Artículo de investigación

The evident crime and its consequences in Iran's criminal law

El crimen evidente y sus consecuencias en el derecho penal de Irán

O crime evidente e suas conseqüências no direito penal do Irã

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Abstract

One of the phenomena in the area of rights is the variety of crimes. Lawyers divide crimes into different categories in order to resolve the issue with fail judge. One of the main divisions is evident and non-evident crimes. Despite Many attempts for defining evident crime there is not any obvious definition, even in the criminal procedure approved in 2013, only types of it mentioned in Article 45. Regarding, proving the evident and non-evident crime is only possible under the Criminal Procedure Act of approved in 2013, since the investigation and prosecution of crime is often carried out by judicial officers, and even judicial authority interfere in proceeding prosecutions since crime is evident and reasons against defendant are more, and the gathering of evidence and analysis of them is more easier than non-evident crimes, the Iran's Criminal Procedure Law approved in 2013, is similar to other countries, due to strong evidences against defendant and his/her venture, has given special authorities to judicial officers, and does not deem observing certain formalities necessary, which may be there will be a serious breach of the restriction and violation of the rights and freedoms of individuals. This research is a descriptive-analytic study to investigate this issue in Criminal Procedure Code approved in 2013. The results shows that evident crimes are committed in presence of judicial officers, and other crime are categorized as non-evident or semi-evident crimes. Even citizenship rights focuses on rights of defendant in evident crimes which is stipulated in the law, but does not have a specific enforcement guarantee, and finally, the Iranian judicial system in defining punishment of crimes has legal vacuum.

Keywords: Evident Crime, Criminal Justice, Iran.

Resumen

Uno de los fenómenos en el área de los derechos es la variedad de los delitos. Lawyers divide crímenes en diferentes categorías para resolver el problema con fallas de cuenta. Una de las principales divisiones es evidente y no-crímenes. En el caso de que se trate de un delito y de un crimen ilícito, sólo es probable que, en el caso de la infracción del procedimiento, de la investigación y de la persecución del crimen es frecuentemente realizada por los tribunales judiciales, y la autoridad judicial judicial interfiere en el proceso de persecución desde el crimen es evidente y las razones contra el defensor son más, y la reunión de la evidencia y el análisis de estos son más en el caso de que se trate de un delito de violación de los crímenes de los derechos humanos, el Gobierno de los Estados Unidos, , que puede estar en una breve brecha de la restricción y la infracción de los derechos y las freedoms de individuales. Esta investigación es un estudio descriptivo-analítico para investigar este problema en el procedimiento de procedimiento de procedimiento previsto en el 2013. Los resultados muestran que los delitos se vinculan en presencia de los tribunales judiciales, y otros delitos se categorizan las no-evidentes o los semi-crímenes. La mayoría de los derechos de los derechos de derechos de defensa de los crímenes que se han estrechado en la ley, pero no tienen una aplicación específica de la seguridad, y finalmente, el sistema judicial de gobierno en caso de castigos de los crímenes ha legal limpio.

Keywords: Evident Crimen, Criminal Justice, Irán

Resumo

Um dos fenômenos na área dos direitos é a variedade de crimes. Advogados divididos em diferentes categorias, a fim de resolver o problema com juiz de falha. Uma das principais divisões é evidente e crimes não evidentes. Apesar de muitas tentativas para definir evidente que não há qualquer definição óbvia crime, mesmo no processo penal aprovada em 2013, a apenas tipos do mesmo mencionado no artigo 45. A respeito, comprovando o crime evidente e não-evidente só é possível sob a Lei de Processo Penal de aprovado em 2013, uma vez que a investigação e repressão do crime é muitas vezes realizada por oficiais de justiça, e até mesmo autoridade legal interfira em processos processo desde o crime é evidente e Razões contra réu são mais, e a recolha de provas e análise deles é mais Mais fácil do que crimes não-evidentes, Direito Processual Penal do Irão aprovado em 2013, é semelhante a outros países, devido às fortes evidências contra réu e seu / sua venture, tem dado especial tribunal Autoridades oficiais, e não considerem observar certas formalidades Necessary , que pode ser que haja uma violação grave da restrição e violação dos direitos e liberdades dos indivíduos. Esta pesquisa é um estudo descritivo-analítico para investigar esta questão no Código de Processo Penal aprovado em 2013. Os resultados mostram evidente que os crimes são cometidos na presença de oficiais de justiça, e outros crimes são classificados como crimes não-evidentes ou semi-evidente. Mesmo versa sobre os direitos dos direitos de cidadania dos réus em crimes evidentes estipulado que está na lei, mas não tem uma garantia de execução específica, e, finalmente, o sistema de justiça iraniana na definição de punição de crimes têm vazio jurídico.

