

Investigation into the criminal phenomenon and its elements; Analysis of different perspectives and Authority theory

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Abstract

One of the most important and basic issues of public criminal law is the elements of the criminal phenomenon. Different opinions have been presented about the number of elements of the criminal phenomenon. The legal, material, and psychological pillars are the most important pillars of the criminal phenomenon, although some jurists have placed other pillars next to these three pillars and have listed up to five pillars for the criminal phenomenon. But the majority of jurists are in favor of the three-pillar theory of crime. This dominant view in our country has been influenced by French law. A view that has been repeatedly mentioned in the works of Iranian jurists before and after the revolution. But it seems that the crime is realized with the material element and what is called the psychological element and the legal element is not part of the nature of the crime, so the legal element and the psychological element should not be included in the elements of the crime. We should talk about the legal and psychological condition instead of the legal and psychological element. The Islamic Penal Code of 2013 is also in line with this view. For example, in Article 2, there is no reference to the psychological element for committing a crime. Also, in Note 2 of Article 88, he has accepted the presumption of a crime from birth. In addition, the position of Article 144 shows that the psychological element is a condition of criminal responsibility and has no involvement in committing a crime. There is another evidence for this claim.

Keywords: legal element, material element, psychological element, crime, elements of crime.

INTRODUCTION

Human history is full of ignoring the important principles of criminal law, punishing the innocent, animals and objects, and ignoring the principle of legality of crimes and punishments are bitter experiences that human history has gone through in the past centuries. Explain and describe the elements of the criminal phenomenon in order to protect the important principles of criminal law with the help of these elements and prevent these important principles from being violated. The elements of the criminal phenomenon have never been directly discussed in the criminal law. However, from the content of the articles of the law, it can be inferred which elements or elements the legislator considers to be a criminal phenomenon. The lack of direct reference to the

elements of the criminal phenomenon by the legislator has led to a lack of agreement and consensus among criminal experts in this regard, so that some jurists believe that crime is a five-pillar crime, others believe that it is a four-pillar crime, and Most jurists also believe that the criminal phenomenon is three-pronged. A view that has many supporters in our country because of the similarity of Iranian criminal law with French law. Criminalization is a benefit, but the most important practical benefit is that adherence to any of the above views is evident in the task of investigating and prosecuting officials in the face of a criminal phenomenon. Any opinion and adherence to the elements of the criminal phenomenon must be fully met so that the official can begin an investigation and prosecution of the body, so if, as well-known jurists believe, the crime is based on three pillars

in Here are the judicial authorities They should also establish the psychological element of the perpetrator in order to consider the crime as a crime and then investigate the crime. Judicial officials in the face of the criminal phenomenon also confirms this view. The common views on the criminal phenomenon should be explained and criticized, and finally the theory that is in accordance with the criminal laws of our country should be explained.

Explaining the concepts

Elements of crime

Pillars in the word means the pillars, columns and the sum of the pillars (Amid, 2010, p. 97). The term pillar is different from what jurists mean by the pillar. Compound "whose intentional or inadvertent omission causes invalidity, against which there is a non-elemental component that only intentional omission causes invalidity of action. Is equal to what the jurists say "part" and if the part is not realized, the compound will not be realized and it does not matter if the "part" is intentionally left or inadvertently (Mir Saeedi, 1998, p. 95) Some believe that between the element is the pillar There is a difference; Thus, the element is used where we are dealing with crimes in general, in other words, it is used in the field of public criminal law, but the element is used in the field of specific criminal law when we study a specific crime. , The present separation is useful as in most works of criminal law there is no difference between the element and the element.

