



Iran's Penal Policy for Incomplete Crimes

Abolghasem Khodadi *¹; Mir Reza Salimi ²

¹ Assistant Professor, Department of Law, Shahed University, Iran

² PhD Student in Criminal Law and Criminology, Shahid Beheshti University of Tehran, Iran

*Email: a.khodadi@gmail.com

<http://dx.doi.org/10.18415/ijmmu.v6i4.1223>

Abstract

Incomplete crime is one of the unfinished crimes and differs from its similar concepts namely impossible crime and attempting a crime. By examining Iran's penal policy we can say that the legislator's view toward this type of crime is shaky. This lack of integrity, both within the framework of the Public Penal Code of 1352 and in the context of post-revolutionary laws, has led to divisions in judicial and doctrine process. In the current legal order, however, we are faced with two articles 613 of the Ta'zir Law of 1375 and 122 of the Islamic Penal Code of 2013. In this article, while criticizing different viewpoints, two views have been presented. Firstly, in accordance with Article 122 of the Islamic Penal Code and its note, the incomplete crimes cannot be punished. Second, despite the implicit abolition of Article 613 of the Ta'zir Law of 1375 for commencing the premeditated murder, this Article still appears to be valid in the case of incomplete crimes and, consequently, by reference to this Article, the incomplete crimes are punishable solely for premeditated murder.

Keywords: Unfinished Crimes ; Incomplete crimes ; Attempt; Impossible Crime ; Penal Policy

Introduction

In the criminal course and in the stage of transition from thought to action, the perpetrator may fail to accomplish his purpose and doing or abandoning his action be the same. At this point, we are dealing with crimes known as unfinished or incomplete crimes. The ancestors were not alien to the concept of incomplete crimes. As in ancient Rome, incomplete crimes were regarded as equivalent to complete crime. (Gassin, 79, 1392). These crimes are called unfinished because they are not a complete crime, but are done in order to commit a crime. The perpetrator has taken steps to finish the criminal act but has failed to deliver the results under certain circumstances. (Mehra, 202, 1392) From the moment a person has the idea of committing a crime in his mind and the has the desire to commit a crime, until this point, he is only thinking of committing a crime and according to the general principles of criminal law, he cannot be arrested for his thought. (Beccaria, 64, 1393)

After committing the criminal intent, which constitutes the person's internal reflections, he commits the preparations for committing the crime. He then enters the executive phase of the crime. These phases are also referred to as the criminal cycle or the course of the crime realization. (Chawla, 2006, 1)

There are 5 modes imaginable during the executive phase:

1. Committing a crime entirely (Complete Offence)
2. Voluntary renunciation of perpetrator during executive operations
3. Involuntary renunciation of perpetrator during the executive operation that is the attempt.
4. Completion of the executive operations and the impossibility of achieving the result due to the judgmental or subjective characteristics, which is the impossible crime.
5. Failure to do so due to unforeseen circumstances and situations, despite the fact that the individual has completed the criminal executive operation while achieving the result was possible. This is the case of inchoate offence.

The main subject of this article is the analysis of Iran's penal policy towards the fifth state that is the inchoate or incomplete offence. The penal policy is understood as a practical reaction in the form of punishments against the current action or omission that expresses opposition to human values shaped in public order. (Lazerges, 1382, 10) In other words, the establishment of laws on the determination of offences and the type of responses adopted by the legislature to deal with the phenomenon of crime is called penal or criminal policy (Salehi, 36, 1387). This article first examines the history of legislation on incomplete crime before and after the revolution. By examining the historical evolution of legislation in criminal law, it becomes clear that there is a wandering criminal policy regarding the inchoate offence.

Adoption of any policy against incomplete crime requires a thorough understanding of this type of crime. Therefore, in the second part of the article, a detailed definition of incomplete crime and its constituent elements is provided. Then the relationship between this type of crime and similar concepts such as the attempt and the impossible crime is examined. But in the final section, it is tried to examine Iran's criminal policy in the new criminal law order. In fact, the main question in this article is whether incomplete crime is punishable by the legislator of criminal law? Lawyers' views on this question differ. In this article, while explaining their different views and criticisms, this is another testimony to this wandering criminal policy. An appropriate answer is provided under the Islamic Penal Code of 2013 as the last will of the legislator and Article 613 of the Ta'zir Law of 1996 as the accepted theory of the scholar.

First - The historical evolution of incomplete crime in Iranian criminal law

Investigating the historical evolution of Iranian criminal law can be divided into pre- and post-revolutionary criminal laws. The most important pre-revolutionary criminal laws are the two general penal code 1304 and the general penal code 1352, which will be considered on the first part, and then on the second, the post-revolutionary criminal laws will be studied.