Palavras-chave: Crime Evidente, Justiça Criminal, Irã

Introduction

In criminal law, crimes are divided into different types. In a kind of division of crimes based on the material and the moment of observation, divides into evident and non-evident crimes. The basis of evident crime is its extraordinary and urgent process, with the minimum legal formalities (Ansari, 2001). There is a discrepancy between lawyers and law professors in defining evident crime's punishment, but generally means, a crime which has begun to occur or a short period lasted from its occurrence, so that the effects and evidences of the crime can prove its attribution to the subject, while non-evident crime occurred a long time ago which urgent accessing to evidences is impossible and needs more time (Ardebili, 2000).

In evident crime perpetrator has more brutality and the reasons are stronger against him/her, therefore jurisdiction of the powers of the judiciary is even more. Since there is not an obvious definition for evident crime, most of the time, legislators have merely defined to types of it which are not the real crime as a whole, and only are considered as crime. Therefore, the urgent and quick approaching the crime and perpetrators is for securing social order which requires governments and experts try their best in lawmaking, using technology and other relevant sciences, for the detection of crimes. Since Iranian laws are based on Imam's jurisprudence, without apparent Jurisprudential basis for evident crime, the commitment of crimes is only conceived as "demonstrating to sin", "publicly committed sin" or "manifestation of sin".

Criminal law, by categorizing crimes, criminals and punishments, seeks to deal with justice in various ways, in which both individual and social justice are respected. Therefore, divides crime into continuous and immediate; simple and compound; crimes against persons, against property, and against public security and health; evident and non-evident. Evident and non-evident crimes are different in prosecuting, evident crimes are persuaded by judiciary thereby giving them a duty to do so without the authority of the judicial authority, to take action and collect evidence of crime and preserve the effects of crime, in order to speed up proceedings. To achieve this goal, the crime must be accurately recognized and its hidden parts must be clarified and duty of executors to be precisely determined in this regard, as crimes and their instances are evident, their judgments and prosecutions can be decisively done.

Moreover, since the subject of crime has been neglected in most previous researches. The present research by descriptive-analytic methods try to clarify the exceptions from performance of officials and judicial authorities and the lawyers, in Iran's criminal law.

Definitions

Crime

"crime" in the word means "sin" (Beheshti. 1993), and in general, the behavior which make perpetrates be punishable. Different definitions are due to different philosophical, social, criminological, ethical and religious perspectives through crime. For example, religious law considers it as a prohibited affairs which Allah determines punishment, prohibited everyone in doing them (Odeh, 1428).

Lawyers in different countries almost present same definition for crime. For example. Crime is "a doing which is harmful for public order, peace and tranquil and law provides punishment for it" (Nourbia, 2003), "a practice which law estimates punishment for it" (Afrasiabi, 2003).

Savayeh, a French scientist, describes the crime as "a practice which law determines punishment for its doer" (Okhovat, 2006).

The definitions which have been presented so far are for criminal crimes which are different from civil crimes. Scholars define civil crime as an affair which causes civil liability (Mohseni, 1996). The major difference between criminal and civil crimes related to their enforcement guarantee, enforcement guarantee of criminal crimes is punishment, penalty, while enforcement guarantee of civil crimes is the extradition of property and payment for damages (Ali Abadi, 2006), although in other aspects are different too (Validi, 2003).

Evident crime

the kind of division of crimes is based on the material and the moment of observation, divides into evident and non-evident crimes. The basis of evident crime is its extraordinary and urgent process, with the minimum legal formalities otherwise it deems as a violation from right (Ansari, 2001). There is a discrepancy between lawyers and law professors in defining evident crime, some of them are as below.

- The evident crime occurs in front of crime detector or a group of people, like a pugilist who bite and wound the opponent's ear, even the crime is not in front in of people but its effects appear immediately after occurrence. If the guilty person immediately identifies as culprit, or, at the time of occurrence remains obvious signs of crime, and their belonging to the culprit is determined, or s/he intends to escaped (Jafari Langroudi, 1999).

- The evident crime occurs in front of crime detector or a group of people, (Karimi, 1999).

- Evidence crime is in the beginning of occurrence or short time has spent from it which evidences are immediately accessible against committer. In non-evident crimes after a while are found and evidences are not acceptable immediately after occurrence (Ardebili, 2000).

