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Supporting the Victims of Sexual Offences in the Criminal Justice Process of Iran

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Abstract: *In the sacred Islamic Law, strict provisions were set about crimes against chastity based on personal and social interests to make it difficult for people to prove these kinds of crimes. The proofs of evidence, which forms a part of criminal procedure act in any legal system, including the international legal system, is a tool that allows the possibility of proving the positions of each party about a dispute in a judicial review. Hence, achieving a satisfactory outcome from a judicial review depends on the proper and maximized use of such a tool. This is a descriptive-analytical study that was carried out with the aim of examining the Iranian criminal justice approach in protecting the victim of this crime. It can be said that some of the proving aspects of the rape are in conflict with the victim's right, and actions such as the right of independent and impartial proceedings, the right to have a lawyer, and the protection of the security and identity of the victim by criminal justice system can be fulfilled to meet the needs of women who were the victim of sexual crimes.*

Keywords: *Victims of Sexual Crimes, Proof of Evidence, Criminal Justice.*

INTRODUCTION

Obviously, crimes against chastity have particular importance compared to the other crimes due to their particular effects and the harmful consequences for the dignity and social life of the victim. These harmful consequences will be more severe in a society like Iran, whose cultural context is originated from religion.

In each society that a phenomenon is criminalized, there should be evidence to prove the crime that had happened. These evidence are used by one of the parties, in various ways, to reveal the unknown fact during the judicial precedents. In general, the sacred Islamic law had passed very strict regulations and the law against crimes against chastity based on personal and social interests to make it difficult for offenders to commit these kinds of crimes. Proving these kinds of crimes are subjected to the specific legal grounds with particular qualifications, and if there are no specific legal grounds, the unchaste act cannot be proven. The existence of this method leads to the conclusion that in many cases the crimes cannot be proved, because providing the evidence required by the legislators is either not easy or impossible, and thus the rights of the victim may be violated. Paying attention to the position and role of the victim in criminal justice and providing competent and proper support to the victim can be considered a relatively new issue in criminal science. In the first step, victimology uses scientific and criminological findings and criteria to investigate the role and contribution of the victim in the development of the criminal event based on the relationship between the victim and the offender (scientific or first-degree Victimology). The second step in the victimology development is the support and protection provided to the victim in a supportive multi-pattern framework – this item is based on the legal and criminological findings and criteria (Raijian, the main).

Supportive victimology fundamentals

Today, all or most legal systems are considering the victim supporting and protection as one of the main points and critical issues in the criminal policy. It can be said that this issue has become the center of attention for authorities responsible for the criminal policy and the core of the new criminal policy agenda. This is due to the fact that this policy, unlike other policies, does not make the criminal the center of attention, but also pays attention to the victim as well. To do this, not only the correction of the offender is considered by the criminal policy, but the compensation of material and spiritual damages to the victim had become a significant aim.

Indicators of support for victimized women

The victim suffers a set of injuries and damages immediately after the crime was committed. The victim is also entitled to some rights; these damages and harms, along with the rights developed for the victim, formed her needs after the occurrence of the crime. It should be noted that the needs of the victim can be divided into the general needs of the victim and the specific needs of specific crimes victims.

Supporting and protecting the victims of sexual offences based on their general needs

The general needs of the victim are defined as the common needs specified for victims of all kinds of crimes, regardless of the type of victim or the type of crime involved. Often a victim is a weak person and her weakness and disability makes her a vulnerable person and eventually a real victim of the crime.

Supporting the needs of the victims in the process of investigation and prosecution

Basically, after the crime was committed, the victim should have the proper opportunity to tell the story of that event. Afterward, reacting to the event, ensuring the correctness of their reaction and preparing themselves to address its consequences, should be carried out correctly to provide the opportunity for the victim to participate in the process of investigation and prosecution. Investigation and prosecution is a set of actions taken by judicial authorities including investigating a victim's complaint, prosecution of the defendant, obtaining adequate supplies, collecting and preserving the causes and effects of the crime before the trial process begins (Shiri, no date).