1- Criminal Laws before the Revolution 1357

In the legislative history of public criminal law in the first criminal response to unfinished crimes, we come across Article 20 of the Penal Code 1304. The article stated about the attempt to the crime: "Whenever a

person intends a crime and attempt to do it, but because of external barriers in which the agent has no effect, his intention shall be suspended or ineffective and the crime shall not be committed, the perpetrator will be sentenced to the minimum punishment imposed by the crime itself and ... "Given that the legislator made no distinction between incomplete crime and attempt a crime, so some believed during the rule of this law that the legislator through the framework of Article 20 adopted in 1304 has begun to criminalize crime and inchoate offence. In both cases, the perpetrator has failed because of occurring some barriers beyond his will. (Mohseni, 188, 2, 1382) Of course, this is not an error free. Because applying the punishment or criminalization requires legal clarity. For this reason, some, against this view, argued that Article 20 was not applicable to inchoate offences. The thing can be learned by reference to Article 20 is that the action under Article 20 can be punishable if the offense does not accomplished due to external barriers to which the agent has had no influence. While the crime may be ineffective as a result of the perpetrator's inexperience. This lack of skill is an internal matter. Therefore, incomplete crime cannot be punished in the context of the material provided. (Sane'i, 358, 1382) In other words, if the failure to obtain a result in an incomplete crime is due to an external agent, Article 20 applies. In this case, the opinion is challenged that Article 20 is about the attempt of executive operations while the suspending of intention is the same as the attempt phase, not the incomplete crime in which the executive operation has been finished. After reforming the General Penal Code in 1352, the wording of Article 20 was repeated with slight modifications. The legislator reformed Article 20 by accreting a note to Article 20 to introduce new innovations. Article 20 states: "Everyone who intends to commit a crime and attempts it, but due to some external barriers in which the agent has no influence, the criminal intention is suspended or ineffective and the crime is not completed, the perpetrator will be condemned as follows:

1. The death penalty shall not be less than ten years in prison, and so on.

Note: If the acts committed are directly related to the commitment of the crime, but in the material respects that the perpetrator was unaware of, the fulfillment of the crime would be impossible, the act is considered attempting a crime. "

As the legislator once again, in reforming the General Penal Code 1304, left unsaid the question of the distinction between an attempt and an inchoate offence, the divergence of opinions still remained in the doctrine. Some argued in the light of Article 20 of the Reform Act that they were not punished since the incomplete crime has no punishment. (Ibid, p. 359) Although this interpretation has been in line with the presumption of innocence and is dependent on the intention, it also appears that the presumed reformed Article 20 which fails to obtain the result due to an internal agent does not cover something like a lack of skill in shooting. While it seems in the incomplete crime that there is no distinction between voluntary and involuntary non-occurrence. That is to say, in the case of inchoate offence, the failure to obtain the result can depend both on the will of the perpetrator and on the other. But some also cited the statute used by the legislator, such as "the ineffectiveness of intention", to punish the punishment of the incomplete crime under Article 20. (Ali Abadi, 124, 1378). In addition, because the incomplete crime is accomplished in terms of the constituent elements of the crime, it is distinct from the attempt and resembles the attempt in the absence of the desired result, and because of this similarity, Article 20 on reforming, has introduced the incomplete crime in the same row of attempt. Then interpreted the intention to be ineffective in the first sense, and the intention to be suspended in the second sense, and both were sentenced in the same penalty. (Sedarat, 210, 1342)

In evaluating these two views, it can be said that although the incomplete crime is similar to attempting a crime in terms of failure to achieve the result, but the fundamental difference in the executive operations precludes the distinction between the incomplete crime and the attempting the crime. On the other hand, the implementation of Article 20 on the incomplete crime is in line with obscuring the legal silence whose evil consequence violates the presumption of innocence and the principle of the lawfulness of the crime and punishment.

2- The Criminal Laws after the Revolution 1357

With the occurrence of the Islamic Revolution in 1357, the Criminal Law changed. The Law on Islamic Penal Code adopted in 1361, in Article 15, under Chapter IV, on the attempting a crime, stated: "Everyone who intends to commit a crime and attempt to commit it, but because of external barriers in which the agent has no influence, his is suspended and the crime is not completed..." In this law, by omitting the term ineffectiveness, only this premise has been mentioned that the intention to commit a crime is suspended. Obviously, by deleting the term ineffectiveness of intention, the diversity of views are increased, and more importantly, it is not clear what the legislator's intention was by removing the term ineffectiveness of intention? While we know that the dangerous condition of the perpetrator in the incomplete crime is much greater than that of the perpetrator attempting a crime. Also, objectively and materially, the act of the one who has continued the executive operation to the end, but his intention remains ineffective, is far more harmful than the one who merely attempted the executive operation. However, this wandering penal policy continued until the problem was doubled in 1370.

