



Hermeneutics of Attempt in Iranian Criminal Law

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Abstract

Investigating the concept of "Attempt" in Iranian criminal law and explaining the rule-based methodology of this concept is one of the inevitable hermeneutics of this criminal law establishment.

Hermeneutics Although not widely regarded in post-modern humanities and art texts, it can be particularly useful in the field of law, which is tied to social order, and in particular to judgment, and paves the way. And to unambiguously put readers at the forefront of the judiciary and to prevent the dissolution of judicial opinions.

In this article, the author has attempted to give a clear picture of this criminal law entity and to explain the law-based methodology for a unified understanding of the concept, regardless of the legislative history and theoretical discussions surrounding the issue. To be clear, the author of this article has achieved his goal if the readers of the article at the end of their study have all come to a single inference of the concept of "Attempt".

Keywords: Hermeneutics; Attempt; Inchoate Offence; Impossible Crime; Criminal Law

Research Methodology

This research is a descriptive-analytical research using library resources.

Background and Aim

Investigating the institution of Attempt in Iranian criminal law and explaining the systematic methodology of this concept is one of the inevitable hermeneutics of this criminal law establishment.

Introduction

Hermeneutics or the science of interpretation is a method of interpretation that attempts to systematically interpret all meaningful human actions and the products of these meaningful behaviors, especially when they occur in the form of texts. In fact, the science of interpretation is the knowledge that is "in the process of understanding an effect". It examines how meaning is acquired from various human phenomena, including speech, behavior, written texts, and

artwork. The science of interpretation with methodological criticism seeks to provide a way to "better understand" human phenomena, although a group of interpretative theorists disagree with creating and explaining "method" in the path of understanding and consider "understanding" to be an event that cannot be measured or systematized. In simpler terms, translatology seeks to find the answer to the question whether there is a way for readers of a text or viewers of a work of art to obtain a definite and definite meaning of that work or text by using that method; or That each audience has its own understanding and differs from the other 2.

Unlike philosophical texts or artifacts that allow for varied interpretations in legal texts, we are faced with rules and principles that vary widely in the academic and academic environment. The nature of legal texts, given their intimate connection with the court and the judiciary, blocks the way for multiple interpretations and interpretations. Therefore, hermeneutics can have a significant and significant place in law, especially in criminal law, which is one of the branches of public law. Referrals to the courts of justice and their inquiries

from relevant institutions (eg the consultative theories of the legal system of the judiciary in the Iranian legal structure) on these texts in cases that are not expressive and transparent. Therefore, hermeneutics can play an important and effective role in making a right and fair judgment.

One of the institutions of criminal law is Attempt, which has been the subject of widespread debate in all legal systems. In the Iranian legal system, both in the academic and legal doctrines, and in the context of the legalization and enactment of its rules and legal principles, extensive and extensive research has been carried out; This will lead to a unified view of the subject, and ultimately a clear and far-sighted view of readers, especially jurists.

In this article, far from the historical evolution of the institution of crime and legal developments, and regardless of the legal doctrine and theories of criminal law scholars and scholars, its scientific and rigorous examination and explanation in accordance with the rules governing this institution, relying We will address the recent law of the Islamic Penal Code adopted in 2013 on the subject of Articles 122 to 124 of this law.

Section One

The Concept and Nature of Attempt

According to the wording and text of Article 122 of the Islamic Penal Code of 2013, the Attempt can be defined as follows:

Whenever a person intends to commit a crime and starts committing it, he is committing a crime because of the factor outside his will. This legal definition has three essential pillars for committing a crime:

Intent to commit a crime: The first pillar, or better yet, the first condition for Attempt is the intention to commit a crime. Obviously, mere intent to commit a crime alone does not qualify as a criminal offense and cannot be considered an Attempt.

Anyone who intends to commit a crime, from the moment the thought of committing a crime to the mind of a criminal abroad, goes through what are, for the former lawyers, the so-called "way of crime" and, from the perspective of current criminal law scholars, various stages of action. It's called criminal. These steps have been described by some jurists in four stages: 1. Criminal thought or intention to commit a crime 2. Perform preliminary operations 3. Start executing 4. Complete the crime.

Today, unlike in the past, most countries around the world do not simply respond to committing a criminal act, but rather to Attempt or committing inappropriate criminal

activity (Inchoate Offence or impossible crime) because of such acts, Contrary to public order or denouncing the state of crime, it seeks appropriate punishment.

Getting started: What is a condition for the Attempt is neither a criminal intention, but a step before the committing of the material act of the crime, and not a complete execution of the criminal act; The punishment is considered.

Suspension of intention: In order for a criminal event to become an Attempt, it is a basic requirement that a person who wishes to commit a crime fully be suspended by a factor outside his or her will and will not achieve what he or she wishes. . So at the Attempt, the person intended to commit the crime, not the intention of Attempt. In other words, what he intends to accomplish is a complete criminal act but is not considered a crime under his will.

Section Two

Inchoate Offence and Impossible Crime

Given the close connection between the two concepts with the principle of Attempt, each is examined separately and applied to the rules governing the issue under the Islamic Penal Code of 2013.