Except for the cases that are mentioned in Article 3, Note 3 of the code of Public and Revolutionary Courts Establishment, Public Prosecutor is responsible for these actions and measures. At this stage, victims should have the opportunity to submit a lawsuit and a criminal complaint, on the one hand, and to participate in charge proving process, on the other hand.

a) The possibility of submitting a lawsuit to the court: The decision to prosecute the defendant by the victim, change her role from a victim and witness into an active person in the criminal justice process (Shiri, no date). Although in crimes with higher public aspect than a private aspect or in crimes without any private aspect, such as religious crimes, the victim does not have any authority. It can be said that the Iranian Criminal Code has provided a better position for the victims in the process of investigation and prosecution compared to other countries¹. Basically, the victim of sexual offenses remains a crime victim. In the crime of sexual abuse, the victim is the person who announces the crime and she does not have the right to withdraw from the complaint.

b) Participation in proving the charge: the testimony and other witnesses, and the knowledge and confidence of the judge obtained through conventional ways, are the proofs used to prove the crime. Apart from the testimony of witnesses, other approaches are conducted for proving the sexual offenses in Islamic jurisprudence. In principle, in the absence of a realtor, it is not permissible to investigate some crimes. But it should be noted that, contrary to what sometimes is thought, judicial proof of a set of sexual crimes, such as rape, is not equal with those sexual offenses committed with consent of both sides. The reason is that it is not recommended in sacred Islamic codes to prosecute the unchaste act and sexual offenses carried out with the

¹. In criminal Code of Iran, some crimes and offences cannot be investigated without victim's complaint. According to the Article 3 of the Criminal Code, "the prosecution the defendant and the offender" of the private aspects cannot began without any relator.

consent is to protect and maintain the honor and reputation of individuals (www.tazehaye hoghogh.com). One of the rights the victim can obtain by participating in the process of investigation and prosecution is the right to request a local investigation according to Act 164 GH. A. D. K². Other rights that the victim has in the process of investigation and prosecution is the right on investigating and interviewing with the witness. According to Article 148 Gh. A. D. K, the judge summons people who can introduce the complainant in order to clarify the charge based on the existing principals and even can arrest them. (Shiri, Ibid, p.46).

Supporting the victim against their general needs during the court proceedings

According to Article 14 of the Civil and Political Code adopted in 1966, everyone has the right to have a fair and public hearing in an independent and impartial court developed by the law. Iran is a member of this International Convention. According to Article 9 GH. M., the execution of this Convention is obligatory in the Iranian courts. A fair trial is a procedure in which both parties have the same position and defend their claims without having a bad condition compared to other parties (Khaleghi, 2015). The right to have a fair hearing includes the indicators that must be observed for each party to the dispute

- a) The right to have a legal aid
- b) the right to be heard independently and impartially
- c) The right to have a lawyer
- d) Maintaining the security and identity of the victim

Supporting the general needs of the victims after the conclusion of the proceedings in Iran is based on the Criminal Procedure Code for material and interest damages are possible, while compensation for spiritual damages was not considered. Previously, according to Article 9 of the previous Criminal Procedure Code, compensation for the spiritual damage was possible. However, it appears that the new law, contrary to Article 171 of the Constitution, has considered the viewpoints of spiritual damages dissenters. Recently this legal system has been moving toward accepting such damages. For example, in the case of contaminated blood products and hemophilic patients, a verdict of spiritual damage was awarded. Thus, it can be said that some changes are about to happen, which can be predicted from the level of the judicial process to the legislative criminal policy (Raijian Asli).

Supporting the special needs of the women who were the victim of sexual offences

The impact of these crimes on the mental health of the victim depends on the intensity of physical damages inflicted on her. Deaths from sexual violence can be due to suicide, HIV infection, or murder. Murder can occur during a sexual assault or after the woman was raped as an honor killing. Sexual crimes can dramatically affect the health of the victim and may even lead to the rejection and isolation of victims by families and others. Therefore, it is critical to support and protect this group of victims from particular damage they may suffer.

Medical support

Appropriate medical support to these group of victims is required in two areas: first, in the field of helping the victim to discover and prove the crime, and second, to provide appropriate medical and therapeutic services to prevent infectious diseases and STDs³and treating physical damage of the victim.

- a) Helping the victim to discover and prove the crime: When sexual offenses, in particular, sexual assault, occur then the body of the victim is the first and most important scene of the crime. Forensic examinations are a key part in the process of evidence collection (Merril, 2004).
- b) Providing medical services in the field of treatment and prevention: The risk of HIV transmission during rape is a major concern, especially in the countries where the rate of HIV infection is high. (Global Report on Violence and Health)

². According to this Article: "if the defendant or the complainant uses the information of local people as an evidence or the judges believes the local investigation is necessary, then "the local investigation" can be conducted.