In evident crime the culprit is found at the place of committing crime suddenly and evidence of a crime are collected, example of someone is injured or killed on the street and in the presence of people, or motorcyclist forcibly takes a passer's bag then police arrest him/her in escaping. According to the law, evident crimes are not only referred to immediately visible crimes, but covers other ones. Therefore, evident crimes does not use only literal meaning (the crime which is observed). The definition of the crime established in Article 54 of the Public Procurement and Revolutionary Court on Criminal Matters, which states its type but not an apparent definition.

Types of evident crime

Real evident crime (subject matter)

the real crime occurs in the presence of judicial officers or immediately after the occurrence is observed by them. Therefore, types of evident crime stipulated in article 54, the following items are for real evident crimes.

1. The crime is occurred in the presence of judicial officers.
2. Immediately upon occurrence of the crime, can be observed by the judicial officers.
3. Immediately upon occurrence of the crime, is detected by crime discovering officer (Shargi, 2015).

Assumed evident crime (verdict)

in assumed evident crime, criminal action is not really evident, but the legislator considers it to be evident because of the particular occurrence evidences; in some cases, using evidences, material rules or rational arguments, attribution of criminal action to a particular person is obtained.

1. If the crime is occurred in the presence of two or more people (ordinary people).
2. Immediately upon the occurrence of a crime, he/she introduces a particular person as a committer.

There must be no ambiguity for the prosecutor, and as long as the detector is not aware of the crime, has not right to arrest a person charged with evident crime and the mere introduction of the plaintiff is not due to the fact which criminal action has occurred. For example, if the plaintiff for deceiving the officer, declare that crime is already happened, but officer by visiting the place notices that crime has been committed a few hours ago or last day, therefore, without the consent of the judiciary, he/she has not right to deem it as evident crime or arrest defendant, otherwise the defendant is fully satisfied and freely to be referred to the judicial authority to be investigated, in this case, it seems that there is no legal prohibition.

3. Obtaining clear evidence of crime or the causes of crime in the accident, near the time of commitment: if short time after the crime commitment, the signs and obvious effects of crime such as finger print, blood in crime location or on the body and / or automobile, etc., which can be related to each other were discovered, and/or tools and devices which are used in committing a crime such as a knife, a sharp shot, a gun, a stick, a key, etc. related to the criminal act, can be discovered, in such cases, if all evidences are obvious against the committer, and relation between the effect and the sign of crime and belonging of criminal material were obtained, defendant needs to be arrested.

4. If the defendant immediately intends to escape after the crime, or immediately after escaping arrests: the escape process is divided into three divisions:
(A) if the police officer detects an unusual behavior in the committer which indicates s/he intends to escape. He can arrest the committer.
(B) if the defendant has actually started escaping, this is considered as criminal act and officer has the right of arresting.
C) if the defendant's escape has ended, he/she will be arrested immediately after escaping.

5. When a defendant is a roamer, the crime detection officer acknowledges the occurrence of the crime, and tries to confirm that defendant is without residence, work and means of life. Therefore it will be deemed as criminal act, and officer can arrest him/her.

6. At the request of the landlord: If the landlord (or tenant) due to a crime is occurring inside or outside the house, (whether it is crime against the landlord himself/herself or another) and for detecting the crime commitment by permission of landlord and observing laws police officers can enter and collect the reasons for the crime and the arrest the culprit, whether in day or night (Shargi, 2015).

3. The effects of evident crimes

The commencement of proceedings by assistant to the public prosecutor or interrogator is routinely happens by "referring report". Otherwise the prosecutor or his/her deputy refers it directly to assistant to the public prosecutor or interrogator for complainant's prosecution. Even judge of public prosecutor's office can refer companies for prosecution to officers. According to clause (c) in Article 65 of the Public Procurement and Revolutionary Code of Criminal Matters, one of the legal ways to begin investigating is as below if evident crimes is committed in presence of judge.

The judge in the previous line means a judge who has competence to prosecuting crime (the head of the general court and the court of revolution and their successors) of course, the matter related to cases in which the prosecutor did not exist in the judicial system of Iran, and application of this article is only related to areas lacking public prosecutor's office (for example sector's areas) moreover in cases which files directly goes to the court. In areas where the Public Prosecutor and Revolutionary Court districts exist, preliminary investigation of crimes begin in accordance with clause (D) in reformed Article 3 of the formation of public and revolutionary courts.

First of all, it should be clarified that discovery of the crime and prosecution is by discovering officer or prosecutor?

