Features of the Criminal Policy Discourse of New Law of Hearing the Driving Violations in Iran

Parviz Daneshmand*, Javan Jafari
Department of Criminal Law and Criminology, Bandar Abbas Branch, Islamic Azad University, Bandar Abbas, Iran.

ABSTRACT
One of the solutions that have great potential in the implementation phase is related to the prevention of criminal acts. So, since the prevention and security are inseparable, all stakeholders should understand it. Accordingly, in the criminal policy that is considered for non-intentional crimes, the legislator tries to warn the drivers to remember the driving laws by the use of some tools such as negative points, arresting the car and so on in possible case of reminding drivers and this thought is because prevention has precedence over penalty in the executive branch of the criminal policy.

Keywords: Criminal Policy, Driving Violation, Third Party Insurance, Redress.

INTRODUCTION
The criminology findings also introduce the delinquency as a function of the development of cities. Along with an increase in delinquency, unintentional crimes and among the recent crimes, accidents caused by driving led to death, physical injury and in general, damages, have devoted a remarkable contribution in crime statistics. On the other hand, due to the absence of a deliberate and appropriate policy in the field of driving violations which knew all crimes in this field as a forced conversion of imprisonment to the fine, the law scientists and authors decided to adjust the methods to prevent recent topic’s events using experiences of other countries and according to the cultural and social features of our country in order to be able to present an appropriate solution to reduce such crimes.

In this regard, this policy has been generally based on three principles as: legislative, judicial and executive principles.

However, due to the concerns of legal positivism and egalitarianism in this field, the appropriate criminal policy is a criminal policy that to issue a punishment that cannot raise its amount more than the anticipated maximum for the committed crime. With this thought that by such committed crime a sure penalty is coincidental and if we want to look at the field of study subject to the lesson of legislation principals, we can point out to the law of public penalty 1925 as the first codified laws collection in the field of substantive criminal law that devoted some cases to express the sentences related to the unintentional murder, assault that authorized sentence in it is extended form to the drivers of vehicles that cause the death or physical injury of a pedestrian.

* . Corresponding Author: danesh3101@yahoo.com

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driver or aboard of other vehicles due to carelessness (Article 177). According to the above cases, the issue is that whether new rules of hearing the driving criminals can be account as a supplement of this policy according to the Iran’s criminal policy in case of unintentional crimes from driving accidents or not?

COMMITMENT TO THE INSURANCE OR COMMITMENT TO THE REDRESS IN THE NEW LAW

The purport of Article 1 of the Law of compulsory insurance of civil liability of land motor vehicles owners have two commitments against the third approved party (1968, former law) included as: first: the compulsory insurance coverage and duty of holder of the vehicle in this field; second: the civil liability of this vehicle and owner position. Amendment of this law in the 2008 is comprising some general changes; the changes that are theoretically important1.

Legal Controversy Surrounding the Concept of Holder

The term “owner” that has come in both laws, especially in legal doctor hood, was the cause of disagreement. Important effects have been achieved from this conflict; some knew the article 1 of former law including commitment to the damage redress3. A responsibility that had a normal face far from fault and many topics has been done about its basic. Some also believed that a new law cannot be achieved from the first article of that law, but it involves some changes. The changes that can be effective in fulfill the responsibilities4. The common value of these theories was being far away of owner of responsibility from the theory of guilt and distinction concept of "driver" and "owner" of the vehicle. One was discussed based on fault and the other based on the ideas of risk or being near that is not a necessary discussion, but what seems important is the current situation. We read in Note 1 of article 1 of the new law:

"The owners in terms of this law include the owner or possessor of the vehicle and whoever that verify the insurance policy of this subject, the assignment is fallen from another". Note 2 of this Article declare in the case of individuals who might be responsible in an accident driver that: "the responsibility of the vehicle owner does not prevent the responsibility of a person that the incident is attributed to his action or omission. However, the damages are paid from the insurance of responsible vehicle for the accident".

It might be imagined that the new law makes a distinction between the responsibility of owner and driver; the first, based on the theory of fault and accident distribution to him and second, because of danger theory and having the feature of “owner” both are responsible and in this term, it has no difference with the former law and merely the concept of owner is been illuminated. This look, containing thought foreground from the former law, does not seem correct; other changes in the new law should be pointed out in its explanation and then come back to this topic.