In 1370, the Islamic penal legislator predicted the rules for attempting a crime in Article 41: "Whoever intends to commit a crime and attempts to commit it, but the crime is not completed, if performed actions are considered crime, the perpetrator will be sentenced to the same penalty." In this law, the legislator's approach completely questioned the basis of all instances of unfinished crimes. In other words, in the context of the law 1370, unfinished crimes, including the inchoate offences, could not be punished unless the same amount of committed act is crime.

Finally, in the last will of the legislator in 1392 under Section II, the first chapter of Article 122 states about attempting a crime: "Whoever intends to commit a crime and attempts to commit it, but by an involuntarily agent, his intention remains suspended, he will be punished as following:

A) for offences punishable by hanging, permanent life imprisonment or discretionary imprisonment from first to three degree, or discretionary imprisonment degree four, etc."

The third part of this article will examine the legislator's view on the Islamic Penal Code of 1392. But in summing up the historical investigation of inchoate offence, it can be said that first of all there is confusion in criminal policy against unfinished crimes, especially inchoate offences. Secondly, it seems that this confusion is due to a lack of understanding of the concepts of unfinished crimes, including inchoate offences.

Second – Definition of incomplete crime and its relation to similar concepts

Any criminal policy on incomplete crimes depends on a proper understanding of this crime. This recognition, on the one hand, goes back to the precise definition of this crime and its constituent elements, and on the other hand, it depends on understanding the differences of this crime with other instances of unfinished crime, namely an attempt and an impossible crime. In this section of the paper, these two issues are discussed.

1. Definition of incomplete crime and its constituent elements

Inchoate in the word means infertile, sterile, and fruitless (Amid, 733, 1342), but in the term it is a crime that has all the elements of the crime but due to some reasons the person doesn't achieve the desired result (Ja'far Langroodi, 1540, 2, 1378) In other words, the perpetrator completes the executive operations of the crime, but for the unexpected reasons, his actions are ineffective. Like someone trying to kill someone, so he uses a time bomb to kill the person at a certain time, but the person does not pass there, and he or anyone else will not be harmed by the bomb. While committing all executive operations of the crime to accomplish his criminal intent, but his work remains fruitless. (Walidi, 221, 1388) In other words, in the inchoate offence,

one must pay attention to the consequences of the crime that has not been achieved by the perpetrator despite the fact that the executive operation has been completed. In fact, although the executive operation is completed, the latter component cannot be achieved.

The material element of the incomplete crime is as follows:

- 1- The executive operation has been completely finished. Like throwing someone into the sea and the victim doesn't know how to swim but a third person rescues him. Here, the perpetrator has completed his criminal operations. In other words, the perpetrator must have fulfilled all criminal acts in the material sector.
2. Ineffectiveness of the actions of perpetrator and failure to achieve results. It is like shooting at someone but not targeting him because of the external factors.
3. Failure to obtain a result is due to external factors in which the agent's will is not included. External factors can include a barrier with an internal origin, such as a lack of skill which is outside the person's will, and an external barrier, such as third-party involvement. In addition, in the inchoate offence, the perpetrator cannot refuse his intent since he has completed the criminal operations of the crime.

But regarding the spiritual element of the incomplete crime according to Article 144 of 1392, it can be said that the perpetrator must have the intention to commit a crime. Consequently, the one who commit an inchoate offence, like the attempt, must have the intention of committing a certain crime, and the attempt for an indefinable crime seems unlikely. Therefore, first of all, the definite evil intention is necessary for incomplete crime and it is not possible to commit an incomplete crime in absolute crimes. Secondly, in unintentional offences it is not possible to accomplish an inchoate offence.

2. Difference between inchoate crimes and other unfinished crimes

Another example of unfinished crime is attempting a crime and an impossible crime. Each of these two concepts has differences with the inchoate offence. A proper understanding of these differences is essential for the interpretation of criminal law, especially what will appear in Part III of this article.

2-1 Difference between incomplete crimes with an attempt

Although inchoate crime is classified under unfinished crimes, but is different from its similar concepts, including an attempt and impossible crime. In attempting a crime, though, the perpetrator has some similarities with the inchoate crime in terms of the intention to commit the crime and failure to obtain the result, but the major difference between incomplete crime and an attempt is in the material element. (Farhudnia, 164, 1381) The person attempting the crime does not fully perform the crime and stops in the middle of the action. His halt is caused by an unintentional factor. In other words, a third party, such as the police, is preventing the completion of the executive operation of crime. While in inchoate offence, he or she completes all of the executive operations of the crime and, for unexpected reasons, he fails. Whether this failure is a result of one's lack of skill or a third element. In other words, the distinction between the attempt and the incomplete crime depends on the result of the crime. (Sami'i, 49, 1348) Moreover, contrary to an attempt, in which the intention of the perpetrator is not definite and conclusive, in the inchoate offence, this intention is clearly visible. So the dangerous state of one committing the incomplete crime is definite and clearly achievable, but at the attempt, this dangerous state is uncertain and suspicious because the act has not yet been fully executed and it is not clear what its purpose is. For example, when someone points the gun to another, one cannot say that he is definitely going to kill him, but he may want to threaten the other. But if he

shoots and cannot kill him due to lack of skill, certainly it can be said his intention was murder and there is no doubt that he is in a dangerous situation.