Examining the history of legalization regarding the discovery of a crime in Iranian law, indicates that public prosecutor's office has the right of the judicial authority in discovering a crime. Otherwise, it is with the judiciary and the general court, and the prosecutor's office or the judicial authority can use general or special

officers to discover the crime. In fact, the judiciary's judges do not have the right to act as a crime discoverer, if it is needed, by instruction and under the guidance of the judicial authority, can carry out the task of detecting the crime, unless they are informed by a non-verifiable crime. In this case, they have the right to discover the crime before reporting to the judicial authority without direct supervision of him/her, and inform the judicial authority after assuring the crime commitment.

Maintaining tools, instruments, signs and reasons for crime

Article 44 of the Law approved in 2013 indicates, judiciary offices in non-evident crimes after informing the occurrence, for obtaining required order, shall declare the process to public prosecutor, and he/she after investigating the file, orders them for further investigation and taking a judicial decision. The judicial officers carry out all necessary measures to maintain the tools, equipment, signs, and evidences of crime, to prevent the escape, concealment or collusion of the culprit and immediately deliver obtained information to the Prosecutor. Moreover, if there is a witness or an informant in the crime place, the name, address, telephone number and other details of the case shall be included in the file. The judiciary in executing the article (46) of the law can only arrest the accuser if he or she has strong evidence in committing the evident crime.

Article 45 of the Criminal Procedure Law approved in 2013 also provides that the officials of the judiciary shall not be entitled to enter preliminary investigations, and, in cases of authorization, entry into investigations after the presence of the prosecutor or the interrogator at the crime place is possible only for submitting investigations to them. They do not interfere in the process unless with authority of the judiciary.

Article 90 of the Criminal Procedure Law of approved in 2013 considered preliminary investigations only as supervising a set of measures taken by the investigator or other judicial authorities in accordance with the law, considering the actions and investigations of the judiciary are so important in criminal proceedings. The limitation of preliminary investigations to the actions of the judicial authorities needs to be taken into account.

Arrest and prosecution

After collecting reason for the criminal act, the defendant needs to be prosecuted and it is possible by summing up him/her. In accordance with Article 133 of law on Public Procurement and Revolutionary Courts in Criminal Matters, "the defendant is obliged to appear in due time, and if s/he fails, s/he must declare his right excuse" The guarantee of the law execution for presence of the defendant, the prediction of his detention is by the legislator. According to Article 179 of the same law, "if a defendant who does not appear unjustifiably or does not declare his unjustified excuse will be called upon by the order of the interrogator." For detention the following conditions are necessary.

1. The defendant has been summoned.
2. The summons has been delivered to the defendant.
3. The summoning was held directly.
4. The defendant has not presented.
5. The defendant has not made an unjustified excuse for his absence.

all of these conditions must be presented together, otherwise, detention is impossible and the defendant must be summoned again.

Sometimes the judiciary for proceeding the process of detention request the detention of defendant done by judiciary officers.

Based on Article 180 of the Public Procurement and Revolutionary Court Rules on Criminal Matters: The interrogator can order the detention without defendant first being summoned in the following conditions.

A. Crimes which their punishments are by the death penalty, amputation or life imprisonment.

B. If the place of residence, place of business or the defendant's job is not determined and the investigator's actions do not result in the identification of his/her address.

C. In the case of punishable crimes in grade 5 or more, if the circumstances of the present situation are threatened with collusion or escape or concealment of the accused.

D. persons charged with organized crime and crimes against national and international security.

Finally, the judicial authority does not have the power to prosecute, apprehend, and arrest persons who enjoy immunity, except in

accordance with their constitutional requirements.

The arrest of the defendants

according to Article 240 of the Public Procurement and Revolutionary Laws on Criminal Matters, judiciary offices in evident crimes from the time they submit their investigative report to a judicial authority do not qualify for the detention of defendant, unless the judicial authority permits and if, even before arresting, the report to be delivered to judicial authority does not have the discretion to detain the defendant. But in non-evident crimes, detention is possible only with the permission of the judicial authority, even before delivery of reports. According to this article, "The imprisonment of the defendant must be sent immediately to the prosecutor. The Prosecutor is required to give his opinion in writing to the Prosecutor within twenty-four hours. If the prosecutor does not agree to the arrest the defendant, the dispute will be resolved with the competent court and defendant will be arrested within ten days until the court verdict is issued."

