



## Dispersive approach to ill will in murder within Iran & England Laws

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**Abstract.** This essay is composed to discuss formation Process of psychological element in murder crime and dispersive approach to murder ill will in Iran & England laws. Thus psychological element of murder in Iran's penal code regarding will or ill will is itself divided into behavioral ill will and conclusional ill will. In British penal law; psychological element, murder conduct or physically harmful conduct is sever and physical harm is sometime and some contexts is same as murder conduct in Iran penal law.

Hense, This study aims to cite that: since all legal relations are among human beings, therefore rules that if to be violated is crime would be pointed to people and human beings are responsible for its violation.

Finally, it is concluded that regarding moral element of crime, ignoring this elements leads to harmful consequences for people then addressing assignability or implicate and responsibility is addressed and a person may be executed that has wisdom & capability of conduct and has understand about crime.

**Keywords:** conduct, murder, responsibility, ill will, psychological element

### Introduction

In penal law "criminal will" is defined as an absolute wish and intend to conduct or quit an act which is banned by law and rule; therefore it is principally beleived that each crime would not be conducted without a wish, then known will is present in any deliberate or accidental crimes and even moral misconducts. If intend and will lead to action and something is resulted then will would be criminal and ill will; but if will only ends to action without any conclusion, it is a penal error (Zeraat, 2006, 182). Is conduct, the same as ill will, and is there any difference between motivation and ill will?

Legislators did not stated any definition of ill will in law contexts although in numerous articles pointed to this term as delibrate, conduct, general ill will and specified ill will, wish and intention; we can define ill will, conduct and deliberate such as: want to do or quit doing action in contrast to legislators imperativeness and characterizations. Hence, if conducting factor knows for example the obtained wealth or granted wealth is prepared through burglary or rubbery, it means that his/her will is adapted accurately with crime and is not due to law (Ardabili 1999, p; 23).

In order to analysis and determine any crime, triple components of crime within general penal law sphere is a necessity, Once human behavior is accounted to be crime that its composed elements to be maintained, firstly, need of human behavior to be predicted as criminal activity (legal element), second; need of criminal behaviour to be conducted in format of take action or quit (material elements), third; integrating with ill will (criminal intention) or penal misconduct (psychological element), by considering these elements, measure of segregation between international and accidental crimes is reflected by psychological element, In penal code, accomplishment of intentional murder is similiar to other crimes related to aggregation of triple elements (legal, material nad psychological). psychological element in terminology means mental interaction of doer and belonging his/her conscious intention to criminal behavior and

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legal banned results. This requirement of belonging to banned result is characteristic of liability crimes consisting of intentional murder. Therefore, in domain of general penal law, principally stipulated intentional crimes are accounted in compliance to common triple elements. In one word, when we talk about general theory of crimes then all intentional crimes are common in fulfillment and forming of psychological element. Hence, legislator considered psychological element of all intentional crimes to be common and unique to all within general domain and penal responsibility title under article 290 of Islamic law ratified in 2014.

Overall, psychological element of stipulated intentional crimes such as murder, theft, fraud and ... is consisted of knowledge about issue, + general ill will+ particular ill will and it seems that Iranian legislators in intentional murder's session have (such as article 206 of previous Islamic punishment law and article 209 of recently ratified Islamic punishment law) had a dispersive approach to other similar crimes (such as stipulated intentional crimes); because legislator approved intentional murder in case of criminal conducted (Material element) offense against (general ill will) a certain person (dispersive approach) in order to murder (particular ill will). Thus from legal point of view, it may say that psychological element of murder would be intention to kill a certain individual. While from general penal law, ill will always is intention to conduct a behaviour in contrast to law and banned consequences, without considering how murdered individual intentional crime, psychological crime is intention to rub someone else's assets (general ill will) and deprivation of a person to put possession on his/ her assets (particular ill will). In this setting, it makes no difference who would be offended? Whether is the targeted person of thief or not? Therefore, if thief confesses that he intended to rub her/his brother but in the dark of night entered his neighbor's yard (Not targeted person), then he/she forced to conduct theft; this defense is not accepted at all. Reason is that, at legislators points of view, it is absolute evil will of doer in maintaining criminal action and criminal banned consequences. Hence, apart from the fact that to whom this evil nature is belonged, mention conduct is blamable & needs punishment unless taking the action to be eligible and lawful then we do not discuss the case here. Then we believe that dispersive approach and different style in murder should be assessed and compared with other crimes and its rationality to be evaluated.

