

# Position of Fault in Unintentional Murder in Iran and Britain Criminal System

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## Abstract

Fault or criminal mistake has different concept in legal systems for intrinsic features (two-sidedness). Studying laws in Iran criminal system shows materials approach to criminal fault in spite of doctrine; as though, these examples are adaptable with civil ignorance in Britain. Actually, the resulted crimes by criminal fault in Iran can be known with abstract responsibility in proof of crime step by this approach toward fault examples. Articles 616 and 714 of the Islamic Penal Code, article 145 and its supplements, and 529 and 537 of the Islamic Penal Code show materialistic yet contradicted performance toward fault examples, because as article 529 has a materialistic approach toward fault, article 537 considers fault opposite to unintentional murder, and so knows it as a mental element; although, manner of adjusting the note to Article 145 of Islamic Penal Code (IPS) also shows fully materialistic approach to fault examples, legal documentary of criminal fault examples is note to article 145 of Islamic Penal Code, while this note is countermeasures of article 953 of penal code. The measurement criterion for fault is pure objective, and the materialistic causality relationship must be accomplished between these examples and the obtained results, while this criterion doesn't have any position in mental element, and materialistic causality relationship is related to materialistic element. However, criminal fault grades in Britain criminal laws are mental elements and even criminal ignorance is different from civil ignorance, and measurement criterion is a type of combined criterion.

**Key words:** Fault, Unintentional murder, Iran laws, Britain laws

## INTRODUCTION

Crimes against people physical integrity are in the group of the most important and heaviest crimes that are called "crimes" in Islamic criminal jurisprudence. The most severe result from crime commitment is murder. This criminal result will have different legal consequences based on intention and commitment behavior for the murder. Sometimes the murderer has the intention and criminal result that the committed crime is defined as intentional murder, and sometimes the criminal intended commitment, the crime is called the pure fault, but not have the obtained result that is called semi-intentional and in cases that the criminal neither has the intention not see the result of crime.

One of the most challenging and ambiguous issues for many groups including medical team and drivers is unintentional murder resulted by fault. Fault has Arabic root that means shortage. In Persian literature it means shortage, ignorance, failure, inadvertence, neglect, crime, sin, etc. in principal, fault is an ethical conception and is transferred from ethical field to the legal field (Ghasemzadeh, 2006, P:12). In legal expression, it is called criminal error. Some authors in spite of knowing protection of organization and order as the most important duty of criminal laws, announce that the conception of public order is not a constant matter and changes by time (Sane'ei, 2002, p: 54) then, model legal laws has a different horizon about traditional criminal laws in its realm. Human rights demands and social issues are the influential elements on its performance and aims. One of these demands is attention to the resulted crimes by criminal faults that even has found international image in driving crimes; as though, General Assembly approved the resolution to the duties of governments to prevent traffic accidents in 2008 (Zamani, 2008, p: 256). In addition to traffic crimes, medical crimes, related issues to the dangerous environments, and important crimes in manufacturing

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factories are mainly related to the criminal faults. These crimes have challenged data of criminal policy and traditional criminal laws about more punishment the intentional crimes. Therefore, that reason of attempt in criminal policy is significant in this field. Challenges in this case can be observed as an intensive reckless with intention intersecting with Britain and American legal systems according to ability to punish (Lefu Wine R, 2007, p: 214). The present research studies the position of fault in unintentional murder in Iran and Britain legal system. Comparative studies in criminal laws and various systems are important as the criminal laws of each country have the most excellent values of its society. Therefore, there is no doubt that each country has the maximum statistics in crimes against physical integrity particularly in crimes, and examination of the related details to these laws will prevent any abuse by offenders. In this regard, the position of fault in unintentional murders in each system needs a specific criminal policy.