Offenses

Crime literally means sin, error, sin, transgression, rebellion, indecency, and the like. (Dekhoda, 1998, vol. 5, p. 7657), throughout the words of law and criminology, there is no word in terms of the complexity of the word crime or misdemeanor (Najafi Aberandabadi, 1998, p. 62) because this word to various sciences such as criminal law, Criminology, psychology and sociology are related. One of the most important issues that is common among philosophers and jurists is the question of whether the legislator discovers crime or creates crime. In other words, crime has a fixed and static meaning or it is a variable and fluid concept. Proponents of the natural law school They believe that the legislator does not create

right or wrong in the rulings he issues, but there is a law above the will of the legislator and the rights of the subject that the legislator should try to find and guide. Values such as "Do not harm another. And "Do not betray the trust" are fixed and static rulings that originate from human nature (Ardabili, 2018, vol. 1, pp. 19-19). And it is the will of the legislator that creates crimes and cites a large number of crimes such as customs, traffic and driving offenses to prove his point. In addition, they consider the temporal and spatial differences in criminalization as evidence to prove their claim, for example. An act like Sahar was a crime in the past, but today it has been decriminalized. Or polygamy is a crime in one society and legal in another. Suicide was a crime until August 1961, but it was allowed under the Suicide Law. (Ghiyasi, Sarikhani, Khosroshahi, 2010, vol. 2, p. 5) We do not intend to explain and examine these definitions in our country. In the Iranian legal system, Ramogov considered proving it to be before a judge, in his opinion: This does not admit that the perpetrator of the "crime" did not drink alcohol and only committed the "sin" which is obligatory to repent between himself and God. If a crime is not proven by religious and legal reasons, it is out of the scope of the crime, which is a person's relationship with the government, and to the extent The sin that is the servant's relationship with God enters; "Therefore, this chapter has been deliberately transferred by the legislator from the bill of criminal procedure to the Islamic Penal Code." This view seems to be criticized in several ways. First, although a large number of crimes face both the afterlife and the world, not all crimes in the penal system have this feature, for example, committing traffic crimes is not a sin. Therefore, it is not acceptable to assume that crimes are considered a crime if they are proven in court. Third, in analyzing the reason for proving the claim, it should not be forgotten that the legislator did not have the correct method for writing legislation in the years after the revolution, and repeatedly mentioned the translation of jurisprudential books as an article of the law. The former criminal law was clearly significant in the way that the legislator, after describing the crimes, also dealt with the method of proving that particular crime. The documentary had identified the evidence of the crime And in some crimes, the knowledge of the judge was not mentioned, which caused confusion among lawyers, whether it is possible

to refer to the knowledge of the judge in all crimes or not? The existing formal and practical objections caused the legislator to mention the evidence in a separate chapter in the 2013 law, although, like the previous law, he did not mention the evidence in a proper place, which is the Code of Criminal Procedure, and from this point of view There is an objection to the legislature. Fourth, suspending a crime to prove it in court has no effect.

Common views about the elements of crime

Most jurists believe in the combination of three material and psychological legal elements for the commission of a crime, but in addition to this view, there are other views, which we will explain each of these views separately in this article.

Five-pillar perspective

Some jurists believe that crime has five pillars (Moradi, 1998, quoting: Bashirieh, 2006, p. 67). Added the elements of the crime. This view does not seem acceptable. There is no rational and acceptable reason for placing the culprit and the victim as one of the elements of the crime, and it raises the question of why what is considered as the temporal symmetry of the material and psychological element in the writings. Criminal law is recognized as a condition for the commission of a crime. Why is the place of the crime not considered as a pillar of the crime? With such broad interpretations of the elements of crime, we must believe that "time" and "place" are also elements of the elements of crime.