On other hand, regarding comparison of our considered law regime in order to study common law and among countries which have this regime we focus on England and land and home of common law. In brief, psychological element of murder is briefly in England, ill will in its special case so as to conduct criminal behaviour that leads to kill an individual. By this explanation the results & consequences of crime also embedded into ill will and we do not discuss here. But in England, also legal procedure as main source of penal code in crime of intentional murder is resorted to a concept called "transferable ill will"; that is although psychological element is a common domain in any intentional crime but regarding murder if murderer makes mistake in conducting murder against a certain person and someone other than targeted one is killed, in order to punish evil action in a way same as intentional murder; by resorting to transferable ill will concept, criminal is deservingly lawfully to be punished. This concept is described in such way that when A intends to kill B but result of crime is C who is killed. While he was not aim of conduct and ill will is transferred from B to C and by resorting to this implication, criminal wants to avoid punishment of intentional murder. Hence, this research requirement can be sought from two aspects of theory application. In one hand, considering theoretical and academic aspects, its assessment and analysis in conceptual basics of ill will regarding intentional murder because of importance of crime and intensity of this kind of crime is needed, specially when assessment of acts sources related to ill will and their interrelation is evitable. Overall, most authors only addressed the concepts of this context only from types of errors in murder; then a study of theoretical principles as stated before which to be competence and proper is necessary and certainly compulsory. Meanwhile, analysing these fundamentals within scope of a modern effective law regime having organized law system and resources (e.g. common law regime and at top England) is a significant help. On other hand, Islamic punishment law of 2013 regarding ill will in murder context have innovations worth to

assessment and analysis where would be apparent in approaching by new law. The importance of applied aspect is not less than fundamental principles; because punishment of intentional murder is one of the most intensive and serious ones (Specially that is not reversible and compensable) regarding recognition and adaptation in courts. In one hand, the issue is criminal's punishment due to establishing and recognition of crime through legal fundamentals; then it is an unforgivable sin to punish a criminal without psychological element, on the other hand justice requires the people who upon their evil will conduct crime and break law by doing the most intensive offenses against certain individuals by intentional murder can not misuse ambiguity and deficiency of law and evade punishment because of lack of recognition and application of different tastes in law. In particular, by conformity or incomformity of case with murder conditions, regarding ill will, sentence of doer is varying and under transformation from life retaliation to long term imprisonment and even freedom and only paying bloodmoney.

It is notable that by researches inside country, the case is worth assessment in two sectors of papers, articles and dissertations and it must be pointed out that most of written dissertations around discussed area focus on errors aspects in murder according to errors in determining murder action's goal and its consequences. Therefore, between ill will of crime in intentional murder regarding definition, basics, common points and differences with other intentional crimes, there is a philosophy arisen of problems which are discussed briefly in books and articles as case by case and we mention some of them in following:

### **A- National & local resources:**

- 1- Impact of error in personality and individuals in penal law of Iran an Islamic jurisprudence, Hossein Islami, dissertation of master degree.
- 2- Dr. Hossein Aghaei nia, Psychological element section.
- 3- Dr. Mir Mohammad Sadeghi "particular sentences law against individuals, Vol. 1, Psychological element section.
- 4- Abulghassem Khoei, Takmaleh Al Menhaj fundamentals Vol. 2, Al elmieh publications, 2007.

