal system. There are many examples; the most common things are seen in the convulsion, coma and etc. As well as actions those occur during sleepwalking or nightmares; are considered lack of the will. Sometimes this involves actions that may occur during alertness that it's examples are the spasms or muscle contractions and they are not based on the accused's mind and thought. In the Islamic penal code, harrowed-will is used for the drunken people and does not applicable to other cases. However, in this situation, the accused must to lose his acts control completely and if a person has relative control is not considered as the harrowed-will one and this act should not be automatic, another example that can be cited is where that to be harrowed-will and automatism occur due to the prescribed drugs by physician.
In the legal system of England, any action occurs in the spasticity and convulsion by the body organs and without the brain control, or is committed by a person who has not consciousness, is considered involuntary. What is necessary here is failure to control the brain to the body.

1-2-2: Awareness:
From this case, the necessity of awareness and understanding of the accused person from the criminal prohibited behavior is inferred; however, on the known rules, the ignorance to the
law does not disclaim the liability and the necessity of religious orders learning and ruling share between the savants and ignorant is assumed. Then knowing the nature and quality as science requires proof and authentication, however, what is understood is the awareness of the components of criminal intent.

Some researchers believe that: the criminal intent consists of the actor's will to commit a crime, as determined by Law, or knowing a criminal from violation of legal prohibitions. In other words criminal intent means that the actor to know that to commit any act will lead to detrimental results for orders and prohibitions. So the will and consciousness is necessary to realize the mens rea of crime. Then, if a criminal is no will and consciousness, his responsibility is seriously called into question, whether internal reasons or external reasons.

In England legal system, awareness has also been discussed in two frameworks of cognition and belief that its scope goes beyond the intentional crimes. In this legal system, awareness and intent have been considered in the term of fault. The fault component is used for all behavioral crimes and the resulting ones, in other words, the intention is used to the specific outcomes in the definition of crime, while knowledge of the conditions and circumstances, is concerned to constitute the definition of the crime. So there must be knowledge of a subject or a quality. Although the discussion of knowledge and belief in the legal system of England has been a special place and their separating has works. But it seems theoretically in all intentional crimes, including offenses of absolute or conditional, knowledge of the fundamental components is a general malice. In this way, in the resulting crime, in addition, the specific intent is necessary. It seems that in England criminal justice system, there is subtle differences exist between awareness and belief. In fact, in cases where the person has awareness relative to anything, is formed a definite relationship, cannot rejected violated, But in the case of belief, there is the probability of occurrence of wrong and fault.

Some lawyers have graded the knowledge; the first degree is the real knowledge includes the non-rebuttable individual's awareness about events with specific conditions; the second degree is called voluntary audacity, that fault ignorance of Islamic jurisprudence is similar. The next stage is the implicit or presumed awareness, in such a way that the person is not aware of the event, and do not even intentional neglect but it is enough to refuse the reasonable scrutiny, it seems, according to the House of Lords in the case of Morgan, it is believed that the presumed awareness in crime that mens rea is a negligence (such as getting drunk), or no-fault crimes that is accepted non-neglect to defend, is invoked and do not suffice in the case of other crimes, especially those knowingly or on the belief.

1-2-3: negation of will
To be harrowed-will and automatism that is made by the accused, if the accused is guilty for negation of the will, the situation will be different. So if accused use the drug which is prescribed by a physician, or use the administered dose more, for example, diabetic patients to neglect food intake after insulin use and or to drink alcohol, are considered the optional negation of will.

The result of being harrowed-will by accused himself is that:

1. If negation of the will is due to the intoxicating effect of alcohol or dangerous drugs use by the accused himself, of course, despite the fact that the defendant has no necessary mens rea, however, he will be guilty. The theory is that a general knowledge exists in everyone that alcohol and narcotics and dangerous drugs may leads to negate the will. In this case, a person commits that he will not have control
and awareness over it, or even can be predicted that in this situation becomes aggressive and violent.