If the judicial authority immediately after presence or detention of defendant and before his/her arrival or presence, issuing the order, and investigations to prevent his/her escape, secrecy, and collusion or the elimination of the effects of the crime, of Article 33 of the Law on Public Procurement and Revolutionary Courts of Justice in the field of criminal affairs, if deems proper can arrest defendant for 24 under control of judicial officers, and the Judicial Officer may issue an arrest warrant after accusing and arraignment of defendant based on this article: "In evident crimes which are outside the jurisdiction of the local court, the prosecutor is required to take all necessary actions to prevent the eviction of the crime and escaping and hiding of the defendant, and do any investigation that is necessary to discover the crime and deliver the results immediately to the competent judicial authority. "

"It may be argued that the prosecutor's consent and interrogator's permanent arrest concluded that it was not possible to arrest defendant between interval of issuing arrest and prosecutor's consent, but it would appear that the defendant should be detained in such a case, since first, interrogator is not obliged to immediately send the file to the prosecutor within 24 hours, defendant's status should be clarified for mentioned 24 hours. Second, the law does not provide a deadline for the submission of a prosecutor's opinion, now if opinion of prosecutor lasts 24 hours, indeed, defendant will be arrested for 48 hours, law is also confirmed it since in H clause of Article 3 of in law of Establishment of Public Prosecutions and Revolutionary Courts reformed in 2002 talked about prosecutor's opposition for arresting. Detention immediately after issuing is executable. In order to protect individual freedoms, it should be set up a procedure for receiving the consent of prosecutor for detention". Some provisions are stipulated for the issuance of detention which is as below.

The issuance of temporary detention is not permissible, except for the following crimes, which indicate reasons, accusations sufficient for the crime.

(A) Crimes which their punishments are death or amputation, and in deliberate crimes against physical integrity, crimes which their blood money are at least one-third of the total amount of damages.

(B) Crimes which their punishment is in degree four or higher.

(C) Crimes against the national and international security of Iran, which their legal punishment is equal to five degrees and higher.

(D) harassment of women and children and pretending to be able to mitigate and harass people by a knife or any type of weapon.

(E) Theft, fraud, bribery, embezzlement, betrayal, forgery, or use of a forged document, if it is not included in clause B of this article, and the defendant has a definitive conviction for committing any of mentioned crimes.

Note: temporary detention provisions, the subject of certain laws, except for the laws on the crimes committed by armed forces since the date of entry into force of this Act is abolished.

finally, according to article 69 of the Islamic Penal Code, approved in 2013.

"Violation of the provisions of the Regulations", 30, 34, 35, 37, 38, 39, 40, 41, 42, 49, 51, 52, 53, 55, 59, 141 of this law for judicial officers condemn them for three months till one-year separation from state services. "

Local examination

Since the registration of the characteristics of the place and crime help greatly in discovering the fact, the collection of evidence and documents must not be delayed at all. Article 125 of the Law on Public Procurement and

Revolutionary Courts in Criminal Matters provides states: "Local examination and investigation are carried out by the interrogator or at his request by the judiciary. During the place examination, people who are involved in the criminal case can attend, but their absence prevents them from conducting an examination".

Whenever an investigator needs to know his or her local attitude at the crime place, the status of defendant or informants and witnesses of crime, deem necessary investigations in place of crime, in presence of the expert or parties are also invited.

As stated in the judicial officer's liabilities, the location examination should be carried out by the judicial authorities in evident and non-evident crimes, and in evident crimes, the judiciary officers examine the location without an order from the judge of the court or the investigation judge since Article 125 in law states "... and/or on his orders, by the judicial officer shall be executed" and the order of the examination of the place must be made by the judicial authority. However, there are some opposing opinions. The judicial authority can personally go to the crime location and proceed to examination or refer the case, to judicial officer.

Auditing and Inspection

If defendant arresting is not possible by prosecutor's order, in accordance with Article 137 of the Public Procurement and Revolutionary Laws of the Criminal Procedure Law, on the basis of reasons, has a strong suspicion of discovering the defendant or of the instruments and the reasons for the crime, instruct the prosecutor and inspection is issued to arrest the defendant. The article states: "Inspection of houses, closed places, as well as inspection of objects which there is strong suspicion of the presence of the defendant or the discovery of equipment, machinery, and evidence of the occurrence of a crime, by order the interrogator".

Article 150 of the Public Procurement and Revolutionary Court Rules of Criminal Procedure explicitly provides: "people's control of telecommunication services is prohibited unless it is related to the national and international security of the country or detected crimes under the terms of article (a), (b) (C) and (d) of Article 302, which provides, with the consent of the Chief Justice of the Province, by the determination of time period and frequency of the control shall be performed. Controlling of telephone conversations of persons and Authorities under article 307 of law, the approval of it is by the head of the judiciary, and this authority is not vested to others. "Therefore, the authorities cannot issue a general order and without specification. Inspection only is done by judicial officers which should have the following qualifications:

A. The addressee of the order is specified.
B. The place of entry is specified in the order.
C. deadline is specified.
D. number of inspections is determined.
E. day or night of the execution of the order is determined.