### **B. Latin resources**

- 1- Wein Arlfiew, "moral element in u.s. penal law", translated by: Taha Moulavi Khoushdell, Mizan pub, 2010.
- 2- Kelarkson, "penal code fundamental analysis", translated by Mir Mohammad Sadeghi Hossain Phd. Jahad daneshgah publications 1995.
- 3- Andrew ....
- 4- George ....

Overall, aim of this paper is :

- 1- Assessment of ill will dimensions in murder and determining position of ill will in murder.
- 2- Determining desired fundamentals for legislators in issue of ill will for murder.
- 3- Assessment and study of England and comparison of code with Iranian one.

### **Murder in subjective Iranian law**

Homicide or deprival a living human from life is the most crime against human beings. Thus, sentence of murder, apart from contrast of some law & philosophy scholars in laws of many countries is execution. Homicide in one side, damages principle of immunity and privacy of an individual also invades human life which is most valuable blessing, in other side makes society setting and security unstable, At times before human communities have general governing power and state organizations, homicide was one of routine and every days events of

life to get people survived and facing murderer has private and personal aspect rather than general aspects. Chasing or sentencing murderer or retaliation for damage's compensation and adjustment against murdered person's relatives and were their responsibilities other than society.

For ancient Greece, "punishment is first of all, conducted to regain lost dignity of murdered person and meanwhile is for approval of returned power and dignity and reflects insulting action against insulter: to undermine murdered: Actually, Sentence must mitigate heart of murdered person and brings a kind of enjoyment" (John Pradell, 1994, P:17). Then after human communities similar to current days acquired general governing power and state organization, government take responsibility & authority to chase and sentence murderer because homicide has general aspect and disturbs social system.

In Iran, before codification of general punishment act in 1925, murder was a private crime and relatives of murdered person have rights under Islamic jurisprudence regulations about retaliation and bloodmoney and they can completely cancel sentence of murderer or take bloodmoney and compensation as stipulated from him or may ask retaliation and execution of murderer. In case of retaliation, under verdict of governor they kill murderer in a similar way as his/her murder conduct. According to previous general punishments act; murder crime has public aspect and prosecutor chases and follows case of homicide and ask for murderer sentences and ignorance or remission as reduction in sentence & punishment. Penance & retaliation act of 1982 focused on private aspect of homicide. Nonetheless, Islamic punishments act of (99) accounted public aspect for homicide and court can imprison killer for life, although relatives have remission vote (article 208 of Islamic punishment act), article 612 of same act, generalizes imprisonment of public aspect related to murder and conduct the verdict to any homicide that is not finalized to retaliation by any reason.

### **Murder in England law**

There are four types of homicide in England law as: murder, manslaughter, vehicular and infanticide.

When someone is killed unlawfully, it is often assumed that if case is pursued, one of above four cases would be fitted in situation. But, it is not so in practice. Circumference in which homicide is occurred, has important impact on law reaction. For example, more people are killed due to insecure style of doing their jobs comparing to violences and hostile attacks. In these cases, the most prevalent reaction is to pursue case in conformity with the same fundamental dangerous conduct (which ended to death): Majority of people are accused to violate health and safety at work etc of 1974, and the fact of death occurrence, if is considered to be at sentencing stage. Similarly, many people are killed due to bad driving comparing to violates. Once bad car driving reaches to a dangerous point; then driver will legally pursued and to be accused of being cause of driving crimes or violations (e.g. driving carelessly or with high speed) is issue of pursue. Regarding sentence of homicide, although all convicted killers must be imprisoned for life. but it is rarely happened that they are remained in prison for rest of their lives. According to criminal justice act of 2003, judge must determine least certain period of time when convicted must definitely spend in prison before probable freedom. In determining this minimum, judge of case must consider general mentioned principles in related act. These principles accounts four onsets. For criminals with minimum 21 years old, the onset point is to be imprisoned for rest of convicted person's life; and it is exceptionally high case. Some examples which are mentioned in act where categorized to be very abominable and obscene are: kill of two or more persons with some previous planning and designing; kill an infant whereas is accompanied by abduct or sexual or sadist motivations (on base of sadism), kill to maintain political goals or religious and ideological objectives & purposes.