The Territory of New Law: Civil Responsibility or Insurance

Liability arising from driving accidents is one of the most important aspects of civil liability, the role of insurance is returned to completing legal capacity for the redress. Principal face of these events is noticed to civil liability and only its effects are similar to insurance. "In the correct position, the law of insurance should be branching on the discussions of civil liability, not to search the discussion of civil liability among the insurance laws; because what is remarkable is the topic of redress and civil liability and insurance which is considered as the means of achieving this goal; therefore, one should never promote from title and dignity instrument to the stage of the ultimate goal and replacement of civil liability”2.
Against the former law that has opened a loophole to the civil responsibility and put the redress commitment to the responsibility of vehicle owner in article 1, in the new law, the owner commitment is merely the matter of insuring his responsibility and commitment to redress is neglected. Of course, note 3 and 4 pointed out to the definition of physical and financial damage and in note 5, the definition of driving events is noted from which the civil responsibility is inferred.

There is some topics about the redress of people who are damaged in note 2 of article 4 of new law; also, it can be said that the insurance commitment that is for owner include commitment to redress as well because of potential signification; because the insurance coverage is not without subject and since the owner is obliged to redress, he will get the insurance in this way. Meanwhile, these spider webs are not so strong to give a special face and different and independent basis to the owner responsibility and separate him from other customary foundations in the laws of civil liability of Iran or religious jurisprudence approaches.

There is no doubt that the man, who claimed for having typical independent and different responsibility, shall be equipped with a crucial proof. In the previous law, there was the possibility of understanding the independence and close to the risk idea responsibility from the concept of redress in Article 1 and the exception rule in article 4 (Cairo branch); but in the new law, such thing is not possible. In Article 1 of this law, the commitment is only to obtain insurance coverage in which there is no trace of responsibility for redress. There was doubt about the typical and independent liability of the owner in the former law as well, and despite the reflection of this theory in the doctrine of judicial procedure, knew the redress scientific from the duct of other principles, rules and principles, particularly the provisions of the Islamic Penalty law and the notion of guilt. In other words, Article 1 of the former law, first knew the owner as liable for redress and then made insurance compulsory to cover it, but legal procedure knew the aforementioned liability in the form and its "details", which include the foundation and conditions of responsibility, is follow based on other rules; because the previous law did not offer any basis and with this situation, judicial procedure definitively analyzed the responsibility based on other provisions, particularly the Islamic penalty law and the theory of guilt and jurisprudence causality. Therefore, assuming the fulfillment of carelessness or negligence of injured or deceased, there was not the possibility of demanding the redress from the insurance and the owner. In this assumption and in the case of not having insurance, the owner did not have the liability of redressing because an independent liability was not raised for driving accidents and in the state of lacking guilt, there was no other person or resource for responsibility and redress.

Second discourse: responsibility basis of the owner in the new law

In driving accidents, determining the basis of responsibility has many difficulties that necessitate more exactness in this issue. On the one hand, the events of these accidents are toward the redress of the damaged person and beyond guilt theories are generally commanding on it. These change are there in many of legal systems, especially when it is accompanied by historical sediment of former law, defend of writers from the independent basis of responsibility and its distance with guilt theory and it encourages the lawyers to amplify this basis and avoid falling in the circle of guilt theory. On the other hand, remove the obligation to make reparation from the scope of Article 1 of the new law, the vote of unity judicial precedent No. 13 dated 28.9.1983 that has been issued on the basis of the theory of error and negligence, the strong juridical history and investigate this kind of responsibility with other cases of liability, laws of Islamic penalty law and their jurisprudence do not know "<< accident attributable >>" and investigation of the accident, from the duct of loss and causality and the provisions of Clause 2 of Article 1 of the new law as the

July, 2016
responsibility of the vehicle owner as an obstacle for the responsibility of the person that the incident is attributed to his action or omission and actually states that the basis of liability is the customary apply ability and "assignment". 

Traffic accidents are actually applied to other cases and the public basis of responsibility in Iran’s law. This is especially true when we know that disaster experts and judges observe committing a kind of carelessness and lack of observing traffic rules at the time of studying the accidents and during the hearing, in the most cases, the presence of insurance increases the condemnation motivation of incident responsible and redress of the lost and the differentiate the results of two kinds of responsibility basis (responsibility based on fault or danger), in a way that in most cases less a damaged person stay without redress. The experience would verify this as well; however, we do not deny those injured people that are totally deprived of redress. But, we do not also verify that the technical views of expert are announced so extensive and broad that in many cases, there are responsible for the incident and the insurer acts for redress. 