³. Sexually transmitted diseases

The emergency department is one of the most important medical units, which can provide the necessary services to the victims of sexual crimes.

Mental and emotional support

As it was mentioned before, PTSD disorder is one of the most serious injuries to victims of sexual crimes. People suffering from disorder react in two ways:

1. Sudden collapse of power along with rising of fear in them
2. Contrary to the other situation, i.e inappropriate reaction and stimulation; the person's reaction may take several hours or sometimes several days. Furthermore, general and partial amnesia is seen in this group of victims (Boskey et al., 2010).

It is critical to provide appropriate mental support to the victim against this disorder. Major therapeutic practices used to deal with disorders of women who were the victim of sexual offenses are cognitive-behavioral therapy (CBT), and the treatment provided by a feminist therapist. It can be said that rape victims are not only faced with personal reactions to it, but they also have to face its effect on their families and relatives (Merril, 2004). Contrary to CBT's focus on early signs of fear and anxiety developing on the victims after the rape, feminist therapeutic approaches emphasize on the integration of social causes of the rape action with global views and the ideologically of the victim herself, and reduction of self-remorse and guilty feeling in the victim after the rape. The key in this treatment is to help the victim understand that rape is a social problem, not just a personal problem. In the United States, in addition to providing various strategies for the mental treatment of the victims, researchers and experts have evaluated and examined the efficiency of the existing strategies and approaches, while in Iran, experts and practitioners of criminal justice are not even familiar with different types of mental damages and psychological harm the victims of sexual crimes may suffer. Therefore, it is important to investigate and identify the adverse effects caused by the crime and the ways to cope with these effects.

Legal protection

Providing full support to women who became the victim of sexual crimes requires the existence of comprehensive laws and barriers to meeting the needs of these kinds of victims. These laws should be able to provide the basic human rights for the victim women to help them return to their situation prior to the crime event. These laws can cover a wide range of unsupported needs of sexual offense victims and range from the need to recognize the committed crime to act against honor killings. The most important needs of women who became the victim of sexual crimes that can be provided are as follows:

- a) Recognizing the committed crime: The first step towards protecting women whose physical integrity has been harassed and oppressed by the opposite sex is the behavior criminalization that has led to the serious physical and psychological injuries.

Sexual violence of the spouse is one of the violence committed against women that requires the attention of the legislator. Sexual violence or the sexual abuse of the wife by the husband is an unconventional martial relationship which is carried out through raping or without consent of the wife (Azim Zadeh and Mirzazadeh, 2016). After studying the rape cases of the courts No 16 and 17 in Khuzestan Province, it was found out that from 16 cases that were awarded in 2011, none of them led to the conviction of the defendant and the occurrence of the crime was not proven. One of the reasons the crime was not proven is that the legislator's intention about incest rape and unwillingness is not clear. However, in many countries, the laws and regulation related to rape are precise, unambiguous, and comprehensive. In recent years, in order to support and protect the rape victims, the laws and regulations of many countries, were modified. For example, the Criminal Code of Canada was modified in such a way that the verification and confirmation of the victim's evidence were excluded. However, the prosecutors still ignore this regulation and only a small number of the cases were sent to the court without evidence.