2. Of course, this issue is not true about non-hazardous drugs like sedatives and pain relievers, because there is no a general knowledge that these drugs based on naturally are drawn to negation of the will in the people. If the negation of will makes due to the use of drugs such as sedatives and non-hazardous or general malice, he would not sentenced. So the prosecutor is obligatory to prove that accused person has forecast the results and possible implications of its action, And or has neglected to avoid for falling down in the drunk state or being harrowed-will. (Hinton, 2004: 170)

1-2-4: cause for the negation of will:
Whatever is essential for being the harrowed-will is that the defendant brain has not control on his body and organs and only the defendant's mind and thought does not function properly at the time of committing the offense, isn't sufficient.
To be voluntary is necessary to impose the criminal liability that accused's act or omission to constitute the actus Reus of crime, therefore, if the prosecutor fails to prove that accused action was voluntary, the accused will be acquitted. The prosecutor is only required to deny the lack of will, when there is the harrowed-will defence with the necessary evidences, the mere accusation claims is not enough, but should be reinforced by evidences of experts and practitioners.
The distinction between causes the lack of will is very important, being harrowed-will is voluntary and optional when it is arising from the accused's act or omission; the most common of example is drunkenness that is caused by alcohol and drugs medication.
After discussing on the criminal liability and its disclaimer factors, the conditions for entry into the main focus of the present chapter has been prepared. In the current section, position of offenses committed by asleep person and his criminal liability in murder will be discussed.

2.1: the asleep person's criminal liability in the Justice System
Article 292 of the Islamic Penal Code is devoted to the issue of crime in the case of pure fault, and the legislature has been referred in this matter to commit crime in aspects such as sleep and anesthesia, since entering into discussions sleepwalking and sleep and anesthesia and hypnosis (hypnosis) include elements that demand to the extensive research physiologically, on the other hand, the present study exit from its original path, Since the commission of the criminal act in the above situation (sleep, anesthesia and hypnosis), according to some scholars is a state of near-madness, it is necessary to explain.

2-1-1: lower than insanity disorders and criminal laws
Psychotic modes other than insanity (in the meaning and legal) may also be occurred in humans that in this case, the perception power of the human is removed and in other words, sometimes there are intermediate cases between complete madness and treatment that In this case, discrimination power without destroy would be decay.
In the psychology, psychiatrists have been ranked these group social maladjustments as bad characters and some others as mental disorders including epilepsy, deaf, dumb and patients with hysteria. But the modern psychiatry does not know this group as offender. (Tarigati, 287)
In the current Iranian Criminal Code, cases and states close to the madness are not considered by the legislature and so in this case viewpoint of some religious scholars is negative, but in general, we can to consider some states close to insanity as following:

2-1-1- 1: the will disorders
The disease will not affect on the wisdom and power of human reasoning principally, only lose the human being authority and to make unstable him against internal self-seeking, Diseases such as neurasthenia or mental fatigue or illness that are periodic or constant state of desire, robbery or arson don’t disclaim the criminal liability due to low effects. Those who are suffering from moral insanity, they are in the same situation. They have desire to do bad action, but weak moral sense makes that don’t regret and remorse against their acts. These patients are also known the responsible for their actions in the custom law.

2-1-1-2: somnambulism
The Larousse dictionary has defined somnambulism as the spontaneous movements during sleeping. Crime committing in sleep of natural and artificial (hypnosis) due to the will disclaimer against the strong force is similar to some mandatory cases.

2-1-1-3- natural sleep
According to the Encyclopedia Britannica has defined sleep as normal, reversible state and accompanied by incontinence due to reductions in response to the external stimuli. Human is lack of the consciousness and perception during sleep, and his movements during sleep is not under his control. So if it causes defects or other crimes in the sleep by moving and rolling, he is not liable, his wise is the only guarantee of payment of blood money. Also, if a person kills anyone during sleep, he will sentence to the murder blood money. It should be noted that there are differences in human behavior during sleep, the first part of crime will be considered as intentional and the second part is quasi-intentional.

2-1-1-4- hypnosis (inductive)
A person may sleep with another human's indoctrination and by his command commits a crime; In this case, if he was deprived of the complete authority, that is, he was such a tool in the hands of others, he has not any liability. In this case, a person who leads sleep in another (hypnotizer) is liable, But if the steward know to this subject before sleeping that will be forced to commit a crime in the sleep, and to do it by awareness to this case (to be hypnosed intentionally), will be difficult to resolve the criminal responsibility, Because if persons with his knowledge be as a tool of criminal action in other hands, is responsible.

2-2: murder as pure fault
This crime has been mentioned in Clause 1 of Article 292 and in cases where someone is in sleep mode causes the death of another, because his act was not intentional, so basically they are out of the intentional and quasi-intentional criminal and pure fault categories, However, because the agent has not intention to act, so the legislator to support victim considers murder and injury as the pure fault, and he is responsible for paying the blood money to the victim. About the nature and responsibilities of paying the blood money for the murder committed by a sleeping person, there are different opinions among scholars include:

A- To pay the blood money for the assassinated person is on the asleep one.
B- To pay the blood money for the assassinated person is on the male kinfolk.
C- The Blood money is not entitled for the assassinated person, because death is the result of involuntary killing.
D- The blood money is paid from the treasury.