2-2 Difference between the incomplete crime and an impossible offence

In the impossible offense, the perpetrator first intends to commit a certain crime, then he enters the executive operations of the crime by providing preparations, but because of the absence of the subject or the temporary absence of the subject, rationally the outcome is not possible. (Garou, 257, 1344) The impossible crime is similar to the incomplete crime in that he has committed a criminal act and has performed all executive operations and ultimately does not yield a criminal result. (Naqdinejad, 130, 1390) But apart from this similarity, the impossible crime has a major difference with the inchoate offence; the most important difference between the incomplete crime and the impossible crime is the failure to obtain the result. As such, it has not been possible for the perpetrator to obtain the result rationally. While it is always possible to obtain results in inchoate offences. On the other hand, failure to achieve results in impossible crime is due to the lack of the intended device or purpose or the lack of the necessary conditions in general. For example, shooting a dead person is an impossible crime. Since the legislator interpreted the murder as killing an alive person. Whereas, in this example, the lack of a subject means the absence of the material element prevents the completion of the crime that the legislator deems necessary. But in the inchoate offence, failure to obtain the result is for unexpected reasons such as lack of skill, carelessness, and so on. It is like throwing an arrow at a target but shooting it with an error and lack of success. (Ardebili, 335, 1392) Therefore, it can be said despite the fact that the incomplete crime and impossible crime are similar in failure to obtain the result, but in the impossible crime, performing the material operations of crime is impossible, while in the incomplete crime it is possible to realize the material element of crime.

2-3 Difference between the incomplete crimes with Error in Target

Another term comparable to the concept of incomplete crime is an error in target. For example, a person is trying to kill a certain person, but because of some factors such as a mistake in targeting or airflow or dodging the target person, the arrow does not hit the target or hits another target or someone else. Identifying the type of murder in mistaking the person or the target, which is very closely related to the inchoate offence, is a matter of debate. Some have argued that anyone attempting to shoot at person A or to throw wildfire, etc., but shot or fired at person B and killed him, the murder has been occurred additionally it is a mere error toward B (according to Article 292 paragraph C) but it is considered an attempt against person A (Mir Muhammad Sadeghi, 365, 1392). In contrast, some jurists believe that the murder is an intentional murder against B and consider it outside Article 292 paragraph C. (Aghayee Niya, 1394, 205)

To summarize these two viewpoints, it should be said that according to the writers of this article, an error in the target is one of the examples of quasi-intentional murder. Because, under paragraph (C) of Article 291, if there is any mistake, the committed crime would be quasi-intentional. Therefore, it can be concluded that the cases of murder is simple mistake under Article 292, namely murder in sleep, anesthesia and the like, as well as the crime, in which the perpetrator intended to commit the crime neither toward the victim nor the obtained result. The murder is simple mistake that there is no fault in any of it. In short, the cases of simple mistake in murder are fault free. In our case, just shooting at another person or the careless in using the weapons against humans are some instances of fault. In English law, however, a mistake in target is interpreted to be intentional murder under the rule of 'transmitted malice or evil'. However, Professor Ashworth argues, instead of citing this rule, the perpetrator be convicted of committing unintentional murder and attempting a crime (Ashworth, 2001: 122)

In British criminal law, incomplete crimes also include inchoate crimes in accordance with the law of attempting a criminal offences enacted on 1981. In other words, the incomplete crimes are explicitly the

subset of attempt (Clarkson, 259, 1390). However, the incomplete crime is different from the error in the target because in the error in the target, the criminal result has been committed against another unintended target, and including all jurists consider it punishable but in the inchoate offence, the criminal result has not been occurred against another target, and it is not clear whether such an act is punishable or not?

Third – Incomplete crime in the new order of criminal law

In criminal statute laws, the term incomplete crime does not exist, but rather a separation done between incomplete crime and similar cases of unfinished crimes, are the product of legal doctrine. Note this point is useful in future review. In the current Iranian criminal law discipline, it is important to analyze two laws on inchoate offences.