"If the defendant hides in the house of others what circumstances must be done?" what is in the basis is a strong suspicion of access to the defendant, and the place of hiding and its ownership are not important since the order of judge will be enforced and location must be investigated. According to clause C of Article 180 of the Public Procurement Law and Revolutionary Courts Act, in criminal acts states: "In the following cases, the prosecutor may order the prosecution without first issue the order of detention:

C. In the case of punishable crimes of grade 5 or higher, based on evidences and documents, there is a threat of collusion or escape or concealment of the defendant.

Preliminary investigation

Since the approval of the Criminal Procedural Code in Iran so far, it seems that the request for an investigation of the fact is not a right for the parties of the dispute. Therefore, although there is no prohibition on asking for some investigation, for example hearing witnesses, call for presence, location investigation, but there is no obligation for investigating prosecutors to comply with requests. For example, in the case of local examinations, according to Article 78 of the Criminal Procedure Code approved in 1999, the investigator does not announce the proceedings to the parties, and their absence does not prevent the location examination. Article 123 of the Criminal Procedure Code approved in 2013 considered prosecution upon the request of defendant or plaintiff. However,

the investigator does not oblige to comply with such requests since, if he refuses the request, shows that the prosecutor failed to issue a reasonable opinion that could be appealed to the competent court. The right to request the necessary investigation to disclose the truth about the parties to a criminal proceeding is not equally respected. In the case of the prosecutor, Article 266 of the law stipulates that "if the prosecutor does not complete the investigation of the prosecutor, indicates the cases need more investigation to be clarified and completed in the file. Therefore, the prosecutor is obligated to carry out investigations." meanwhile, the legislator ignored the need for the" equalization of rights "to predict the prosecutor's rights in a way that there is no equivalent to the defendant and the plaintiff.

"According to Article 3 of the Law on the Amendments to the Law on the Establishment of Public and Revolutionary Courts, the Prosecutor's Office is established only in the jurisdiction of the province. The assistant to the public prosecutor and the investigator are by two officials of the prosecutor's office. The crimes of public and revolutionary prosecutor's office of the province are not out of following cases scope.
A) Judgment by the criminal court of the province.
B) The judgment of a crime by General Court;
C) The judgment of a crime by the Revolutionary Court.

Considering crimes in clause A, preliminary investigations of crimes specifically are the responsibility of the investigator. The crimes which are subject to the jurisdiction of the Penal Court is set forth in Article 5 of the Law. The public prosecutor is very limited (i.e, the public prosecutor has the right to collect the reasons for the crime before the presence of interrogator) and he must use the interrogator and refer the file to him/her.

In crimes of clause B, although the principle is that the prosecutor has the right to investigate, the prosecutor also has the powers and responsibility of interrogation. In accordance with Note 4, Article 9 of the Law, the powers in the form of referral of the file can be delegated to the assistant prosecutor, so the preliminary investigation will be made by the assistant prosecutor. Except the jurisdiction of the relevant authorities, including the criminal jurisdiction of the province and the Revolutionary Court, which is stipulated in the law on the prosecution of other crimes are upon the general court.

Investigation of crimes stipulated in clause C, Article 3 is also by the assistant prosecutor, although the investigator is also competent, therefore, in criminal proceedings related to the Revolutionary Court, preliminary investigations will be conducted by the prosecutor.
The investigator has the right to investigate all three categories of crimes under clause D in article 3 of the law, but the authority of the prosecutor and assistant prosecutor is limited to preliminary investigations in crimes referred to clause B and C of the mentioned article.

Question 1: regarding Articles 2 and 3 in clause D, Article 3 of the amendment on the Establishment of Public Prosecutions and the Revolution court approved in 2002, if interrogator of evident crimes, begins to investigate without a prosecutor's referral, whether interrogator is allowed to continue the investigation until the end of the proceedings, in the answer it should be noted that the investigator can investigate the crimes committed in his/her presence. According to the public prosecutor's supervisory responsibility referred in clause D of mentioned article, proceedings should be immediately delivered to the public prosecutor (the Judiciary, the deputy director of education and research, 2005, p. 40).

Question 2: In crimes in the direct jurisdiction of the Penal Courts of the Province (in cases which bill of indictment has not been prosecuted) if the chief of court or the relevant supervisor witnesses the crime, can he act as an interrogator in other crimes?

