

The Effect of Emergency Caused by Personality Disorder on Committing a Crime in the Legal System of Iran and Canada

In all legal systems of the world, insanity prevents the execution of the punishment of the criminal. The principle is that a sane person should be punished for the improper use of his mind, so that, first, he is reformed in terms of the punishment he has suffered, secondly, the principles of justice are implemented, and thirdly, this punishment becomes a deterrent for other people who intend to commit a similar crime in the present and future. A person who lacks reason will not be disciplined as a result of refinement and at the same time will not learn a lesson from other punishments; therefore, he is considered to be devoid of criminal responsibility. The legislator of our country has strictly stated in the General Penal Code (the law before the Islamic Revolution of Iran) and the Islamic Penal Code approved in 2013: Insanity at any moment of the crime causes exemption from criminal responsibility. This means that if a permanent lunatic commits murder or if a person momentarily loses his mind for any reason and commits a crime at that time, he will not be punishable. The objection that the majority of jurists have raised is that from a scientific point of view and the opinion of trusted doctors, only permanent lunatic can be definitely identified, and other aspects of momentary insanity have been reported only by speculation and with relatively low certainty, and at the same time, if the criminal act is typically criminal, the principle is that it was committed intentionally unless there is acceptable evidence to refute it; therefore, establishing criminal liability due to momentary insanity remains only a written document and has no practical aspect. Among the factors that cause momentary insanity, the issue of urgency caused by obsession has recently been raised. People with this mental illness react with an intense obsession with their cleanliness and eventually, in order to fight for their strict life, sometimes develop a personality disorder that they do not remember at that time. This mental problem may lead to committing a crime against another. Currently, the Common Law of Canada is a pioneer in identifying this disease and if a case history of these people is available, the only punishment is forced labor until they are completely sober. Scientific research on this type of disease is relatively brief and, except for Canada, no other country has considered this as a factor in removing criminal responsibility. This research is necessary because, in the absence of appropriate scientific evidence, people with this disease who involuntarily commit crimes are punished despite legal protection, and at the same time, there is no preventive program to correct them.

Laws are enacted with the aim of implementing the general principles of justice. If the law is without a guarantee of implementation, it will not achieve any of its high goals. A person who has momentarily lost his mind and has committed a crime in the meantime lacks the mental and material elements of the crime; therefore, his punishment is practically incompatible with the principles of criminal justice and should only require him to undergo treatment and, if his mental condition is dangerous, to be kept in a suitable place; however, one of the disadvantages of this legal protection is that criminals, under the pretext of such a mental condition, try to escape punishment and if they succeed in this, the high goals of criminal policy will not be achieved; therefore, in order to achieve high goals, reliable evidence must be found. The Canadian judicial system has used evidence that can be trusted in this relatively newly recognized disease. Given that Canada is the only country in the world that currently relies on this evidence, it can be a model for other countries. In this regard, trusted experts should give their opinions, and if it is possible to express opinions with this confidence regarding the accurate knowledge of the criminal's condition during the commission of the crime, it is possible to correctly prevent the punishment of a person who was not negligent in committing the crime. The legal system of Iran, in general, is weak in the implementation of Article 149 of the Islamic Penal Code; because the evidence to prove crimes is separated depending on their nature and no reliable legal evidence has been introduced to prove momentary insanity at the time of the crime. The model used in Canada can be tested and if it has the necessary scientific criteria to ensure judicial

concerns, it can be introduced as an executive regulation to the forensic medicine. In this case, even without the need to change the existing laws, similar cases can be inquired from the forensic medicine and, if a relevant report is issued, the judge's knowledge can also confirm it. Naturally, the general judicial perspective should be the observer of the form of expert reports, and only then can the desired situation be identified with the least error.