When crime has particularly high characteristic and criminal's age is eighteen and over, the onset point is thirty year imprisonment. Some examples are homicide of a police officer at duty, homicide by firearm or explosive, conducted homicide so as to obtain interest, for

example robbery or burglary with offensive action to conduct a crime. In all cases, where criminal has eighteen years old and older, onset point is fifteen years and if criminal is under eighteen years old, this period of imprisonment could be start from twelve years. Judge of case has right to determine minimum years of compulsory imprisonment years and all onset or beginning points which are mentioned above may reduce or increase upon being aggravating or mitigating factors. There are some examples of aggravating factors are cases wherein victim is vulnerable in some special type (e.g. underage or handicapped) or criminal was in trustee position or corpse was hidden or butchered in pieces. Examples for recommended mitigating factors is attempt to hit and harm physically only (not killing), without any planning or design of action before homicide occurrence or criminal had been put in provocation position (Not such that expressed to be self defense). Although, judge of case must consider these principles, but if he thought that observing these principles leads to insufficient sentence, then judge may not observe this instruction. After prisoner terminates his minimum imprisonment time, then the file can be delivered to parole board to determine whether prisoner freedom could have risks. In this stage, prisoner would be released on licence and this means, prisoner could be returned to prison whenever through life violates his/her freedom conditions or prisoner's behaviour shows probability of a severe crime from prisoner. As numerous factors are considered for determining minimum of imprisonment period, murders have different natures with each others, starting from intentional ruthless killings to mercy killings and there is a significant difference between sentences of murderers and manslaughterers. It is important to emphasize on a point that minimum period of imprisonment is duration of real stay of prisoner in prison. For other crimes (such as manslaughter) where sentence is known and certain, criminal can be free on licence after taking half of imprisonment time and this permission is continued only up to the termination time of verdict (and after that it would be absolute freedom). Many legislators stated that, significant difference in sentences of murder and manslaughter is not explainable, because these two crimes are overlapped in margins and depth. It is said that life imprisonment sentence is not suitable for all killers, and judge must be able to apply each sentence at the level of crime significance. This notification means that it must be a little distinction between murder & manslaughter and this is whether two crimes combine in one (or not). Although we mean of murder to be the most blamable type of homicide and limited to this sphere, but manslaughter is like a huge garbage bin which includes most of unlawful killings which are not accounted murder. There are a lot of different manslaughterers where each of them has its specified regulations, but one point is common to all of them, criminal is blamable but not at level of being known as murderer. Different degrees of blameworthiness can have drastic differences with each other: killing may be only a little lower than murder in ranking or a little more than a (incidental) killing by mistake in nature and as a result a little enters penal sphere. Different degrees of guilt can be reflected in applied sentence. Hence, judge may determine any sentence up to life imprisonment. From old ages, manslaughterers are classified into voluntary & involuntary. A voluntary homicide is occurred when accused person has required previous ill will to conduct killing but because of a special excuse such as instigation or reduced responsibility or killing is consequences of a suicide pact, then homicide is less blameworthy (Mir Mohammad Sadeghi, 162-168, 188-199).

### **It will requirement in applicability of result**

special ill will means, wish to acquire criminal result. Particular ill will in murder case or this kind of special ill will in murder means that other than killer do action voluntarily against killed one, but also wish to deprive killed person of life. Therefore if there is wish to have a behaviour but is not wish of result (deprive of life), then we can not talk about murder and the case is same as when a person hit another one in a style that is not fatal to chastise him/her but hit ends to death; then this person wanted to hit killed person but not killing and homicide is not murder. In particular ill will, sometimes doer hits killed one on basis of killing him and hit one is died, then in this case because of killing wish, there is not any doubt in voluntary killing or murder; but if killer claims that homicide is conducted without killing wish but his/ her action is of killing