The answer is, provincial Penal Courts consists of five judges, hence the observation of one of them, whether by the chief or others, does not make it be deemed as an evident crime (Judiciary, Deputy of education and research, 2005, p. 122).

Article 74 states: "The public prosecutor can attend preliminary investigations and oversee the process, but cannot stop investigations process."

Article 75 also states: "Supervision of investigations is the responsibility of the public prosecutor, who investigations are fulfilled in his/her area, although it is about something that

has happened out of their scope of responsibilities"

Article 76 states: "public prosecutor before requesting a criminal investigation from an interrogator, or giving a general investigation to the interrogator, In this case, the prosecutor is responsible for doing to do so and deliver the results to him."
of course, There are exceptions regarding preliminary research, as follows:

1. Regarding the opposition in Article 102 of the Public Prosecution and Revolutionary Law on Criminal Act, in crime against chastity the judicial authority cannot refer to investigations to judicial offices, and according to the following note, all related items are stipulated.

A) In evident crimes.
B) Crime has a private plaintiff, the prosecution should be done by the judge of the court.

Therefore, if a crime against chastity evidently occurs, judicial officers, public prosecutor, other judges enforced to prosecute like other crimes, in case of issuing the guiltiness the indictment is sent to competent court.

Article 102 of the Law on Public Procurement and Revolutionary Courts in Criminal Matters, prohibits any investigations in crimes against chastity, it seems that court judge provides a legal background for investigation only by him/her. By comparing the article and the note, it is clear that the purpose of term "judge of the court", is this files not to be investigated by other judicial officers, nor the judge of public prosecutor's office. In addition, according to note 1, 2, and 3 of this article, the amendment of the law establishing the general and revolutionary courts, which merely excludes crime in the scope of adultery and sodomy from the jurisdiction of the public prosecutor's office, otherwise public prosecutor's office is competent for prosecuting other crimes.

Secondly, the legislator in Article 285 and in notes 1 and 2 of the Procedure of Public Procuring and Revolutionary courts for Criminal Matters explicitly prohibited all judicial officers in respect of juvenile crimes and were subjected to the discretion of judges.

Question 1: Can the Provincial Criminal Court hand over some investigations to the Prosecutor's Office or Custodians?

Answer: The crimes in the jurisdiction of the Penal Courts of the Province are divided into two categories: the first, issuing indictment by the prosecutor's office of the relevant provincial prosecutor, which has the authority to investigate and do preliminary prosecution of the claim. (Part 2 of Article 14 of the amendment of the Law on the Establishment of Public and Revolutionary Courts.) Second, according to Note 3 in Article 3 of the amended Law, they are directly brought before the Penal Courts of the Province (the punishments of adultery and sodomy) regarding these crimes investigations cannot be prosecuted by the Public Prosecutor's Office.

Question 2: "Initial investigation of crimes committed by children under eighteen years old (from maturity to growth). In accordance with the note in Article 285 of the Public Procurement and Revolutionary Courts in criminal matters of the Penal Code is in the jurisdiction of the Public Prosecutor, or in the implementation of note 3 in article 3 of Law on the Amendment of the Law establishing public courts and the revolution is directly raised in the criminal court?

Answer: According to Note of amended Article 3 of Law on the Establishment of Public and Revolutionary Courts, children's crimes are directly prosecuted in the competent courts, and the child in note 1 in Article 285 of the Public Prosecution and Revolutionary Courts of the Criminal Procedure Code of the Islamic Penal Code means a child who has not reached maturity and according to Note 1 of Article 1210 of the Civil Code, the age of maturity for boys is fifteen years old and for girls nine. Therefore, if someone who has not reached the age of maturity and has committed a crime (although he or she has no criminal responsibility) the case should be handled directly by the child's court and the public prosecutor's office does not intervene in this matter.

Those who have reached the age of maturity but have not completed 18 years old, in the case of committing a crime, are not included in note 3 of article 3 of amended law and the preliminary investigation of their crimes must be carried out at the prosecutor's office since they do not deem

as a child. In a note of article 304 Public and Revolutionary Courts in Criminal Matters law has also been used as a child. Obviously, after conducting investigations in the prosecutor's office and issuing indictments for persons under eighteen years old in accordance with the note of Article 304 of the abovementioned law, will be prosecuted in the Children's Court."

Results

The present study seeks to investigate the effects of evident crimes in criminal law: According to the findings, evident crime is committed in presence of judicial officers, and other ones can be deemed as evident or semi-evident.