1- Ta'zir Law enacted on 1375

When the Article 41 of the Islamic Penal Code was enacted in 1370, the attempt for a crime was not a crime except in specific cases, in this context, the legislator in the Ta'zir Law of 1375 under the Article 613 referred to the attempt for an intentional murder as an attempt. Considering that Article 613 also implicitly included the inchoate offence, it is necessary to examine it. Article 613 states: "Whenever a person attempts to commit an intentional murder but the result is not accomplished impulsively, he or she shall be sentenced to six months to three years' discretionary imprisonment." The explanation is that failure to obtain the result in the incomplete crime is punishable under the law. The phrase "impulsively" is either the involvement of an external factor or the result of an involuntary factor such as stress in the shooting and the phrase "the result is not obtained" whether the intention is suspended or ineffective. However, the result is not obtained. It therefore appears to include both the concept of attempt and inchoate offence. But in response to the objection that the term "inchoate offence" does not appear in this Article, it should be said that in the Criminal Code, the term "inchoate offence" does not exist, but rather the distinction made between incomplete crime and similar cases of unfinished crimes is the result of Legal Doctrine. However, the legislator in the Islamic Penal Code of 1392 has a dual enjoyment of abrogation or non-abrogation of this article. The explanation is that on the one hand, while the Article 728 has been about the abrogated laws, does not make reference to Article 613, but on the other hand, Article 122, paragraph A, speaks of the attempt for crimes like murder. This double encounter causes a divergence of opinions. Some believe that Article 613, which also includes the inchoate offence, is still valid. Because the legislator tried to amend the Islamic Penal Code in 1392 and if he decided to abolish these cases he would do it. As a result, it is probable that Article 613 remains valid. Therefore, incomplete crime is punishable under Article 613 (Zera'at, 105, 1394), but others believe that Article 613 is abolished by enactment of the Islamic Penal Code 1392 and that only cases, which were investigating before 1392, were considered within the context of Article 613 (Aghayi Nia, 262, 1392). The result of the second view is that we can assume that the conviction of the inchoate offense can be removed from Article 613 of the Ta'zir Law of 1375, but Article 613 has been implicitly abolished by Article 122 Paragraph A. In other words, Article 613 is not valid because it is not collectable with paragraph A of Article 122 of the Islamic Penal Code enacted on 1392. Because the latter law, without explicitly abrogating a preceding law, results in its abolition due to the fundamental conflict with the provisions of the preceding law (Mohaqiq Damad, 143, 1390), also in Article 728, the Legislator as a general rule has abolished the controversial cases. In addition, the lawmaker in 1392 sought to establish the institution of the attempt for crime and set out a comprehensive ruling for all cases, including specific cases. In line with this view, the Judicial Department's General Directorate in Theory No. 7/92/963 states: "Given that the legislator in the Islamic Penal Code adopted in 1392 is establishing a special order for the punishment of attempting a crime. Therefore, all cases attempting to commit a crime are subject to Article 122 of the said law and Article 728 includes all special laws and regulations." But besides these two promises, another theory can be mentioned. The authors of this article, despite the enactment of Article 122 and the implicit abolition of Article 613 of the

Ta'zir law in the area of attempting a crime, argue the incomplete crime can still be punished. Explanation is that we first know Article 613 is just implicitly abolished, so it is only abolished within the scope of Article 122. This contradiction can be both in subject matter and in judgment. As stated, Article 613 covers two issues of attempt and inchoate offence, but Article 122 merely covers the attempt of a crime so there is a mere contradiction in the scope of the concept of attempting a crime and in the concept of inchoate offence, Article 122 has no judgement. Thus, regarding the contradiction, one can still establish the validity of Article 613 in the area of inchoate offence. Secondly, the judgment of Article 613 applies to murder, but Article 122 applies to all crimes. Referring to the legislative record on inchoate offence, the issue is clear. Article 20 of the General Penal Code of 1352 provided: "Whenever a person intends to commit a crime and attempts for it, but through external barriers where the agent has no intention, his intention shall be suspended or ineffective and the crime shall not be committed ... "It turns out that incomplete crime was a punishable offense. Article 613 of the Ta'zir Law also applies to the crime of intentional murder. With this explanation it becomes clear that the new establishment of the Legislator 92 on attempting a crime has no effect on the validity of the provisions of Article 613 of the Ta'zir Law on incomplete crimes in the crime of intentional murder.