However, it is said that note 2 of article 1 of new law speaks of the responsibility of another person except for the owner; so, there is a conflict between the owner and driver, and “the responsibility of owner is beyond the fault” is not an accepted issue. Because, first the owner is defined in the law and he is not a person except an owner of the vehicle that is responsible because of occupation and monitoring on his vehicle. But, the basis of responsibility cannot be inferred from the issue itself; because it will be misused. Since determining the responsibility is silent in the law, it should be determined based on the principals of civil responsibility laws. It is said that in this state, the theory of assignment ability would be applied. Secondly, note 1 of article 1 of new law is not trying to determine the basis of responsibility, rather for avoiding from lack of using insurance coverage for the people who have signed an insurance contract at first and have delivered the car or are deterred as whatever the case is, or are known as responsible because of another reason that cause the involvement of vehicle in accident in order for the insurer to not to procrastinate from paying the damage.

The same is desired as well in related negotiations of this text; because the primary method of text writing was in such a way that there was the possibility of imagining insurance for each person independently and not for the vehicle. To avoid this result, it was suggested that each one that obtain the subject insurance policy of this article, another task will be discarded of him. 

So, the basis of responsibility cannot be traced in the insurance space; thirdly, the purpose of Note 2 of Article 1 is that the responsibility is not only for the one who have captured the vehicle, but whoever the accident is attributed to his act or omission will be responsible. For example, aimless deflection of car causes another driver to hit the pedestrians. In this case, although the second car has hurt to passers, but the incident is attributed to someone else. Or someone that defects tires and causes accident during driving by manipulation at the wheel of a car, is responsible and the car driver does not have any responsibility. 

The meaning of the phrase "in any case, the damages will be paid from the insurance of incident offending vehicle” is that any person is liable in case of driving accident and this responsibility is diployd by the insured cars and can make use of insurance coverage. For example, a father delivers his car to his son after insuring the car or the son moves the car without permission and causes damages to the car. The question is whether the people, to whom the incident is attributed to, but have no relation to the vehicle and the car is the only damaged vehicle, can benefit the insurance coverage as well? For example, a person causes the sliding of other cars by pouring oil on the road, or deviates other cars by digging holes in the road, or factory producers of tires have produced defective produced and after breaking wheel and deviation of the vehicle, cause the pedestrian death.
In these cases, the establishment of responsibility on a person does not give the possibility of using car insurance because not only insurance coverage is for those who have their vehicle and cause the damages because of the causality, and in fact, the commitment of insurer is the commitment apposition of the main responsible and the insurer covers the people who are responsible as well due to the assignment of accidents to the car, but if we consider the fact that everyone is covered due to the involvement of car, it will means that people who are insurer, owner, possessor (according to the new law of the owner or driver) or are not the other related topics to the vehicle either could be secured from their principal and direct responsibility and put the responsibility on the behalf of insurer. The phrase << accident inducement' vehicles >> also implies that in any case, insured vehicle must be responsible for the accident by its operator\(^3\), while in the examples above, other entities are responsible that are not considered as driver and owner and are outsiders to the car and its insurance.

CONCLUSION

As it was observed, taking criminal policy in the justice system causes all decisions to be affected in this area. For example, in 1990s, most of the penal system of Iran was concluded to lash and imprisonment by editing Islamic penalty law that was verified without any chaptering, and in traffic penalties especially in the area of accidents that led to death or limb defect the dealing with offenders was in a repressive way by following from Islamic penalty law without considering that in the happened accidents the driver and the opposite part are not just as the guilty parties and other factors such as lack of some tips and driving tableau, pedestrian bridge and even the engineering status of street or road can be effective in the intensity of accidents as well. But nowadays, according to the change of Iran’s criminal policy that looks in three legislative, judicial and executive branches with a new look to the events and happenings, the decisions are being make and the new laws of traffic department are affected as well. For example in above sample, nowadays it is been trying to survey the amount of the effectiveness of each one of factors even the car factory in determining the damages in happened accidents that is the explanatory of experts’ attitude and lookout change in this area. On the other side, one of the other new attitudes in this area is preventing approaches that try to pay attention to the guidance topic more. Based on this, according to the executive criminal policies in our country and by the use of cultural, economic and social tools, the effort is toward the decrease of crimes and accidents. In conclusion, the researcher’s theory proving that new rules of traffic department are in the line with Iran criminal policy in the field of unintentional crimes, are being proved.

REFERENCES