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## THE INVESTIGATION OF SPIRITUAL ELEMENT OF THEFT IN IRAN AND AZERBAIJAN LAW

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### Abstract:

*Theft has always been considered as a 'Natural Crime' and a Crime against People's Properties. Its characterization is based on both meeting material and Spiritual Elements since identifying its spiritual basis is considerably important in identifying its identity followed by a fair decision because what distinguishes Penal Responsibility from Civil Responsibility and as a result, Crime from Non-Crime is its Spiritual Element. Considering crime Spiritual Element, in 'Iran and Azerbaijan Legislations' has Talcen nothing Anto Account. Therefore, The present paper investigates its Spiritual Element in the two Countries' Law analytically and contrastively through a law viewpoint.*

### KEYWORDS:

Offence, Intention, Will, Theft, Spiritual Basis

### INTRODUCTION

Before defining Theft Spiritual Elements, It is necessary to investigate its lexical and expressional concept. Theft means Stealing. In Jurisprudence there are various intensified definitions for theft which are divided into two categories: Precinct and prescribed punishment. Though, There are some articles regarding Theft In Iran's Law (Articles 1&5 and 197 to 203 In Islamic Punishment Law in which Theft lawful element is precinct , articles 651 to 667 in Islamic punishment and articles 544 , 545 ,559 ,683 and 684 of the some law , articles 88 to 92 in armed forces punishment law , single article in Low Bill about intensifying punishment for armed robbers passed in 1333 (1954) , sing article of armed robbery punishment from banks and exchanges assed in January 1959 , and offensive drivers intensified punishment passed in 1996. In all of the above except the first part (Theft Law Element is considered as Prescribed Punishment). However, Lawmakers have defined it in article 197 In Islamic Punishment Law of Theft as: taking someone else's properties covertly. However, some have criticized the definition saying that the definition has lowered it to precinct. but if we use 'Fraudulently' instead of 'Covertly' it will include both precinct and prescribed punishment Theft where Theft means 'Stealing someone else's chattel fraudulently if Theft meets all conditions stated in article 197 , It is considered a precinct , If not , It is considered as prescribed punishment .

### 1.1 Theft Physical Element in Iran law

There are four Physical Elements necessary for a crime to be considered a Theft in Iran law:

- 1-The main basis for Theft in Iran is Larceny. Stealing is a fraudulent act without the owner's satisfaction and it requires moving property from a place to other way the property from the owner's territory.
- 2-The Theft topic must be subject to larceny. Therefore, the subject of the stolen item is the property itself not the rights or profits of it. Thing like air , insects and / or spoiled food which have no value to be exchanged with other goods are not considered as property except in some special cases (like the air) in a diver's capsule) and therefore its stealing is not theft.

On the other hand, goods like alcoholic drinks which are considered naturally valueless based on

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Islamic jurisprudence and Iranian law are not properties. Then, their stealing is not considered theft except in some special cases (for example a non-Muslim steals alcoholic drink from other non-Muslim are some justified uses are required).

3-In order for theft to be proven, the stolen property must be someone else's. Therefore, stealing properties which have no owner is not theft.

4-The nature of theft is covert: covertly nature of stealing is limited to precinct crimes, but in prescribed crimes the term appears as "non-satisfaction" which accurs as non-aware and behind the possessor's awareness. but non-satisfaction is not limited to being covert.

### 1.2 The Investigation of Spiritual Element of Theft

In Azerbaijan law sources has also been delineated that spiritual element of crime in the structure of villainy is of great importance. Spiritual element of crime directly emerges from spiritual effect in a criminal. Spiritual element of crime indicates the certainty of wrong-doing against social security, realization of needs, reflection of reason in signs of crime harm and criminal's relation with them, i.e., the offence (intention and lack of caution describes the motivation, purpose and the emerged sense of crime formation elements as well as orientation of specific spiritual element in the crime and distinguishes that it considers whether they are against social security or not and requires offence to be taken in to account while deciding whether it is crime or not.

Therefore, crime is not identified just through exterior purposes and / or signs, but in an occurred crime it is necessary to understand the mental status and its signs. This inner sense of the act clarifies crime spiritual element and confirms crime spiritual element in combination of crimes and reflects a criminal's will's spiritual element and reason while commuting a crime. Crime spiritual element, in different mental and intentional cases and sensational expectancy indicates both the acts and their difference and dependence on it whether coming before or concurrent with it or occurring in the future and their coincidence. Therefore, a criminal while committing a crime creates spiritual senses in his/her mind which creates the offence, motivation, purpose and his/her situation, which in its own turn creates inner mental status and reflects his/her reason and intention while wrong-doing. Each of these elements has its own specifications which come to show because of their inter-reaction and in a certain time states the content and the functions.