Given that the legislator considers the murder or personal injury caused by sleeping, anesthesia, or insane child as the pure fault, therefore, if a person in one of the states of sleeping, unconsciousness, minor to commit murder, his the male kinfolk is known as responsible for the payment of blood money.

2.2.1: The mens rea in the pure fault murder
According to paragraph A of Article 292 IPC and other provisions, the mens rea in the pure fault murder includes the following components:

2-2-1-1- Fault in action and result:
The term of pure fault generally means that perpetrator in the committing an act against the victim and so on the result is offender, and it is not deliberate but rather the fault has not done on the victim.

2-2-1-2- The voluntary action:
In the murder due to pure fault, such as intentional and quasi-intentional murder, the perpetrator must have committed a voluntary act; Otherwise murder will be outside of the recent titles.

2-2-1-3- lack of action intent:
Although in the murder due to the pure fault, the perpetrator must have the will to do act, and may even be intentional, but it is essential that did not intend to act on the victim, in other words, being intentional in the action is different than being intentional on the victim. A person's intent may be deliberate, but the committing act hits another goal that is not going to have to act. The legislator stipulated the phrase "not intended to act on him" reflects this point. This situation can be interpreted in three ways:
The first case is related to the mistake on purpose. That is an example in the context of paragraph (a) of the article: a gun is shooting to hunter but it beats a person.
The first case is related to the mistake in the human targeting. This means that the shooter to shoot a purpose deliberately, but he thought the purpose is not human.
The third case is a situation in which the perpetrator is an alive person. But did not intend to act on his/her, but his mistake is done by using the killing means.

2-2-1-4- lack of intention to result:
Paragraph (c) of Article 292 IPC states: in the crime which a perpetrator has not intention to act a crime against the victim and no intention an action on him/ her, for example guns hooting. It is emphasized on the lack of intention to act a fault. In this case, the word of felony means as the murder.

2.3 – to commit murder by an asleep person in Islamic jurisprudence
Rules of Islamic law are derived from the Quran and Hadith and Quranic narratives, and therefore the above sources are in order to recognize the existence and nature of human
beings, they have applied rules that, after centuries, other civil schools have achieved to it. One of these rules is the subject of sleep in humans; it has been quoted on the traditions and many traditions from the Imams. According to the legislator's understanding of the mind and soul, the most important and most central act of prayer is lifted from the shoulders of the person who is sleeping, in other words, sleep in Islamic law and religious duty is a personal responsibility and it is known as disclaimer factors for the responsibility. In this regard, the Prophet Muhammad (pbuh) has said: Three things have been removed my people, or have no the responsibility for three categories:

1. Child who has not yet reached puberty;
2. Madman that has not been improved yet;
3. Sleeping person has still not awake.

He has also said on the blood money: Someone who is committed a murder when to move or roll in the sleeping; he must to pay blood money from his property.

"The second martyr" in Loma book says: a sleeping person is the guarantor of a crime that is being committed at sleep.

Imam Khomeini says: if a sleeking person to cause the cutting of breath or other member by moving or rolling at the sleep, he is the guarantor.

**Conclusion**

Pure fault in paragraph (c) of Article 292 has two points: First, criminal is not going to commit crime on a victim, and the second, criminal is not going to act on the victim. So if there is a plan of action on a victim in general, then subject of the offense as fault is denied. Accordingly mentioned in paragraph (a) of sleep and anesthesia, and so it has been mentioned by the legislature. The legislator by adding a paragraph (c), says the fact that Murder under general anesthesia or hypnosis, is including actions that has been carried out without intention, and so, hypnosis is considered as disclaimer factors of criminal responsibility in this field. By studying the great jurists' ideas reached two different understandings which can to have variety of solutions. Some legal authors believe that two penal provisions have different physical fault degree. According to sleepwalking states, he goes at the sleep and starts to do things that are a sign of his spiritual awakening of some states, for example, he writes, drinks, but generally what he does at sleep since he cannot remember it in the waking state, then it is said that he has not awareness, although he is semi-conciseness one. The authors and some lawyers believe that given that indifference is seen in the human sleeping behavior that for this case the legislator has provided one as the quasi-intentional and the other one is as pure error.
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