## DEFINITION OF FAULT

Fault lexically means prevention of doing an action in spite of having its ability (Masoud, 1994, vol. 2, p: 1372), and its opposite point is shortage that means leaving an action for disability of doing it (Fayumi Maghari, 1984, p: 505). This means is related to the ignorance of defamation and fault (Jafari Langerudi, 1997, p: 175). The term fault in jurisprudence is mainly used with this meaning. It means leaving an action that a person is obliged to or prohibited from doing it in civil law. The first part is called negligence and the second part is called infringement (Jafari Langerudi, 1997, p: 175). This fault is both negligence and infringement (article 953 civil law). However, it is used in two different meanings in criminal laws:

- 1- The general meaning equals to the mental element and includes intentional, ignorance, and nonchalance (Mirsaeidi, 2004, vol. 1, p: 67)
- 2- Its specific meaning that is limited to carelessness, ignorance, and nonchalance and is in opposite point of criminal intention (Jafari Langerudi, 1997, p: 175). Many authors of legal laws introduced this meaning of fault as “unintentional fault” and probably “criminal mistake” (Refer to: Sane’ei, 2003, p: 490; Noorbaha 2002, p: 198; Sadeghi, 2004, p: 221)

Based on this theory, wherever “criminal fault” is used, it has general meaning and wherever “criminal mistake” is used, it has a specific meaning.

## EXAMPLES OF FAULTS IN IRAN LAWS

The examples of criminal faults or mistake in Iran laws are written in note to article 145 of Islamic penal code.

Fault is both carelessness and nonchalance. Nonchalance, negligence, lack of skills, failure to comply with government regulations, and so on is considered as examples of negligence or nonchalance.

- 1- Carelessness: it is doing an action that a careless and wise human doesn’t do it (Sane’ei, 2003, p: 221; Ardebili, 2002, p: 248). A careless is a person commits an action without common attention and forethought that makes harms. Carelessness is description of an action that prophecy, prediction, and vision are not considered in a common level. By this definition, carelessness equals to negligence. (Jafari Langerudi, 1995, p: 901).
- 2- Imprudence: it is not doing a necessary action (Sane’ei, 2003, p: 392; Sadeghi, 2004, p: 221; Ardebili, 2002, p: 248). Recognition is civil law that state Supreme Court has referred to it in one of its votes (Sadeghi, 2004, p: 221). Nonchalance is describing a problem on an action whose doer attribute the inserted harms by his/her action to someone else. It is deducted from this definition that nonchalance equals to recklessness and shows mental aspect. In spite of this lexical conceptions, in doctrine, carelessness doesn’t mean to what a careful person doesn’t do. Carelessness is considered equal to negligence. The mutual aspect of carelessness definition and recklessness shows doing of leaving the action of fault and its material aspect. It seems even that legislator didn’t use the expression “criminal mistake” and instead used fault and its examples anywhere he mentioned the materials aspect. The definition of one author can be referred to mention the difference between criminal fault and mistake that the mental element of unintentional crimes can be known as the results criminal fault by carelessness and nonchalance (Ardebili, 2008, p: 52). Therefore, it seems that the examples of criminal fault means carelessness and imprudence that are ways of showing criminal mistakes, while this material aspect in Iran legislative approach was mattered and replaced by criminal mistake. It means the possible examples in Iran criminal laws that can be used as criminal mistakes authentications are identified as criminal mistakes themselves.
- 3- Nonchalance: lexically it means taking easy, behave softly, or the same as negligence. The words “negligence”, “laziness”, or “postponement” of work are sometimes synonym and are called to the behavior that a person impose harms to someone or something by taking easy what he has been entrusted to do. The extra self-confidence of the driver who knows himself experienced and put his legs on the car’s steering wheel in the desert is considered as a type of nonchalance. The laziness of a worker at a house that prevent using

the secure tools in work by self-indulgence and causing damage to the object or person is the example of nonchalance.