Despite the differences in offence, motivation, purpose and the criminal's state of feeling in topics, they are related like various pieces of a unity which all are confirmed in criminal's mental state while committing a crime. In fact, offence is one of the major signs of spiritual elements which could be deduced from acts 24.1, 14.1, and 7 of Azerbaijan penalty law where based on act 7 of Azerbaijan penalty law besides a criminal's offence being against the public security or leaving the act is considered in charge because of the offence, and is punished, and the person without an offence is not considered to be in a charge of the theft although he/she caused loss.

### 1.3 In Iran law the following elements are the basic spiritual bases of theft:

- A) Bad public intention: theft is an intentional crime, its requires bad public intention which is the same as stealing.
- B) Bad specific intention: intending to take a property or taking it away from the possessors and possessing it him/herself.
- C) Being aware of belonging the property to someone else.
- D) Being aware of the reverence of the act: according to the joint 6 of article 198 penalty law, a criminal must know that taking away the property is unlawful.

Therefore, penalty law structure in Iran is somewhat different from it in Azerbaijan for example in common penal law. Common codes have been considered. In this chapter, according to article 2, every act or leaving on act which penalty has been specified for is a crime. However, according to Azerbaijan penal law, it is only identification of offence by someone which allows putting forth the formation of crime. In the formation of crime and while there is no natural offence in action, One cannot arrest someone under penal charge and/or punish him/her and crime without offence is like crime without spiritual element.

The content of offence and the nature and form of offence have different meanings in relation to each other. the content of offence surpasses all steps and specification of event and related elements and signs. offence in antisocial events makes up for the meaning of offence because of its various forms in mental occasions of intention and carelessness which include the elements of reason, will and sense. However, some include motivation and intention in the a content of offence.

Fridoon Samandarov states that spiritual elements indicated in anti-public-security act reflect the acts and creates the content of offence among them.

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Content of offence does not simply include acts of act but depends on combination structure defined in law. Most of crime elements not specified in crime combination to define and specify crime features do not play a role in discriminating other crimes being anti-low.

However, even if they are not relevant in crime combination, if crime document have an influence on intensifying or relieving punishment, it will get involved in mens rea of the offence and will show the index and degree of offence.

Specific signs of intention like materializing the results of a criminal act or predicting keeping a result, having a wish to the results of the act and arranging all these in the mind and finally getting involved unconditionally in gaining the results be obtained in understanding an antisocial act committed by an offender.

Understanding a crime features by the offender is obtained through predicting the results of a crime before committing it. Prediction means to imagine the committed crime in the future with its legal documents. Wishing the results a crime to be gained Indicates that the results have been the final purpose of a crime.

In Azerbaijan law, intention is distinguished from carelessness in that a criminal act resulted from carelessness has less damage and the amount of crime resulted from carelessness is less than in a criminal one. Samandarov states In committing a crime with the intention of heavy damage of its result and performed hatefully there is a direct relationship between features and orientations. In carelessness one cannot expect such things since in specific situations, especially while applying high tech, slight carelessness, forgetting and forgetfulness could cause massive human loss. In committed acts resulted from carelessness, the offender's carelessness, and his /her physical state and family-related and other mental status seem to be effective.

According to article 25 in Azerbaijan penal law, such kind of intention is specified with two forms, i.e. intellectual and intentional. In the first sense the perpetrator is specified through committing an antisocial act (doing or leaving an act), and in the second sense, i.e. predicting the conclusion of a crime and intentional wish to get a result specifies it.

In Azerbaijan penal law, stealing someone's properties in a secret way is a general sign of intention. The first intellectual state, i.e. the offender who has no right (legal or real) to take something without the permission of the owner, is against the ownership law and indicates that it is against the law code to use other's properties and/or to issue the final command to steal someone's properties. Second, it seems that taking someone's properties secretly to do damage to its possessor or legal owner is prediction. Intention indicates wish to a criminal act. Intention means stealing someone's properties secretly and that the properties belong to someone else and that the offender has no right in the stolen properties and he/has knows and understands it. Although in some cases the offender makes mistakes in stealing other's properties. Finally, the thief's mistake in possessing properties has no effect on describing stealing other's properties secretly since the committed act does not change the social nature of it.

In theft, a criminal gets access to other's properties secretly i.e. he/has imagines that no one has seen him/her or that the deprived one does not understand legal opposition or through rules which are not perceived by a third person. The criminal wishes understanding of the act and prediction of its result while performing larceny. The orientation of spiritual element of stealing other's properties secretly is distinguished merely through offence and direct type of intention.

While stealing secretly other people's properties, first intention to lead change of ownership or guardian's fight while stealing, interference of a third person, etc. could be effective i.e. whether the theft has been committed with the aim of greed or not. The criminal's intention of greed is specified when he/she tries to possess properties of which he/she has no rights, all because of greed and without any exchange.