nature, this nature of killing activity is authentic existence of killing will in killer and killer known to be murderer, although claims that has not will to kill someone. In most of conditional penal laws existence of ill will is main condition of any voluntary crime, thus in order to consider a homicide to be intentional or voluntary, doer should have intention in action and also intention to deprive life of killed person which is intention to provide result; therefore if someone burns a house without awareness of being some people inside that and residents are died of result of this action or drops an asleep person by mistake of thinking asleep one is death from a height and the same fall kills asleep person, the action of doer is not accounted murder, because of this in one of the votes against supreme court of country, "pre-decision and homicide will" has been known as condition for authentication & approval of murder. Hence, although approval of homicide will and intend is very difficult task but existence of and killing action and will to conduct homicide is sufficient to prove such a will and putting responsibility on doer; because this existence is in a kind of perception, expresses homicide will in doer's mind, then approves ill will in homicide, for example, exploding an aeroplane and killing its passengers as given a bomb was put under plane seat or hidden among passengers is accounted murder, although doer claims that however he was aware of passengers in plane but his/her primary will had been only demolishing loads of goods to get compensation from insurance company (Mir Mohammad Sadeghi, 107-108); as normal and rational wisdom can not accept that in this case, doer's claim of lack of killing will, when she/he accept that her/his action was killing and was aware of passengers in plane.

### **Types of ill will related to murder in Iran & England law**

#### **A- Instant ill will**

In some foreign laws, criminal will is divided into aggravating and simple criminal (Instant or pre-decision). Aggravating will is a case in which; doer thought of and made decision to conduct crime before occurrence of crime, but in simple will, there is not any pre-decision and making decision to conduct homicide is incidentally with another one and suddenly gets angry and loses control, then hits another person and kills him/her. Reason of this classification is the fact that homicide with pre-decision is more dangerous than simple will for homicide and implies on dangerous altitude of doer but simple will in homicide has not this kind of danger and often occurs by emotions and lack of mental and psychological equilibrium. According to this, often legislators differentiate between these two homicides and consider pre-decision as aggravating causes of sentence, but in our law this classification is not accepted due to the fact that sentences for all homicides are the same and are not mitigated or aggravated, but it seems that our legislators are also able to accept these classifications and those are not in contrast with qoranic narratives and verdicts (Zeraat, 110). Hence, legislator states in article 291 paragraph A, that if doer has been willful but did not predict all concluded results and not eager to have those consequences such as an individual who hits another person to chastise him/her without apparent evidence of homicide then case is involuntary but in case that doer conduct an action which is in nature a killing action, then homicide is voluntary or intentional and would be under context of paragraph B of article 209. This transformation of homicide's type from voluntary to involuntary could be resulted of preconception and pre-decision to take an act with killing nature whereas aggravate sentence of homicide (Goldoosian, 181-182). Overall, we must admit that in our law in contrast to England; ill will and its consequence of homicide are not transparently divided into instant and with pre-decision. In English law, all homicides with ill will are accounted murder and interpreted as unlawfully killing a creature with rational life who dies of injuries within one day to on year period of time.

#### **B- Ill will with pre-decision**

Homicide with pre-decision is a homicide that, in order to realize that, previous decision making and planning have been accomplished. Because in this kind of homicide, killer is conducting homicide based on criminal intention and previous will, therefore killer had idea about

implementation of crime and with full intention and his/her own wish and by evaluating homicide's consequences, conducts this action (Pad, 2002, p:38). Similar to a given case, in which a person prepare a gun so as to conduct homicide and lies in wait till proper situation and shots kill another person. Pre-decision is a kind of planning to conduct crime and requires wish for crime, but actually we must admit that this kind of homicide requires existence of two elements: First element is wish to conduct homicide that must be serious and evaluated, it means that doer must have planning to conduct crime after evaluating criminal action; thus in any homicide which is under influence of emotions or rage, there is not pre-decision, but in case of planning before conducting crime even if a particular person is not targeted and "whoever found or seen" is aim of crime, then pre-decision is existed. Second element is that, intention to conduct homicide must from before crime occurrence and since legislator couldn't make the time of wish creation clear, then full authority is granted to judge in this domain. Garrow believes that mentioned will is "a decided and stable wish with sign of coldbloodedness and calmness". For Andre Vito also pre-decision is "a plan which is properly evaluated and is stable with aim of utilizing tools which are prepared to achieving success in crime and harming another person's life."