Four-pillar perspective

Garou and some old German jurists believe that crime has four pillars (Salehi, 1998, p. 106), that is, in addition to the three known pillars, another pillar called "illegitimacy" is necessary for the commission of a crime. Believe in three pillars, for example, in legitimate defense or legal order, all elements of the crime are realized, while these acts are not considered criminal. The element of illegitimacy has also been added to the elements of crime. However, this view is not valid because it is the law that criminalizes behavior and it is the law that decriminalizes acts such as legitimate defense or law

enforcement. Despite the law, it is no longer necessary to need another pillar called illegitimacy. Of course, some jurists believe that in acts such as legitimate defense, there is a disorder in the psychological pillar. Other actions, such as the issue of legal authority, should also be valid, considering the absence of a legal element in actions such as defense of the client To be a legal authority and to believe that the psychological element of these acts is disturbed, the element of illegitimacy along with other elements seems redundant.

three-pillar views

The majority of jurists are in favor of the theory of the triviality of crime (Ardabili, 2013, vol. 1, p. 179 and Golduzian, 2008, p. 72 and Mr. Janat Makan, 2011, vol. 1, p. 87) This prevailing view in our country follows the law of France. Page 103) Due to the intellectual affinity of Iranian jurists with the French legal system, such a view is frequently mentioned in the works of Iranian jurists before and after the revolution. In order to be able to explain this view simply, it is necessary to explain the three elements of crime differently Let us.

Legal pillar

The basis of this pillar should be sought in the principle of legality of crimes and punishments. (Noorbaha, 2011, p. 139) The principle of legality of crimes and punishments is one of the most progressive principles of modern criminal law, not to be recognized as a crime and not to be punished for it; the judiciary cannot deal with that behavior in criminal terms. Due to the low intellectual development of societies in ancient times, the principle of legality of crimes and punishments did not exist in its modern meaning, but traces of it can be found scattered in the laws of Hammurabi and the teachings of Judaism and can be deduced from it. The emergence and influence of religious teachings of religions has certainly had undeniable effects on the legal systems of ancient societies, but for a long time due to intellectual stagnation and the rule of authoritarian political systems (Milani, 2008, p. 171) in Islam, the rule of ugliness of the eagle It bears similarities with the principle of legality of crimes and punishments. The implication of the rule is, in short, that as long as an act is not forbidden by the Shari'ah and that prohibition is not declared obligatory, if a person commits it, his punishment is rationally ugly and

ugly. One of the professors of Mozazbian says that "it should be known that the scope of this rule is wider than the" principle of legality of crime and punishment "in contemporary customary law, because the principle of legality of crime and punishment is about the law and consequently the steps of notification and Publication of the law. However, the jurists have also resorted to this rule in cases where the obligated person was ignorant not because of his fault but in another way. In other words, the expression in this rule is the received expression, not the issued expression. "Therefore, its scope is wider than the principle of legality of crime and punishment." (Mohaghegh Damad, 2008, p. 15) What can be understood from this statement is that the principle of legality of crimes and punishments and the ugliness of the eagle are two unified concepts and their relationship is between the four genera of public and private, while it seems absolute. These two concepts should not be the same. The legality of crimes and punishments is the separation of the three powers, which guarantees the independence of judges, which means that none of the powers should interfere in each other's work, and it is the responsibility of the parliament to legislate. The system of criminal justice punished. The principle of legality of crimes and punishments includes two general and specific meanings. The legality of crimes and punishments. (Milani, 2009, p. 158) Therefore, the legislature did not adhere to the principle of legality of crimes and punishments for various reasons, and in various principles of the constitution and relevant laws, this important principle was violated. The legislator of the Islamic Republic has tried to Jurisprudence should be considered as a source of criminal law. This approach of the legislator has led jurists to defend the view and even to establish a scientific basis for it based on the principle of legality of crimes and punishments. Two respected authors write in this regard: "The principle of legality of crimes" implies two general and specific meanings. The general meaning of the principle of legality is that any act that is prohibited and entails punishment must be announced by the competent authority, and only then does the prohibition and punishment find meaning. In this sense, in monarchical systems, the king, in religious systems, the holy shari'a, and in democratic systems, the authority that the people determine is the competent authority, and when the declaration of a crime is done from its authority,

the principle of legality Has been observed. But based on the specific meaning of the principle of legality, which has gained meaning and consolidation in modern times and after modernity and the separation of powers in the West, only parliament can write a law on practical criminalization, and anyone else can do so, contrary to democracy. It has acted liberally, even if the majority of the people themselves recognize that authority as the competent authority for criminalization. Therefore, it is better to call the principle of legality in the specific sense of "the principle of parliamentaryity of crimes" (Mohebbi, Riyazat, 2018, p. 27).