Velgen Keen states about specifying the offender's intention of greed: stealing other's properties without exchange and illegally to the benefit of offender is considered as greed if his/her financial status is good and he/she tries to transfer properties to the benefit of kinsman and also to the benefit of other attendants. He continues that being relative or friendly with someone to whom the thief grants the stolen properties in order not to spend his/her own finance and deviates it to other's properties where the aim of crime could be not greed. It must be stated that in common theft in order for greed appears in a specific form. Greed in stealing properties secretly is directed toward the attendant's benefit. In common theft intention of greed cannot exist for ever. Lack of greed while stealing secretly discriminates descriptive states: for example a thief sells properties after stealing them and spends all of it on day-care centers, old-care centers or on the expenses of the sick. In these cases there is no intention for greed since other people's benefit is intended.

In Iran law based on article 198 term 14 Islamic penalty law one of the conditions for theft precinct is that the thief must take something as theft, therefore, it seems that if someone takes someone else's property only to use it temporarily and to give it back after meeting his/her need, one cannot claim the act as theft.

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Public people will also not call him/her thief if they know his/her intention. However he/she is in charge of usurpation. But if someone takes properties with the intention of temporary use, and change his/her idea after a while, and decides to keep it permanently, it is not considered theft based on Iran law, because there is no coincidence of actus reus and mens rea in time. In case of depriving someone permanently one should notice that if an accused one takes something apparently for a temporary time but the value of the property is limited in time to that particular time (like taking a timed ticket to use it in the valid time) theft is proven, since regarding the time limit of the ticket, taking it is considered as theft. One must also notice that one's purpose of deriving permanently is not that the purpose of taking property is necessarily to deprive the other from the property forever or in an unlimited way.

The last but not the least is that permanent deprivation of the owner from his/her property is not the final term of theft, but what is important is the robber's purpose of depriving the owner permanently from the property with the purpose of permanent deprivation, he/she is considered as a thief, although the property is given back to its original owner whether intentionally or because of the thief capture (article 198 part 4 Islamic penal law).

In this manner, if a partner takes possession of a shared property, some jurists including the late Mofid, Salar and Fakh-al-Mohagheghin have pronounced that: precept is definitely rejected, whether he/she takes more or equal or less than his/her share, since in every case there is doubt.

Legal experts have also pronounced various ideas based on religious jurisprudence. Some have stated that: since the thief is the owner of every single part of the property, then the act is not namely theft; meanwhile interpretation to the benefit of accused and the rule of 'sgh' is so. Some others have stated that since every single part of the property belongs to someone else, the act is topically theft. However some others have explained that if the person takes the property as his/her own property, it is not topically theft since he/she does not mean to steal, but if he/she takes it as somebody else's property, it is theft. One other interpretation is that if the person takes only to the amount of his/her own share, it is not theft, but if it is more than his/her share it is theft. In Azerbaijan law positives there are different ideas regarding possession in a family and between members of a family specially husband and wife and members theft from each other. It is noticeable to state that family members, specially husband and wife are specified as robber according to dominant rules present in criminal charges of family members.

Fointsley indicated that in the connection of 19 and 20 centuries there were three independent systems regarding European law of family-possessed properties and the robbery of family properties by the family members. Firstly, there is basic punishment for the robbery of properties among relatives, husband and wife. Secondly, general penal law is in accordance with taking such acts as theft. Third, one can make penal charge exception about stealing properties which belong to the family for husband and wife and close relatives, and on the other hand, relating to analogy of occurred crimes by for relatives, one must follow individual charges, rules.

In Azerbaijan penal law there is no special penal charge about stealing family properties by the very members of the family, and it is clearly stated in verdict 9 Azerbaijan high courts on 14 May 1999: Based on comparative experiences about taking someone's properties secretly and possessing others' properties illegally. Taking common properties of husband and wife does not create the criminal combination of theft.

Possessive relations among parents and children needs other law according to Azerbaijan family law article 55.4 children have the right of possession to their income, right of legacy or properties they take as gift, and other properties that they have in their account in these cases. Taking properties secretly invokes criminal charge for close relatives like children and parents, grandparents and grandchildren, brothers and sisters, step brothers and sisters, and adopted children.

Iran legislators do not accept the rule of impunity from prosecution. Rather, if the theft is performed by relatives (in laws or genealogical) the case will be insuable if the complainant forgives. According to Iran law, if theft is performed by family members, the accused person is suable to prosecution and punishment but if the complainant forgives, the case will stop.

## 2. CONCLUSION

Based on what was said one can conclude that:

1. Spiritual Element of crime is the most important element of criminal law structure to prove the truth of crime
2. Type of intention and will, different types of carelessness, motive of crime and the purpose of it will all specify the features and amount of crime and will be directly considered in crime structure elements and will show their effect in defining crime and through getting out of the frame of crime structure will specify the punishment and its features.
3. Regarding actus reus and rea there are a lot of similarities between Iran and Azerbaijan penal law.

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