In penal code of England also this ill will is addressed where at beginning of mentioned law, the condition (pre-decision) for homicide or physical injuries is necessary and mere will of killing is not sufficient for intentional murder but it must be decided previously and thought before accomplishment. But we must admit that, a condition such that is not correct, because it is possible that murder occurs instantly and at real time (Elite, Queen, 2008, 110-109), then condition of pre-decision also accepted.

### **Stating the concept of ill will against a certain person**

Legislator pointed to paragraph A of article 290 of penal code for requirement and necessity of ill will in particular, and will to achieve intentionally the result of action. Therefore, to invoke paragraph A is approval of murder from doer and to be killing or not has not any impact on whether homicide is murder or not. Thus slapping someone, pushing a young one from height and ... if all are done with will of homicide and result in death then homicide is murder and voluntarily and is known as absolute murder (Aghaeinia, 77-88). This intention is also emphasized in retaliations & penances law and legislator states in this environment that: cases in which, killer intends to kill someone by conducting an action, either that action is killing in nature or not but causes kill is intentional one. But, new law also same as previous one does not determine meaning of murder term against a certain person and this ambiguity about meaning of this term and what does it mean? Still remains. But, legislators interpret this term as mistake in established aim and mistake in acknowledgement it means that someone intends to kill a certain person and start preparations of performing crime but due to a cause makes mistake and kill a person other than targeted one or same as a person who based on hostility with A, seeks to kill A, then prepare gun or any weapon and ambush to target A by bullet and kill A, but at shot moment becomes anxious and instead of aiming A, shot a pedestrian and finally kill another person, in this case homicide is resulted of mistake in aim and means failure of a crime which is objective of doer and doer's action ends to occurrence of another crime because of person's mistake.

Some legislators admit mistake in aiming, according to context of paragraph A in article 206 of penal code and believe that in these case, homicide is not murder. "After a legislative analysis it may conclude that mistake in homicide target or battery makes criminal action out of an intentional or voluntarily nature of action because in this case, doer considered an intended point as an aim and coincide of bullet to another point located at a few meter or a few kilometer of first point in not resulted of intentional action but nature of action is accounted to be by mistake and condition of "intention in action" is not implied in this case and for this criminal" (Mir Mohammad Sadeghi, 2008: p:95). In compliance to the same idea, Ayatollah Seyed Mohammad Hassan Maraashi also according to jurisprudence resources believes that through

this assumption, homicide can not be accounted as murder (Maraashi, 1986, p:116). Some other legislators believe that: "If Someone shoots a certain person in order to kill her/him, but due to clumsiness, bullet targets another person & kill that person, because aim has been depriving life from a human and this aim is maintained then occurred homicide is accounted voluntarily & a murder, and even clumsiness can not alter that nature of action." (Sepahvand & Asgaripour, 2010, p:80). A drawback on this argument is providing an expanded interpretation against accused person's benefit, derived from penal code.