- 4- Negligence: lexically it means forgetting, neglecting. Negligence is actually like a cover on the thought and heart of a human; as though, he/she stays far from the reality. Negligent is usually called a person with behavior far from wise and common order but she/he is unaware of it. For example, a worker in deep of this thought for the economic pressure of life that gaze on the far point and doesn't have attention on the cutting system while working and hams another person or thing is called negligent (Nabipour, 2015, p: 100).
- 5- Lack of skill: skill includes material and spiritual dominance of a person on the origin and the manner of an action with his/her intention to do, and lack of skills means lack of essential intellectual and technical ability to the mentioned action. For example, a doctor than prescripts in the non-skilled field, and lack of technical skills is when a person doesn't have efficient ability to do an action such as a driver without background and experience of driving. (Sadeghi, 2004, p: 221)
- 6- Failure to comply with government regulations: this doesn't have a civil concept and its criterion is the references that determined these systems. (Sane'ei, 2003, p: 394; Sadeghi, 2004, p: 223)

## FAULT IN UNINTENTIONAL MURDER IN ISLAMIC PENAL CODE

Legitimate crime history by criminal mistake retunes to the general penal code approved in 1925 referring to articles 174 and 177. The logic of these articles shows that the legislator considered the two-sidedness of criminal mistakes examples, but these examples were written as fault in note to article 336 in Islamic Penal Code, approved in 1996. The doctrine knows this note as the examples of criminal mistake, while first that article 336 is a total civil article (Advisory Opinion No. 1362/9/21-4466/7), and undoubtedly the stated fault examples in this note can be only known as allegorical examples of civil faults. The stated examples in note of article 336 of IPC, approved in 1996 have brought besides each other with the same width without any difference in their degree of punishment. In addition to these examples, in other various laws such as the law for how to prevention infectious diseases and disciplinary penal code in oil industry, approved in 1957, and cases 21 and 22 of the related criminal laws to railway, approved in 1941, just two mistakes of ignorance and imprudence are mentioned (Nabipour, 2015, p: 94). Note of article 8 of the recent law indicates the materials aspect of ignorance as leaving an action. The variety of legislator words in various articles in the previous law shows the type of mistake or fault is not important for

the legislator, but it is important to see the other faces of fault by industrial advances and evolutions that haven't had any background by now, and this issue mustn't be neglected from the newcomers' type (Nabipour, 2015, p: 94). This idea in new law of IPC, approved in 20014, was mentioned. Legislator in article 291 of this law suffices to the word "fault" without limiting it to specific examples. In IPC, approved in 2014, in article 145, negligence is mentioned as a sub collection of imprudence. In this note, legislator used the word "and so on" to determine the lack of fault punishment. Mistake, ignorance, forgetfulness, and so on can be the other examples. Maybe cases such as imprudence, negligence, carelessness, laziness, and forgetfulness can be known as samples of fault. However, whether other faces of fault can be found in the out world or not need to think, because there are many other synonyms or translation of the present words. On the other hand, non-definition of the present words makes the other words to be replaced (Nabipour, 2015, p: 102). Totally, it can be claimed by examining the other examples of criminal mistake such as ignorance that they are action or leaving the action that are evaluated by objective evaluation criterion. The author of all examples knows fault rooted from action or leaving the action or infringement or aggression of articles 952 and 953 of civil law. Consequently, they know them adaptable or civil ignorance in Britain laws with this difference that wergild has been predicted as punishment for these examples.

Based on article 616 of IPC, if an unintentional murder happens for ignorance and carelessness or through doing an action without skill or failure to comply with governmental regulations, the causer will be sentenced to 1-3 years and paying wergild if the guardians demanded, unless the fault was pure. The crime of this subject is tied to fault and the action of the criminal is done on a specific victim.

Based on article 714 of IPC, whenever the carelessness, imprudence, or failure to comply with governmental regulations, or lack of driver skill (including all land, water, or air vehicles) or the or any motor vehicle operator commit an unintentional murder, he/she is sentenced to 6 months to 3 years and also paying wergild if the guardians demand.

Examining articles 616 and 714 of the fifth book of law of imprisonment and punitive damages, and article 2951 of IPC, the following results are obtained:

- 1 Based on article 295 IPC, when a person leaves an undertaken action or a specific responsibility by law, and caused a crime for this ignorance as he/she was able to do it, the made crimes id documented and is intentional, semi-intentional, or pure mistake such as a mother or a nurse don't breastfeeding a baby, or the doctor or nurse will leave their legal duty.