2- Islamic Penal Code adopted in 1392

By reviewing the Islamic Penal Code adopted in 1392, we come to important conclusions about the legal penal policy for inchoate offences. This law, as the last will of the legislator, has states the judgement on the attempt in Article 122. The article states: "Anyone who intends to commit a crime and attempts for it, but it is suspended by an agent outside his will, he shall be punished as follows ..." This law that has generally defined the judgement of attempting a crime, as in the past, has not stated the judgment of incomplete crime and its distinction with similar concepts. In other words, the same wandering penal policy, which was within the framework of the prevailing laws, has been repeated in this law. This lack of frankness of legislator has led to divergence of opinions in the doctrine of criminal law. In the context of Article 122, some have argued that involuntary agents can be both individual and external and therefore the perpetrator of the incomplete crime can be punished under Article 122. (Rahdar Pour & Changayi, 69, 1390) In other words, the inchoate crime is considered to be attempting a crime and punishable under Article 122. (Kalantari and Shekariyan, 55, 1392). In line with this view, some argue that although the legislator has not explicitly named an inchoate crime, and despite the fact that it is not possible to punish the perpetrators of a inchoate offense under Article 122, which has prescribed an impermissible crime, but due to a change in the words of legislator in 1392 in the wording of this Article, which has changed it from the phrase "foreign obstacles in which the agent has no influence" Article 15 of the Islamic Penal Code of 1361 has changed to "impulsive agent". As a result, it is possible to punish the perpetrators of inchoate offenses on the basis of the material provided. (Shams Natrii, 272, 1, 1392) Others also consider no problem for the application of note 1 of Article 122 as an impossible crime to inchoate offense (Goldooziyan, 148, 1392). In other words, they believe that when a person's behavior is directly related to the commitment of the crime and in material respects that the perpetrator is unaware of, it is impossible for the crime to occur, either rationally or practically consistent with the definition of inchoate crime (Saki, 1393: 202). (Sawhani, 1391: 136), but these opinions are not error free because in the suspended crime (attempting the crime) the perpetrator stops committing the material act due halfway due to the interference of impulsive agents, while in the inchoate crime he has committed all the material elements necessary to commit the crime and he just couldn't obtain the result. How, then, can Article 122, which governs attempting the executive operations of the crime and stopping the act, also apply to the inchoate crime? Perhaps the premise of such interpretations is that it would be far from justice to leave the perpetrator of the inchoate crime without penalty. What if the lawmaker punishes the perpetrator who initiated the crime that has not yet completed the executive operations, must first punish the person pointing to the other but he had an error in target? Because he clearly proves his intention to commit a crime and is far more dangerous than the initiator of the crime, it must be said that the criminal law doesn't accept such interpretation that is in conflict with the rights and freedoms of individuals and cannot interpret the judgement just to resolve the legislative absence.

But against these views, some adhere to the principles of modern criminal law, arguing that while the perpetrator of the inchoate crime is no different from the perpetrator of the complete crime regarding that both are intentional and dangerous to the public and should be prosecuted for such acts, In particular, there is no appropriate criminal policy for inchoate crime that is not obtained due to the inaccuracy or inexperience. (Salimi, 1393: 111 and 112) (Aghayi Jannat Makan, 280,281, 1, 1392) In other words, it is difficult to determine the punishment for the one committing an inchoate crime based on Article 122 which governs the attempt for the crime, and also the note of this Article, namely for an impossible crime has some difficulties. In any way, those believing in the punishment of those committing the inchoate crime under Article 122, judge so without emphasizing the difference between inchoate crime and similar concepts. While the term inchoate crime is fundamentally different from similar concepts. The one committing the inchoate crime is a step further than the one attempting a crime. (Tawajjohi, 1394, 176) In other words, in inchoate crime, the individual ends the executive operations of the crime after intending to commit the crime and preparations, while at the attempt for the crime, the perpetrator stops at the execution stage and halfway. Whether the result is obtained intentionally or unintentionally. It doesn't make the two categories match. On the other hand, the legislator in Article 124 of the Law mentions the voluntary renunciation. The Article says: "Whenever a person commits a crime and leaves it intentionally, he shall not be prosecuted on the charge of attempting the crime ..." In other words, the voluntary renunciation of attempting a crime prohibits the prosecution. But we know that in the case of inchoate crime, voluntary renunciation is not the issue. Because, there is no opportunity to enunciate from this phase after the execution of the criminal operations. The mistake of proponents of the punishment for the perpetrator of the inchoate crime under Article 122 is that they attempt to compensate the legal absence by misinterpretation. While one of the important results of the legal principle of the crime and punishment is the narrow interpretation of the criminal law. However, regardless of the fundamental principle in modern penal law, proponents are trying to find a way to punish the perpetrator for committing the inchoate crime. Unaware that inchoate crime is first and foremost different from attempting the crime in terms of materiality and secondly, the absence of renunciation. How, then, can an inchoate crime be judged in a way that is fundamentally different from it?