- b) Dealing with honor killings: honor killing is one of the most unfortunate results of the sexual crimes that might occur just because of its rumor as well. Unfortunately, the extreme fanaticism and futile honor-orientation are rooted in the traditions of Arabs and the tribes in the southern part of Iran. Occasionally, the authoritarian power of men and the use of force by them are based on honor-oriented beliefs that consider force as a means to protect women from any moral corruption or sexual orientation. In some cases, if the father, the brother and the spouse become aware that a woman has an illegitimate relationship or an out of tribal framework sexual interest, they sentence that woman to death and they execute the sentence themselves (Azim Zadeh and Mirzazadeh, 2016). In Iran, the regulations such as Article 612 GH.M.A., were approved, which changed the private aspect of murder and gave a more general aspect to it. These new law and regulations were better than the old ones when dealing and confronting with this phenomenon. However, most of the victim's families refused to submit their complaint to the court and hide the murder case with their silence and even try to show the victim's death as electrocution or accidental death, and by hiding the witnesses in the tribal structure, proving the murder or accusing the crime to the accused is prevented. Anyway, the severity of these deadly traditions is to the point that the law is incapacitated against it. In addition, the silence of judiciary and the legislature against this traditional violence is regrettable (Tavakoli, 2006).
- c) Protecting the privacy of the victim: the right of having privacy is one of the critical elements in protecting the rights and freedoms of the victim women. A complaint of sexual offenses victims is that their privacy is violated after they submit their complaint to the court and the criminal proceedings and preliminary investigations are started. In the legal system of Iran, it seems that the legislator was trying to protect the privacy of the victim and maintain their reputation and their personal and family dignity through approving Article 43 HG.A.D.K. Therefore, interrogations, investigations, and any other action became forbidden in the unchaste crimes⁴. According to Article 188 GH.A.D.K., the publication of the proceedings with the identity, social and occupation status of the individuals are prohibited. It can be said that this Article was approved to protect the privacy right of the dispute parties. However, these laws and regulations were not able to protect the victim's privacy, and according to what was mentioned before, the violation of the victim's privacy is one of the most important problems that women who became the victim of sexual crimes are facing. In this regard, it is necessary to establish comprehensive and clear rules in this field and provide the necessary training to those involved in the criminal justice system.
- d) Determining proper penalties and punishments for the perpetrator: Despite a wide range of physical, psychological and financial damage that the sexual offenses victims are struggling with, the penalties and punishments imposed for these categories of crimes are not adequate enough to respond and resolve these damages. This problem is more critical in unchaste crimes. Often, punishment considered for sexual crimes is a physical punishment type, flogging, stoning, and murder.
- e) using women in the criminal justice process: there is a need to use women forces in various criminal justice organs, including the police station, prosecutor's office, courts, and forensics. The results of a research conducted in Tehran on the evaluation of the female police performance indicated that the respondents were moderately satisfied with the performance of the female police officers and the overall success rate of female police in the missions has been high (Shayegan, 2008).

⁴. According to Advisory Opinion 5325/7 of 19/19/1982 as well as Clause 3 of the Supplementary Amendment to Article 2 of the Modification of General and Revolutionary Courts Formation Law, the last part of the note related to Article 43 is expired. Therefore, investigating the unchaste crimes is prohibited except in cases where the crime is clear or there is a relator. In the latter case, if the unchaste crime is adultery or sodomy, then the case must be sent to the court directly.

Conclusion

To sum it up, the following points can be summarized:

1. By accepting the judge's standard knowledge, it is possible to invent new methods for detecting and proving the crime using the science, such as the forensics, scientific police, criminal photography, and practices such as DNA testing, blood tests, fingerprints, and so on, and insert them into Islamic Criminal Code. Of course, the range and dimension on its regularity must be specified and the judge is obliged to mention the doctrine of his own knowledge.
2. The Iranian legislator prohibited investigating the unchaste crimes, initially, due to the covering and hiding of the committed crimes in case of the unchaste crimes, except in cases that the crime is clear or there is a relator. The crimes against chastity include adultery, sodomy, and so on. Cases related to the adultery and sodomy are sent directly to the related court. Therefore, investigating the crimes against chastity are prohibited, except in cases that the crime is clear or there is a relator.
3. Supportive victimology is based on the belief that society, in general, and the criminal justice system, in particular, must consider the rights and the needs of the victim at all of its levels and treat the damages imposed to the victim and compensate it. For this purpose, supportive victimology goes beyond the material compensation, and emphasizes on the financial or economic support in order to treat and resolve the emotional suffering caused by the crime as well as the recognition of the certain rights for the victim with the aim of obtaining compensating for the imposed damages through a supportive multi-pattern framework (financial, emotional and dignity, legal, medical, and social supports). Since achieving this pattern depends on a favorable criminal policy, the cornerstone of it is the criminal support in the form of criminal- legislation victim-oriented policy.
4. Since the supportive victimology is attempting to support and protect the victims through compensating all the damages suffered by the victim, particularly by treating the emotional suffering and psychological damages caused by the crime, the main purpose of today's victimology is to prevent crime through the elimination of physical, psychological, emotional, dignified and financial consequences of the crime.
5. In Iran, despite the existence of the cultural and ideological foundations about compensating damages and protecting the victim's rights, the public acceptance, and existence of numerous relatively desirable legal provisions, the idea of protecting victims caused by altruism and affection subject of the victim is in isolation which leads to its neglecting. The lack of organizations and associations that help the victims in an organized non-judicial manner are quite tangible.

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