- A) In these cases, carelessness, and imprudence and etc. is stated without doing or leaving an action and consequently damage is documented to these mistakes by a material casualty, while the satisfied causal relationship in mental element is a legal causal relationship not a material one (about legal causality relationship, the behavior leads to the obtained result from the punishment mental state such as criminal fault or mistake).
- B) Based on the principle of mental element referring point, the intentional committed crime place is to these examples and the referring point goes to mistake implicitly. However, mistake in its general meaning here means cognition the right from wrong and not asking the result. This type of mistake is assumed if obtaining result is not mentioned. This type of causality and referring point relationship dominates on material element. Therefore, the material element being has been confirmed to be the example of criminal mistake (fault) in Iran laws.

The conception of criminal mistake and fault has face with more ambiguity in Islamic penal code, approved in 2014. On the other hand, the logic of article 5372 shows the mentality aspect of fault opposite to intentional, while article 145, its note, and also article 529 show the material aspect of these examples.

## FAULT IN IRAN JUDICIAL PROCEDURE

Legislative approaches and the present ambiguities in them has crystalized in judicial approach. The exact negligence in manuscript of the previous laws by legislator was objectified by judicial policy in logical extraction of judgement process. Contemplation in votes shows this reality that using the words “complete cause” is the reason of confirming the legislator idea about the materials aspect of mistakes. On the other hand, the mental element is not a problems to be obtainable by the technical experts. In this case, the main documentary for judge decision making about the criminality of the subject have this direct reason that is the same as the formal truth and have a position in civil law not in criminal law that has internal reality in its dignity. It is not in the dignity of judgment just to satisfy to the simple conditional clause as “*if the expert had carelessness, then “A” is the crime*”. In this type of reasoning, not only the position of legal principles, justice, and legal

- 2 In all mentioned cases in this chapter when the crime is only documented to the intentional crime or the fault is by the victim, the guarantee is not fixed. In cases that the origin of crimes is documented to intentional or faults even if it is for the fault of the victim, the committer is not responsible for the transferred cases.

argument is empty, but also it shows that carelessness is the kind of behavior that expert can directly acquire. Maybe, one field of this judicial nonchalance returns to the legislator nonchalance about these crimes. When a legislator nonchalance about these crimes are up to only consider *wergild* for them that only has the aspect of compensation cost and pays by insurance and charity donors, and the imprison punishment in driving crimes except clause 1 of article 3 of law, some government revenues should become a cash penalty, undoubtedly judge negligence is inevitable in proving the mental element. A conception of fault and negligence is Britain law is examined in the following for better understanding of this anomaly.

## Fault in Britain criminal laws

Most Britain lawyers believe that negligence is defined as the separated mental element degrees and in an independent classification of crimes with negligence according to the nature and type of evaluation tool for it (Smith and Hogan, 1996, p: 96; quoted by Ahadi, 2013, p: 164). Narrowness and development of crimes are in fluctuation about the ones with Britain negligence in judicial procedures. Crimes with negligence in Britain laws can be proposed by three following cases:

- A) Motor crimes that were stated in new laws with the expression of carelessness and dangerous.
- B) In killing crimes such as murder that the negligence must be very severe.
- C) Part of intentional crimes that negligence to conditions is referred to mental element reference point that is a part of material element.

In all mentioned cases, criminal negligence or cognitive behavior negligence, or cognitive negligence is mentioned not as civil or behavioral negligence. Finally, evaluation criterion is combined according to the nature of crime. For example driving crimes that are a type of objective or dominant behavioral criterion. However, negligence criterion is the combination of a subjective and objective ones. It means there is the ability to punish in criminal negligence and consequently accused person or a wise person mental state is considered.

## SEVERE NEGLIGENCE IN NON-SELECTIVE UNINTENTIONAL MURDER IN BRITAIN LAWS

The type of negligence must be the severe criminal negligence in Britain laws in unintentional murder. If this case is acquired, there are both severe behavioral deviation from precision criterion (behavioral negligence) that is punishable fault of the actor in prediction danger (cognitive negligence) and danger of death. In addition, the accused

person undertook the responsibility that broke it. None of them except the first element (behavioral negligence) is acquired neither in negligence nor in one of criminal mistakes example, and accidentally this lack of emphasizing necessity is opposite to the author claim that all examples of criminal mistakes in Iran laws are adaptable with behavioral or civil negligence in Britain laws. In Britain laws, when a person fails to perform what a wise person did is described as negligent in the select conditions.