The result is that in the context of Article 122 of 1392, the sentence of inchoate crime was held in silence, which means that the perpetrators of inchoate crime could not be punished with this Article. While the perpetrators of inchoate crime are more dangerous than the perpetrators of attempting the crime (Babayee, 30/1390.) Obviously the penal policy of legislator against inchoate crime is not clear, and this lack of clarity contradicts the principle of transparency in criminal law. According to Clarkson, the law should be clear and precise about the criteria it sets (Clarkson, 12, 1992). In British law explicitly, the inchoate offense is punishable under the law of attempting the criminal crimes enacted on 1981. (ASHWORTH, 1991, 396, 397). In other words, in English law under the Law 1981 for inchoate crime, a separate legal framework has been provided for similar cases, although it is the same in terms of the type of punishment (SMITH, 1988, 292, 293). In US criminal law, an inchoate offense is also punishable by interest-free criminal conduct (SCHEB, 1996, 94).

Consequence

Investigating Iran's penal policy, both in the context of pre-revolutionary and post-revolutionary laws, indicates that the legislator is confused about inchoate crime. This confusion has, in turn, led to divergence of opinions in judicial and doctrine practice. It turns out that any criminal policy on inchoate crime depends on a proper understanding of the crime. This recognition, on the one hand, goes back to the precise definition of this crime and its constituent elements, and on the other hand it depends on understanding the crime's difference with other instances of unfinished crimes. Incidentally, perhaps one of the reasons for this confusion is the lack of understanding of the criminal legislator's definition of inchoate crime and its fundamental differences with other instances of unfinished crime. Therefore, in this article, it has been

attempted to provide a precise definition of the constituents of inchoate crime and its differences with the attempt to commit a crime, the impossible crime and an error in targeting. A historical review of the criminal legislation revealed that the legislator was not explicit in its stance on the inchoate offense of Public Penal Code 1304 and continued until the Islamic Penal Code 1392. Article 122 of the recent law also provides no certain judgement about the inchoate crime. Some jurists have relied on the phrase "impulsive agent" in Article 122 and believe that the inchoate crime is punishable under this article. This is because the impulsive factor can come from outside interference, such as the police, or it may be due to an intrinsic but impulsive will, such as stress and error in targeting. Another witness to this claim is the change in the legislator's words "external barriers in which the perpetrator has had no influence" Article 15 of the Islamic Penal Code of 1361, as an "impulsive factor" of Article 122 of the Islamic Penal Code of 1392. However, it seems that the basis of the reasoning of this group of jurists is that when a lawmaker punishes a criminal who has attempted to commit a crime but has not yet completed an executive operation, first the person who has shot the other person should be punishable. Because he certainly reveals his intention to commit a crime. In fact, the perpetrator of inchoate crime is committing a crime at a higher level than the perpetrator who attempts to commit a crime. But the authors of the article argue that a legal absence cannot be offset by misinterpretation. In inchoate crime, the perpetrator has completed the execution but his intention remains fruitless. However, in Article 122 we have the expression "his intention is suspended". Clearly, this phrase only refers to attempting a crime. Secondly, the legislator in Article 124 of the same law has spoken about the voluntary renunciation while we know that in the case of inchoate crime, the renunciation is canceled, as it has committed the material element and no longer has the right to renounce it. It is by this point that a detailed understanding of the differences of inchoate crime with other similar concepts appears. Therefore, inchoate crime is not punishable under Article 122. But on the other hand, despite the enactment of Article 122 and the implicit abrogation of Article 613 of the Ta'zir Law in the area of attempting the crime, one can still be punished for the inchoate crime. Explanation is that Article 613 is merely an implicit abolition, so it is only in the area contrary to Article 122, namely it is abolished in the area of attempting a crime. But in the inchoate crime, in its special meaning, namely the intentional murder there has been no abolition. Further evidence that with a reference to the history of legislator on inchoate crime in Article 20 of the General Penal Code of 1352 it is clear that an inchoate offense is punishable. Article 613 of the Ta'zir Law also applies to the crime of intentional murder. With this explanation, we conclude that the new establishment of Legislator 92 on attempting to commit a crime has no effect on the validity of the provisions of Article 613 of the Ta'zir Law has no judgement for the inchoate offenses of intentional murder. However, it is suggested that the criminal legislator explicitly mandate the punishment of inchoate crime, especially in all crimes. Because the perpetrator of the inchoate crime has a more dangerous situation than the perpetrator who attempts to commit a crime. Since the perpetrator of the inchoate crime has completed the execution in the material sense, and in this respect there is no sense of forgiveness in committing the crime. Renunciation is possible for a perpetrator to commit a crime, so criminal policy requires that he or she is not punished if he or she voluntarily stops the act. The legislator is therefore expected to adopt a stricter policy toward the perpetrator of an inchoate crime, as indicated in English law.