Modern criminal law, drawing on past experience, concluded that in order to guarantee the rights and freedoms of individuals, justice, and the principle of separation of powers should be the responsibility of the House of Representatives, because MPs can represent the people before the approval. Take the laws that restrict the rights and freedoms of the people of the society. Extensive and without the intervention of the representatives of the nation, the rights and freedoms of individuals were violated, although these laws, according to the interpretation chosen by the respected authors, are based on the principle of legality of crimes and punishments and are defensible, in addition to excluding words from Putting our position and using it in another position for which the word is not set is not only not a good thing, but it also leads to results that may not be the intention of the speaker.

Today, the principle of legality of crimes and punishments in the developed countries of the world has been abandoned - in the sense that this principle is so improbable and clear to the legislator - and the principle of quality of criminal law has been replaced by the most important qualitative examples. The existence of the law is as follows: the clarity and lead of the criminal laws and their non-ambiguity, mentioning the effects that the criminal law has on the individual, therefore, the consequential punishments as previously written in the laws are eliminated. Therefore, individuals should know that in case of committing a certain crime, what criminal consequences await them, the availability of the law, this access to both physical access and understanding of the law in the sense that understanding criminal law for all

those covered by criminal law should be easy and be easy (Najafi Aberandabadi, 2011, p. 53). It seems necessary for the legislator to recognize the principle of legality of crimes and punishments and once and for all to clarify its duty with the Sharia, in addition to the principle of quality of laws and punishments that in many crimes There is no minimum to exercise and limit the powers of judges in imposing punishments that are in place to adequately guarantee the rights and freedoms of the people of the nation.

Material pillar

Criminal law does not punish filthy and unintentional thinking until it has materially materialized; Because malicious intent does not pose a threat to social order as long as it is not necessary to make it a reality. Therefore, the condition for committing a crime is that the intent to commit an evil act reaches the stage of actuality by committing a certain act. (Ardabili, 2013, vol. 1, p. 301) There are two views on the occurrence of the material element of crime. Some jurists believe that the material element is the behavior of the perpetrator and some believe that the material element of crime is three components In order to commit a crime, the three components must be realized together. The first component of the material element is the physical behavior that includes the act or omission of the act. The second component includes the specific circumstances of each crime. And the place of commission of the crime or the subject of the crime or anything else. There is no need for a criminal result (Mr. Janat Makan, 2011, vol. 1, p. 260). Restricting the material element to the perpetrator's behavior is faced with the objection that in some crimes there are components that do not belong to the perpetrator's behavior, for example in adultery Satisfaction does not belong to the perpetrator's behavior and dissatisfaction should be explored in the victim, so the view that the material element is composed of three components The division is more correct

Psychological pillar

Criminal jurists do not agree on the concept of the psychological element of the crime. There are different and different views in this regard. The broad view and the limited view of the psychological element. Proponents of the broad view of the psychological element believe that

the conditions of criminal responsibility, ie the maturity of reason and science are considered as components of the psychological element The components of criminal responsibility are necessary for the realization of the psychological element, a view that has many supporters among Egyptian and Lebanese jurists. (Abdolmalek, 1931, vol. 3, p. , Pp. 608, 585, 583 and Al-Husari, 1993, vol. 2, p. 24, quoting Qasemzadeh, 1998, p. 51).