In “Adomako” case, unintentional murder with severe negligence instead of unintentional murder with Caldwell’s recklessness<sup>3</sup> of death danger was accepted in appellate-court in “Misra and Serivastava, 2004” case. The decision of this case is remarkable for this aspect that recklessness was defined as an aspect cognition for severe negligence (Ahadi, 2013, p: 165). The author of this vote confirms mental element in severe negligence that confirms on the difference between criminal and civil negligence. Finally, it is acceptable that the modern criminal negligence has a cognitive behavioral aspect that it can only be claimed that negligence and all examples of criminal mistakes in Iran laws is overlapped by the criminal negligence in Britain laws according to behavioral aspect.

What can be imagined about the criminal polity of this country with the criminal mistake is the dynamic face under the regulations and frame of modern criminal laws and justice, which makes Iran criminal laws different from the ones for other countries.

## CONCLUSION

Investigation the history of criminal laws shows that law scientists have sought mental state for the cases with the punishable damage in spite of intention and validated criminal mistake. Therefore, the criminal mistake must be found among the mental element degrees. However, in this research, we want to find the position of criminal mistakes examples (fault) in Iran laws with the fault examples among materials element. This deviation can become a crisis in penal policy against these types of crimes if it is considered according to the importance of the resulted crimes from criminal mistakes in today communities.

The following results are obtained by examining criminal laws and judicial procedure besides emphasis on the mentioned claims:

- 3 Typical or Caldwell’s recklessness was proposed for the first time in Caldwell’s case. The typical recklessness means if the accused person doesn’t predict the great and obvious danger while a wise person can do, he is reckless. This type of recklessness was nearly abolished in J. et al. case in 2003.

- 1- The legal documentary of criminal mistakes examples is note to article 145 IPC, while this note is the countermeasures examples of article 953 of civil laws. This is while this criterion doesn’t have any position in evaluation of mental element, and the material causality relationship is related to the materials element since in criminal laws, for example, in Britain laws, the degrees of criminal mistakes are mental element and even the criminal negligence is different from civil negligence, and evaluation criterion is combined.
- 2- These examples in IPC and modern IPC, despite the lexical doctrine, have materials aspects, and undertake the performance of material element in unintentional crimes, because note to article 145 states: “fault is both carelessness and imprudence”. The conception of this article by the definition of carelessness and imprudence can be said: fault is both leaving or doing an action, because carelessness is doing an action that a cautious person doesn’t do and imprudence is leaving an action that a thoughtful person does, while the principals of criminal laws know then the subjective mental state besides separating carelessness from imprudence that did an action in spite of the prediction for danger.
- 3- Examination the mistake examples in the comparative process indicates that criminal mistake comparison in Iran and Britain is the different comparison that is the significant examples of criminal fault. However, it can be concluded by examining negligence and also conception and performance of negligence that all the criminal crimes and mistakes in Iran criminal law are similar to the behavioral negligence and if the cognitive behavior aspect is accepted for the modern criminal negligence it can be claimed that the criminal mistake examples in Iran is overlapped by this aspect of negligence through behavioral aspect.

Therefore, the only mutual point is that crimes with negligence overlap with crimes with criminal mistakes in Iran in a part of combined evaluation criterion, which is a type of objective criterion. The minimum relationship between conception and performance of negligence in Britain laws by the conception of criminal mistake in Iran criminal system can be called generality and peculiarity in some respect. This comparative study guides the author to know that the criminal mistake conception in Iran criminal laws need revision in conception and survival its performance in order to imagine an efficient criminal polity.

Finally, what is essential for social evolutions in this input, no evolution is not the end of this way. This is the necessity of a science or a normative content with dynamic features. This content and this feature of criminal laws must be mentioned in Iran criminal system; otherwise, it has to

isolate and frigid and in injustice the crimes will have incremental trend.

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