References

- Aghayi Jannat Makan, Hussein. 1392 H.S. General Criminal Law, Volume I, Third Edition, Jungle.
- Aghayi Nia, Hussein. 1392 H.S. Crimes against Individuals, Eleventh Edition, Mizan.
- Ali Abadi, Abdul Hussein. 1392 H.S. Criminal Law, Volume one, Fifth Edition, Ferdowsi.
- Amid, Hassan. 1342 H.S. Amid Culture; First Edition, Amir Kabir.
- Ardabil, Mohammad Ali. 1392 H.S. Public Penal Law; Volume I, 30th Edition, Mizan.
- Ashworth, Andrew. 1991 AD. Principles of Criminal Law, New York, Oxford University Press.
- Babayee, Mohammad Ali. 1390 H.S. Clinical Criminology; Second Edition, Mizan.
- Beccaria, Sandra. 1393 H.S. A Treatise on Crimes and Punishments; Translated by Muhammad Ali Ardabili, Mizan Publications.
- Chawla, Monica. 2006 AD. Criminal attempt and punishment, new volume: deep publications, DVT.LTD.
- Clarkson, Christopher. 1390 H.S. Principles of Public Penal Analysis; Translated by Hussein Mir Mohammad Sadeghi, First Edition, Jungle.
- Clarkson, CMV. 1992 AD. Understanding criminal law, London, sweet & maxwell ltd.
- Garo, Rene. 1344H.S. Theoretical and Practical Studies in Penal Law; Translated by Zia Uddin Taabat; First Volume, First Edition, Ibn Sina.
- Gassin, Raymond. 1392 H.S. Economic Crime Criminology; Translated by Shahram Ebrahimi, Second Edition, Mizan.
- Goldouziyan, Iraj. 1392 H.S. Implementation of Islamic Penal Code, 18th Edition, Majd.
- Langroudi, Muhammad Ja'far. 1378 H.S. Advanced in Legal Terminology; Volume 2; First Edition, Treasure of Knowledge.
- Lazerges, Christine. 1382 H.S. Introduction to Criminal Policy; Translated by Ali Hussein Najafi Abrand Abadi, Mizan, First Edition.
- Mehra, Nasrin. 1392 H.S. Encyclopedia of English Criminal Law, First Edition, Mizan Publishing.
- Mir Muhammad Sadeghi, Hussein. 1392 H.S. Crimes against Persons, Eleventh Edition, Mizan.
- Mohaghegh Damad, Sayyed Mostafa. 1390 H.S. A Discussion of the Principles of Jurisprudence, Volume I, Seventeenth Edition, Islamic Science Publishing Center.
- Mohseni, Morteza. 1382 H.S. The Period of Public Penal Law; Volume II, Second Edition, Treasure of Knowledge.
- Naqdi Najad, Mojtaba. 1390 H.S. Attempt in Criminal Law; First Edition, Jungle.

- Rahdarpour, Hamed; Changayi, Farshad. 1390 H.S. Investigation of the Attempting a Crime ... In Islamic Penal Code, Legal Research Bulletin, No. 1.
- Saki, Muhammad Reza. 1393 H.S. Public Penal Law, Volume One, Sixth Edition, Jungle.
- Salehi, Javad. 1387 H.S. Penal Policy and its Relation to Criminal Policy, Transcendence of Law, No.25.
- Salimi, Sadegh. 1393 H.S. Abstract of Public Penal Law, Fourth Edition, Jungle.
- Sami'i, Hussein. 1348 H.S. Penal Law, Fourth Edition, Press Company.
- Sanei, Parviz. 1382 H.S. Public Penal Law, First Edition, New Design.
- Savalani, Ismail. 1392 H.S. Public Penal Law, Second Edition, Mizan.
- Scheb, John M. 1996 AD. American criminal law, New York, West Publishing Company.
- Sedarat, Ali. 1340 H.S. Criminal Law and Criminology, First Edition, Ma'refat.
- Shams Natri, Muhammad Ibrahim; Kalantari, Hamid Reza, Zare', Ibrahim; Riyazat, Ibrahim. 1392 H.S. Islamic Penal Code in the Current Legal Order, Volume I, First Edition, Mizan.
- Smith J.C. Hogan, Brain. 1988 AD. Criminal law, London, Butterworth & Co. Ltd.
- Stephanie, Gaston; Levasseur; Georges; Bouloc, Bernard. 1377 H.S. Public Penal Law, Translated by Hussein Dadban, Volume I, First Edition, Allameh Tabataba'i University.
- Tawajjohi, Abdol Ali. 1394 H.S. Pathology of Islamic Penal Code; Judiciary Publications.
- Turner, I.W.C. 1948 AD. The Modern Approach to Criminal Law, London: University of Cambridge.
- Walidi, Muhammad Saleh; 1388 H.S. Public Penal Law Requirements; First Edition; Jungle.
- Zera'at, Abbas. 1394 H.S. Crimes against Persons, Third Edition, Jungle.

Copyrights

Copyright for this article is retained by the author(s), with first publication rights granted to the journal. This is an open-access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/4.0/>).