Proponents of a limited view of the psychological element believe that the psychological element of crime consists of two parts: criminal will and intent or criminal error (Sanei, 1983, p. 33, quoting Nabipour, 2005, p. 43) The result of this definition is that the psychological element of crime with The will and intention of the result or guilt of the punishment is realized, so there is no need for the general conditions of the task to develop the psychological element. The Islamic Penal Code recognizes the occurrence of a crime by children and the innocent. At the beginning of Article 88, it states that "about children and adolescents who commit ta'zirat crimes ..." The Juvenile District has also accepted Article 149, which states: "If the perpetrator suffers from a mental disorder at the time of the commission of the crime in a way that lacks will or discernment, he is considered insane and has no criminal liability." And in Article 150, "If the perpetrator of the crime is insane while committing the crime ..." the jurists who believe in the involvement of the psychological element in the commission of the crime in order to be able to explain this view of the legislator and adhere to the involvement of the psychological element in the crime Have accepted the limited of the psychological pillar. In order to be able to judge the correctness and correctness of this theory, we must first clarify what is meant by intention and will? There is much disagreement among jurists about the definition of intention, but in general there are two main definitions of intention. A group like the waiter intends to "know the offender in violation of legal prohibitions" or "the will of the perpetrator to commit a crime as prescribed by law." Has defined. (Ardabili, 2013, vol. 1, p. 338). The second group, by validating public order, has defined intention as "a will that intentionally leans towards a purpose that is prohibited by law" (Stephanie, Lavasor, Bullock, 2004 (P. 354). This definition has supporters among

Iranian jurists as well. Whether the perpetrator is aware of the criminality of the act or is not aware of the criminality of the act (Noorbaha, 2011, p. 175). Therefore, these two definitions, one considers intention to consist of will and consciousness and the other considers intention to be based only on will.

Will is one of the most controversial concepts in criminal law, so that jurists even disagree about its place in the elements of crime. Will is considered a crime within the material element (Shams Natri et al., 2017, p. 403). Authority has been considered as one (Ardabili, 2013, vol. 1, p. 341). While there is a difference between the two, the mere existence of the authority of the subject does not lead to the emergence of the verb; in fact, what is directly related to the emergence of the verb is the will. Humanity of authority is in equal conditions, in the sense that doing and leaving the act are equal for it, while the disciple has chosen one of the parties he has willed. (Deep, 2013, p. 67) Some Islamic scholars to develop the will They have mentioned the stages which are Hodges, memory, hadith of the soul, time and determination. Here, we will briefly examine each of them. It is referred to as appearing in the human psyche due to internal instincts or external causes. The state in which mental imagery and attention are formed in human beings. This stage is also called imagination. After this stage, it reaches the stage of the hadith of the soul. In this stage, the human mind evaluates the possibilities regarding the subject, and it is in this stage that doubt and hesitation are based on the human mind. From this stage to the next stage, in this stage, by choosing different assumptions, he chooses the better way. In fact, in this stage, the human mind chooses and in the end, It is the stage of determination that at this stage the thought has become transcendent and becomes a state of dogma, and at this stage the will to commit has been completed (Nabipour, 2015, pp. 57-58 Validi, 1985, vol. 2, pp. 283-284-285). The above inference from the will is that they will starts from one stage and reaches the last point after the other stages. What is assumed and clear is that criminal law is the field of study of human behavior, so it is not necessary to explain in criminal law a bill that includes both man and the animal and the boundary of these two wills, although philosophers seek to distinguish the human will. And are animals, but since in

criminal law it is only a matter of human behavior, consequently the human will is also studied, so the distinction between human and animal will is useless.

Durkany views

Material - Psychological

Some authors believe that the legal element does not interfere in the construction of crime, so the legal element should not be considered as a separate element. The legal element is in fact a reflection of the principle of legality of crime and punishment and the basis of material and psychological elements. In other words, the legal element is not the width of the material and psychological element to be discussed next to them and equally with them, but both the material element and the psychological element according to the law, that is, according to the law, we can behave or state Or we know a certain situation as a material or psychological element of a crime, so the relationship between the legal element and the two material and psychological elements is a longitudinal relationship, not transverse, and thus the discussion of the legal element is not relevant separately from the material and psychological elements. (Stephanie, Lavasour, Bullock, 2004, p. 301 Mir Mohammad Sadeghi, 2010, p. 53) This view is acceptable because it does not consider the legal element within the elements of the crime, but because it considers the psychological element within the elements of the crime It can be criticized because all the objections that have already been expressed about the involvement of the psychological element in the commission of a crime are based on this theory.