Inchoate offence: Inchoate Offence is when the offender fails to act because of his or her ineptness or inadequacy or recklessness or an unforeseeable accidental cause. In this case, the requirements that arise are independent of the will of the subject. For example, the shooter has left an intention to kill another, but the shooter has failed due to inexperience or inadequacy or an unforeseen accidental cause and has not hit the target. The perpetrator has failed to achieve the end result, which is to kill the person in question; this is called a Inchoate Offence [1].

➤ **The difference between inchoate offence and attempt**
In Inchoate crime, the criminal route goes all the way to the bottom, and the criminal intent can be clearly established, while there is little doubt that the Attempt is uncertain as to the intent of the crime. Therefore, the application of the rules of Attempt in the case of Inchoate Offence is quite justified, and the aforementioned difference does not preclude Inchoate Offence from being the legislator's definition of Attempt. Clearly, Inchoate Offence can be the Attempt.

Impossible crime: Impossible crime is a crime that the perpetrator or any other person cannot do in the circumstances that exist [2].

In crime it is sometimes impossible to commit a crime, such as trying to kill someone who is already dead or

attempting to abort a woman who was not pregnant at all. And sometimes the tools used to commit a crime may be so inherently impossible to do 6.

According to Article 122 of the Islamic Penal Code, "Impossible crime", when the conduct is directly related to the crime, is Attempt and is punishable [3].

Section Three

The Punishment of Attempt

According to Article 122 of the Islamic Penal Code the punishment for Attempt is as follows:

A. In the case of offenses punishable by deprivation of life, permanent imprisonment or Prisoners from grade one to three are sentenced to grade four.

B. In the case of offenses punishable by amputation or imprisonment of the grade four to imprisonment of the grade five.

C. In the case of offenses punishable by either flogging or punishment of imprisonment of the grade five to imprisonment of the flogging or cash penalty or the punishment of imprisonment of the grade six.

Note: In the grade six- to eight offenses, there is no Attempt.

Section Four

Legal Rules Related to the Attempt

- According to Article 123 of the Single Islamic Penal Code, the intent to commit a crime, or to perform activities or actions which are merely a prelude to a crime and have no direct relation to the crime, shall not be Attempt and shall not be punishable in this respect.
- What is necessary for the Attempt is the commencement of the crime, so it is inevitable to distinguish between the commencement of the crime and the criminal intent and the commencement of the crime and preparatory operations [4].
- According to Article 124 of the Islamic Penal Code, when a person commits a crime and leaves it of his own free will on the charge of committing that crime, he shall not be prosecuted, but shall be punished if he commits the same conduct as the crime.
- In accordance with Article 124 committing a crime in the case of a person who forbids his / her will to pursue a criminal course (after committing a crime), shall not be materialized and shall be punished only if his or her actions are independently qualified. Punishable or otherwise punishable by law [5-7].
- According to the Consultative Theory of 7/7/1591 dated 7/7/93, the General Directorate of Justice of the Judiciary,

in principle, suspend the punishment for committing the offense in accordance with the provisions of Articles 40 and 46 of the Penal Code, in accordance with the provisions of Articles 40 and 46 of the Islamic Penal Code adopted in 2013 will be suspended unless the law explicitly prohibits the execution of the punishment in this case.

- According to Theory No. 1320/92/7 - 7/7/92 of the Judiciary General Office of the Judiciary:
- Since the legislature in the Islamic Penal Code of 2013 adopted a special order to punish the Attempt, therefore, in all cases falling under Article 122 of the said law, the penalties provided for in the following paragraphs of this article have been imposed, and in view of the necessity of uniformity in the judicial procedure which Article 7 of the Supreme Leader's supreme policy has been emphasized and the provisions of Article 728 of the Islamic Penal Code of 1392 concerning the abolition of all provisions and laws contrary to this law are also subject to the provisions of this Code, Because if we fail to revoke the specific cases provided for in the penal code for the punishment of Attempt, we will see the severity and severity of the punishment and its proportionality, as a result of all the provisions specifically laid down in the law specifically for the "Attempt". With the enactment of the Islamic Penal Code of 2013, the repeal of the law and the commencement of the offense of all offenses shall be determined in accordance with the provisions of Article 122 of the said Law and in accordance with Article 10 thereof.
- According to advisory theory 1368/93/7 dated 11/6/93 the Judicial Directorate General of the Judiciary simply did not initiate material operations to commit an impossible crime of inadequate nature and the material operation of the crime (cruelty) must be fully implemented so that the act committed is subject to the provisions of Article 122 of the Islamic Penal Code of 2013.

Conclusion

Hermeneutics is a criminal offense in response to ambiguities that may arise in the audience. Therefore, a proper and regular interpretation of legal entities, in particular criminal law, which is a branch of public law and is in full harmony with public order, security and convenience, can facilitate and accelerate the achievement of criminal law objectives. The author proposes to scholars and scholars in the field of law to place the present study as a basis for examining and explaining other criminal law institutions and, based on the method of the present research, to adopt the methodology of interpretation and interpretation of legal texts and to provide the basis for a better realization. Provide criminal justice.

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