At the time of previous general sentences code domination; the law that related to mistake in nature and characteristic was silent, and silence in legislative procedure & trend was believed to be mistake in killed character has not and impact on homicide to be voluntarily (Sepahvand & Asgaripour p:73). Article 2 of retaliations and penances that ratified in 1982 stated that in following cases homicide is murder: A) cases in which, killer do something based on her/his intend to kill a person, either that action is killing in nature or is not but causes homicide." In this paragraph criterion for homicide to be voluntarily was "intention to kill" and characteristics of killed person had not any impact on voluntarily nature of homicide but after ratification of Islamic punishment act in 1991, legislator pointed to intend of killing "a Certain person or person or persons of known characteristics" under context of article 206 paragraph A, thus this change leads to dispute among legislators. Hence, "if someone conducts to kill a certain person, but after killing him/her. it is understood that killed person is not killer appointed one, this homicide is not accounted to be voluntary and murder, in other words, since according to law and legislator, to account homicide as murder and intentionally, it is required targeted person to be killed, but killed one is not targeted person, then under available laws this homicide is not murder and intentional" (Sepahvand & Asgaripour, p. 74). This idea is not admitted by all legislators. Regarding jurisprudence also it is said that Jurisprudents have dispute in mistake about person by killer in murder case, some of them. Such as Ayatollah Nasser Makarem Shirazi believes that homicide would be murder and intentional (Agheinia, 2010, p:74), but others such as Ayatollah Golpayegani believes that in case of mistake by killer, homicide is not accounted murder (Rahami, 2010, p:74). Overall, it is worth noting that, supreme court in a voting considered mistake in characteristic and identification as an obscure for predicted murder in paragraph A of article 206 of Islamic punishment penal act (Sepahvand & Asgaripour, p: 74) Currently, paragraph A of article 290 of penal act about mistake in identification has not any difference with paragraph A of article 206 Islamic punishment law, and only in new act it is stated that doer by taking some action intends to crime against human (homicide) who was certain and identified but similar action occurs.

Therefore, Islamic punishment law in its previous version by considering a term as certain or uncertain, make any mistake from doer effective and a factor which changes nature of homicide from manslaughter to murder and paragraph A of new Islamic punishment law reiterates the same paragraph A of article 206 of previous act and does not omit holistic nature of this paragraph. But by all discussions we provided here, it must be stated that in murder; legislator has liability to protect human being and any voluntarily offence and attack to others' life must be accounted intentional by legislator, due to this and fortunately, in new punishments act, although ambiguity of paragraph A of article 290 is not eliminated, but by introducing article 294 any mistake in identification and characteristic of killed person by doer is not accounted to be effective and in all aspects accounts homicide to be murder. Article 294 of Islamic punishment act announces that: "If someone conduct homicide against another person based on mistake in identification and both of them are not consisted in article (302) criteria, then homicide is accounted murder". Legislator implicitly interpreted mistake in aim and target, then for example in paragraph C of article 292 it is stated that: "If someone release a bullet in order to hunt and bullet collides with a persons and kills he/she, then action is absolute mistake unless shooter is aware of this fact that his/her action naturally may cause homicide when this homicide is accounted voluntarily and it means same as paragraph of article 292 which states: "Regarding paragraphs A & C, whenever doer is acknowledged of nature of his/her action could be killing



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against another person, then homicide is accounted voluntarily” (Rest 2013, pp” 4-5). Thus at the time being, in Iran law, mistake in identification or aim in all conditions make conducted homicide a murder.

### **Assessment of transferable ill will in murder within England laws**

In England, legislative procedures resort to a theory known as “transferable ill will” as a main source of penal act in murder. This means that although in that country, psychological element’s domain in voluntarily crimes is common, but in murder when a person regarding ill will against a certain person makes mistake and in practice kills another one other than the purpose person, in order to sentence action as any criminal and hostile action, punishment must be same as murder, then legislators resort to transferable ill will theory & assumption and doer is deserved to sentence as a murder. This concept is explained in such way that; when A intends to kill B, but in result of his/her crime.

C is killed (whereas did not aim to kill C), then A transfer ill will from B to C and A cannot evade sentence by resorting that he didn’t aim to kill C.

In transferable ill will context, the aimed person (destination) is targeted by mistake and another person is killed where ill will actually transfer for one person to another. Therefore in England penal code as mentioned here, there is a principle that even if accused person attempt to conduct a certain crime against another victim, again is guilty and this is called “transferable ill will” principle, thus England laws donot link mistake in identification or aim to a voluntarily homicide, and if a person (A) intend to kill someone (B) and trigger bullet, but it catch and collide with another person and he/she is killed, there conducted homicide is a murder.