Material - Legal

According to a group of jurists, the psychological element of crime has no role in the realization or non-realization of crime and the psychological element is a condition of criminal responsibility (Azmayesh, 1986-1987, p. 76 Milani, 2014, vol. 1, p. 75). They believe that after the occurrence of an act that endangers public order and is criminalized in the law, we should first place it in the framework of the legal and material element, and if it is in accordance with them, then examine the spiritual element and We pay criminal responsibility to the perpetrator. This view is acceptable because it does not consider the psychological element

within the elements of the crime, but it can be criticized because it considers the legal element within the elements of the crime because the perpetrator created and It does not create a separate element for it, but the perpetrator, by his material behavior, gives an external objectivity to a pre-existing crime, so the legal element cannot be considered as a separate element.

Theory of authority about the elements of crime

Ethical and utilitarian views have affected criminal law both in the field of crime and in the field of punishments. Ethicists believe in the inherent goodness and ugliness of actions. In contrast, utilitarians study crime and punishment only in terms of its usefulness. Put. Ethicism as an important current of thought is rooted in philosophy and religion. It is so moral that even the title of psychological element in describing the crime of perjury in English criminal law in Henrik's time is taken from St. Augustine's sermon and sermon on the crime of perjury. And that (preaching) means that as long as the mind is not criminal, it is not a criminal act. (Robinson; 2003; P35) The emphasis of moralists on criminal intent and action has also had an effect. He intends to shoot in the other direction, but his shot does not hit the target. Because of his evil intent, he is equal to the person whose shot hits Majni and kills him. Another effect of the moralists 'emphasis on criminal intent can be seen in the deputy. Thus, from the moralists' point of view, the unity of intention between the director and the deputy means that the mental state of the deputy and the director are the same to rule the unity of criminal responsibility. Can be clearly seen in English law. In English law, the punishment of the accomplices of the crime is equated with the punishment of the perpetrators. To the psychological element and attention to the mental state of the perpetrator, the great importance that moralists attach to the mental state of the perpetrator causes that in this attitude there is a possibility of leaving the verb, positive verbs and extending it to the circle of omission (Salehi, 2007, pp. 16-56).

Utilitarianism, with its focus on harm, considers the harmfulness of a behavior as the basis of criminalization and crime identification, and

therefore the element of intent and ability to mentally blame the perpetrator is of secondary importance. "Those who thought that the true scale of a crime was the intention to commit a crime were mistaken because the intent of the offender depends on the effects of the facts on the state and the a priori state of mind," Bakaria said bluntly about reducing the role of intent in identifying a crime. Creates the culprit. The intent of the offender varies from person to person and fluctuates in every human being with a rapid sequence of perceptions, interactions, and situations. Therefore, it is necessary not only to set special rules for every citizen, but also to create a new law for crime. "Sometimes people do the greatest harm to society with the best of intentions, and sometimes they do the greatest service to society with the worst of intentions" (Bakaria, 1998, p. 95). The utilitarian emphasis on harm and damage has caused it to be in the opposite point of the moralists and its effects are the opposite point, so that in the case of unfinished crimes there is a clear difference between the punishment of total crimes and unfinished crimes. In line with the utilitarian view in Article 121 of the Islamic Penal Code, the Iranian legal system states: A: In crimes where the legal punishment is deprivation of life, permanent imprisonment or imprisonment of first to third degree to fourth degree imprisonment b - In crimes whose legal punishment is amputation or fourth degree imprisonment to fifth degree imprisonment C- In crimes for which the legal punishment is a partial flogging or imprisonment of the fifth degree to imprisonment or flogging or a fine of the sixth degree Crimes are unfinished.