The growing of crimes in human societies and the complexity of culprit's affairs besides technology, the variety of crimes, increase of urbanism, control of crimes get so difficult which made many problems for human societies. The Criminal Justice Office, as administer for preventing crimes tries to do better steps to deal with this phenomenon, to both provide public security and order and keep rights and freedom of individuals. Therefore, needs to increase the scientific and professional capacity and organizes and coordinate with competent criminal prosecutors.

The investigating evident crime is based on speed and interfering without legal formalities. Of course, the result of limitation of individual freedoms is for benefits of society and public order, consequently, the expansion of government power, in particular, police officers.

The rules of evident crimes, in most laws, are similar in many countries. Thus, lawmakers have developed the powers of the judiciary, the need for quick dealing is, preventing the perpetrator from escaping, collecting and maintaining tools and evidence of a crime. To carry out these actions, judicial officers can arrest and supervise the perpetrator and even enter the his/her house for research.
Therefore, the evident crimes are of two types, real and assumed, real evident crimes mostly are committed in presence of official officers and assumed evident crimes have not committed in presence of official officers or people but according to some evidence legislator deem it as evident.

Many factors and authorities interfere in forming a criminal case, and if they all come together lead the process through fair justice, judicial officers play an important role since the from the discovering the crime till the end of prosecution which is executing judgment has the authority in prosecuting a legal case.

When a person is convicted in violation of the privacy of others and norms recognized in the Criminal Code, people in society expect the government to prosecute and punish the culprit in order to respect the rights of other members and secure the order of society. The authority is given to the government is delegated to the judiciary and the authorities are according to Law.

In order to achieve this purpose, wider authorities are given to judicial authorities, they can enter the houses and other places for the inspection and recording of objects, and evidence of crime without the issuance of the judicial order. Therefore, they are fully aware of evident crimes for fulfilling required prosecutions. Article 15 of the Law on Public Procurement and Revolutionary Courts of the Judiciary approved in 1999 defines the judicial officers under the jurisdiction of the judicial authority in detecting and conducting preliminary interrogation and preserving criminal evidences, preventing from defendant's escape and hiding, issuing bills and the execution of judicial decisions in accordance with the law.

In accordance with Article 44 of the Public Procurement Law and Judiciary Code of Criminal Procedure, the judicial officers take necessary steps in order to preserve signs and evidence of crime, and prevent the escape of defendant or fulfill the investigations, then immediately inform the judicial authority. hence, they possess wider authorities in evident crimes than non-evident crimes they can arrest defendant if the crime and evidence are obvious which should be delivered to the judicial authority in 24 hours.

In accordance with article C in Article 89 of the Code of Civil Procedure, the General and Revolutionary Courts for Criminal Matters, in evident crimes if the interrogator be as observer of crime, immediately inform the public prosecutor from proceedings, According to the Iranian legislators opinion and provisions of clause J in Article 3 of the Public Courts and Revolutionary Revolution approved in 2002,

discovery of a crime is by judicial authority, and judge is obliged to consider the reasons for the preliminary investigation.

Of course, in crimes within the jurisdiction of the Criminal Court provinces in clause A, preliminary investigation of crime is the responsibility of both interrogator and public prosecutor considering that legislator delegates the authority of prosecuting, capturing and detaining some individuals with political, parliamentary and judicial immunity to judicial authorities and officers.

The implication for further researches

1. According to criminal procedure code, executive officer is general and special. Most of the criminal files whether with announcing crime or declaring complaint are send to judicial authorities by police officers, since police has twenty five duties which one of duties of is performing executor of judicial authority, besides the lack of specialized training in responsibilities, separation of the police from the judicial police, in practice, the police officer faces a large volume of legal cases, which causes carelessness, influence, distrust, violation from people's rights. The issue requires the judiciary to have strong, powerful, independent and efficient execution.

2. The enjoyment of judicial officers from trust, public respect, and the need to use the supportive and organizational mechanisms in relation to the duties entrusted to them, they must recognize and respect the laws that have sworn to protect, it is necessary to design and implement knowledge-based programs and during special training courses for official officers. So that they can have accepted behavior because there is no clear evidence that punishment is known to be evident and unobservable, and have a significant impact.
3. Determining the guaranty for the enforcement of penalties in violations of rules and regulations regarding the treatment of evident crimes and their perpetrators and the guarantee of the implementation of punishments in case of violating the regulations.

4. Although it is fruitful to provide solutions to improve law enforcement at the time of the crime, we must not forget that we have to spend more and more time and power for preventing crimes. Advanced criminal policy systems over the last two decades have increasingly focused on evaluating crime prevention and control programs and have provided adequate funding for conducting investigations.

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