An expert in this area believes about definition of wish to homicide that, a person who kills another person by own will often does not announce at the moment or immediately before accomplishment homicide to observers that he/she plans to kill and if witnesses are present, doer would not take anything or at least talk directly about his/her intend, therefore if someone aims accurately his enemy by weapon and trigger, then bullet collides with enemy’s heart and kill enemy, without any doubt in case of lack of other conditions we must conclude that shooter has intention to kill, although shooter doesnot talk about his/her will at that moment. Specified application of this evidence that a person is messaging about natural results of his/her actions in theory (lethal weapon) and access to homicide is apparent, when someone intentionally use lethal weapons against another person and kills that person, it is assumed that intended to kill victim. However, death, with direct intend could be accomplished by avoiding to do homicide and in this case an accused person is only when is accounted murder that conditions show approval of accomplishing action (Arlphew, 2009, p: 101-104).

### **Conclusion**

It is concluded at end of our discussion that, in order to prove crimes such as murder refusal of verdicts and avoidances of legislator is not efficient and crime action must be result of intend & will of doer, in other word, there must be some relations between material action and psychological altitudes of doer to announce doer guilty. As a matter of fact, to be willing is one of psychological elements’ components and base of guilt which also is called wish to conduct. By, Decline of will, the consequences of crime either voluntarily or involuntarily never are accounted for doer and if intend & will of doer is conducting crime and expects its result or in other words, doer intend to acquire results and conduct crime, then his/her crime is voluntarily and in other case, when doer is intended to take guilty action without wish to acquire crime’s results then he is accounted wrongdoer by taking mistake and involuntarily. Therefore, in voluntarily & intentional crime, such as murder also, finally it is will and intention to take action that introduces a person murder, where legislators pointed to this in paragraphs (B) & (C) of

article 290, as mentioned there, murder is approved when criminal or killer do killing type activity on his/her will, it means by knowledge & awareness, otherwise voluntarily homicide or murder is refused. Overall doer of killing type activity, must have will and intend to do killing action and more important will to acquire result of killing type activity and consequently however by approving take action will, (intend to do killing type activity) existence of wish to acquire result also is approved (Perishing life).

Therefore in connection to paragraphs (B) and (C) only will to take killing type activity (behavior will) and awareness about killing nature of activity must be approved and affirmed, because by taking a killing type action and acknowledgement about its quality existence of wish to acquire result (murder will) in doer is an property that cannot be denied, then there is no need to be affirmed. Overall it is efficient that legislator be ready to apply and utilize approaches in order to make more transparent the routes to acquire approval for murder will as a major basis of psychological principle in murder. Which is very dangerous crimes and disturbing factors in societies and to this end judgement can discover this principle in criminal and apply cause properly relative to victim & even criminal.

Finally, comparison of quality and features of sentence related to murder in penal codes of Iran & England also seems to be helpful. This crime's sentence in England law is life imprisonment or short time imprisonment but in Iran penal code it is retaliations according to Islamic law. Although, ignoring execution sentence or retaliation and applying life imprisonment for doers in must countries such as England is in compliance to some world's legislators perceptions and in favour of criminal and in path to keep and maintain criminal's rights and currently has numerous supporters, but ignoring this verdict in Iran law which apparently known to be Islamic, is in contract to robust statement of Holly Quran, hence it can not be admitted to make Iran also performing parallel to other countries laws.

Therefore, it is suggested and recommended that if legislator indeed knows that existence of intend in doer and accomplishment of homicide is enough to account killing to be murder, then legislator must modify mentioned paragraph because wording of "has not will to homicide" is not right when wish to kill is existed and this intend is enough for maintaining action, and Iranian legislator instead of ignoring retaliation as sentence, it is better to limit accomplishment conditions, specially approval of action to be voluntarily in order to in any condition taking this certain action can not result in murder and performing retaliation sentence, then it may be applicable to reduce number of murders and applying retaliation against their criminals and also try to preserve justice and right of wrong doers so as not to be executed and convicted for murder.

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