Regarding the deputy in crime, today criminal law has clearly distanced itself from ethical views and there is a clear difference in the punishment of the deputy and the director. The direct punishment relies on the deputy. In this regard, Article 127 of the poems reads, "The punishment [of the deputy] is as follows: Deliberate and intentional amputation of a member, imprisonment of the fifth or sixth degree - in crimes for which the legal punishment is a whipping - thirty-one to seventy-four lashes of the sixth degree - in crimes punishable by one to two degrees lower than the punishment for the crime".

Regarding the application of objective and subjective criteria, he utilizes a utilitarian view

focusing on the principle of harm and damage of the objective criterion. The crime of Iranian criminal law in the judicial process tends towards objective theory.

Now that the position of the Iranian criminal legal system between the two perspectives of ethics and utilitarianism has been determined, we can try to explain it based on this theory. The two pillars know that one explains the crime on the basis of the material pillar and the legal pillar, the other explains the crime on the basis of the material pillar and the psychological pillar. The structure of the crime has no effect, so it can not be a pillar of the crime, on the other hand, the psychological pillar of the crime is discussed in criminal liability, and accordingly the crime consists of one pillar, in the sense that the crime is realized with the material pillar. Crime with a material element has also been confirmed by some writers and they have stated that in Islamic jurisprudence, a crime with a material element is committed in such a way that the criminal act committed by the criminal is a crime in itself, provided that Islam in the legal texts He himself has specified that it is a crime and provided that the obligee has committed it (Feyz, 1985, vol. 1, pp. 93-94), so the crime with the pillar Material is realized and what is called the psychological element and the legal element is not part of the nature of the crime, so the legal element and the psychological element should not be included in the elements of the crime. To, pp. 135-138-170-171, quoted by Mousavi Khoshdel, 2009, p. 17) The Islamic Penal Code of 2013 is in accordance with this view. There is evidence in this law to prove this claim. "An act or omission for which punishment is prescribed by law is a crime." It should be noted that in this definition there is no reference to the psychological element for committing a crime. Second, the legislature in Note 2 to Article 88 has accepted the presumption of a crime from birth. Recognize one's actions and understand the natural result of one's actions (Awad Mohammad, 1994, p. 439, quoted by Mohammadi, 2004, p. 212) The occurrence of a crime with these conditions cannot be based on the involvement of a psychological element in committing a crime "In the commission of intentional crimes, in addition to the knowledge of the perpetrator of the crime, his intent to commit criminal behavior must also be established" The inclusion of this article in the chapter on criminal liability conditions

shows that the legislature Non-interference of the psychological element in the realization of the crime; The legislature, under the auspices of the Minister, has placed this article under the conditions of criminal responsibility in order to emphasize the rejection of the views of those who consider the psychological element as a condition for committing a crime. Article 144 shows that the psychological element is a condition of criminal responsibility and does not interfere in the commission of a crime. Another proof to prove this theory is the possibility of committing a crime by the insane. In different legislative frameworks, the possibility of committing a crime by the insane is explicitly repeated in the law, while it is basically impossible for the insane to commit a crime if the insane has a psychological element (Bashirieh, 2006, p. 91).

Despite the fact that the legislator has used the word "will" with delicacy and accuracy in Article 149 of the Penal Code of 2013, he deliberately referred to the lack of will in order to re-emphasize the possibility of committing a crime by the insane and to note that the insane is essentially In the absence of will, it does not have a limited psychological element, so that there is no doubt that the psychological element is not involved in free crimes. But based on the theory without answering the question that basically if the legislator considers the material element sufficient to commit a crime, then why in different articles of the law has used the word intention and intentional? The legislator's view of the psychological element of intentional crime, especially intent and intent, is based on one of the following cases: 2013 and Articles 516,512,511,510, the Islamic Penal Code referred to the punishment section. B) In some cases, the legislator has used expressions other than the expressions and words of paragraph A, but these words and expressions again express the same meaning of intent and intent. For example, the legislator has used the intention of fraud in Article 523 of the Islamic Penal Code, or in Article 620 of the same law, he has referred to previous conspiracies and mass conspiracies. In Article 620, the word conspiracy indirectly has the same meaning as intent. Or in Article 690, the legislator has used the word staging, which clearly contains a deliberate and intentional description. C) Finally, in some cases, the legislator has not made any reference to words such as intent and words with similar

meanings, such as Articles 498,499,500,502,513,514,547, the Islamic Penal Code of the Penal Code. کرد. In a general breakdown, the legislature has divided crimes into three groups: The first group is crimes that are as likely to be committed intentionally as they are unintentionally. In the sense that in a balance of probabilities, both probabilities are equally conceivable. In this group of crimes, the legislator has explicitly used intentional expressions and has placed the burden of proving the specified psychological element on the prosecuting authority. Examples of these crimes are the crime of using a forged document subject to Article (535) of the Islamic Penal Code, the section on punishments and abortion by harassment is the subject of Article (622) of the same law. The second group are crimes that the legislator intentionally committed Unintentionally recognized as a crime, so it was necessary to consider such a distinction, specification of words and science necessary. Examples of such crimes are murder. The third group consists of crimes whose nature is such that the commission of a crime unintentionally, based on assumptions and perceptions, is very unlikely and exceptional. In these cases, the legislator, with intelligence and foresight, has refrained from using intentional words in order to prevent the prosecutor from taking over the task. For example, in the case of Article 547 of the Islamic Penal Code, which criminalizes the escape of a prisoner by a prisoner, the legislator has not cleverly used any of the words intentionally because it is far from imagined that anyone would commit this act without It is very unlikely that anyone intends to commit or insult the subject of Article 608, claiming that he was not aware of the meaning of the offensive expressions he used and was not intentional in performing the relevant act (Mantinejad, 2011, pp. 124-125). The conclusion is that although the legislator has used the psychological element in different cases, but the use of the psychological element is not because the inner psychological element is in the condition of committing a crime, but because some crimes are likely to be intentional and unintentional in equal circumstances. It is a balance and the legislator has explicitly used intentional expressions to clarify that this crime is included in intentional crimes and has placed the burden of proving the specified psychological element on the prosecuting authority. Another reason for using this psychological element in some Its

material is criminalized in the laws of both forms of action and the legislature to avoid interference Intentional and unintentional rats have done this distinction. We believe that the material element is sufficient to commit the crime.

Conclusion

Legal ideas should not remain in the framework of popular opinions regardless of the law and should not be alienated from the provisions of the law, because the conflict of these ideas with the legal texts, especially in criminal law, will cause them to be abandoned and neglected. Examining different perspectives, we find that despite the different views on the elements of crime, but the most important approach is the belief that crimes are three pillars. This view has many supporters in Iran and other countries of the world, and it seems to be the dominant view in this field. However, this view does not seem to be correct, and according to what was stated in this study, the belief that crime is a monolith and relying on the material element to commit a crime, in addition to being theoretically correct, also has practical effects and some practical problems with committing a crime. As in the crime of forgery and use of a forged document, if we consider the spiritual element in the realization of the crime of forgery, in cases where the forged document is made without a spiritual element and someone else (other than the manufacturer) uses it and provides a place, we cannot realize Let's talk about the crime of using a fake document, because basically a fake crime has not been committed so that a fake document is in use! However, with the unilateral nature of the crime, one can vote for the crime of forgery by using the material element, ie making a document, and the builder can be considered a forger, but he was not punished for not having criminal responsibility (lack of intent), but someone who uses this document intentionally And intends to misuse or misrepresent it with the conviction of using a forged document. The same practical effects on the Deputy for Crimes are accompanied by the recognition of crimes as a single pillar. Therefore, it can be suggested to the legislators and the judicial procedure to remove the psychological element from the elements of the crime and discuss it in the discussion of criminal

responsibility, and in this way, to solve many existing theoretical and practical problems.

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