

## The Role Of Judicial Organization In Preventing Military Offences

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### Abstract

National security and public order are the bed for community peace and all social activities of human being. Governments to establish public security and guarding public order have prepared military forces and armed police that have special order and discipline. Because they believed that organized and disciplined force can defend independence and national security in the face of the aggressor and can make internal order. Constitution of the Islamic Republic of Iran has assigned the mission of safeguarding the territorial integrity and safeguarding of the Islamic Revolution and its achievements and public order to the armed forces. Special missions and responsibilities of armed forces caused they follow special disciplinary rights that are fundamentally different from the other parts of State sovereignty. These disciplinary militarization rights are under a special penal laws and regulations that are called Military criminal law. Military criminal law is a

branch of criminal law and its topic is to study a set of rules and regulations relating to military crime. Although the rule, considers the organization and judicial authority dealing with military crime as a part of judicature but by establishing military courts, the Military criminal jurisdiction is dedicated to military courts and has separated the reference dealing with military from the competent judicial authorities investigating crimes. In addition to the Constitution, laws and regulations of the ordinary in terms of procedure and legal penalties regime and international relations between war crime and general crime, have been considered differently. Because, military crimes have greater risk to society and as a result, the penalties are more severe and usually general rules of leniency towards them is not executed, prosecuted and dealt with in the exceptional courts, prosecutors and courts to deal with it by The higher speed and intensity; because system and military as their names show, should do the intercourse with speed and intensity. If the military criminals refuge in other countries, they are not refundable and etc. According to the aforementioned impact, it is essential to distinguish between civilian and military crimes; but it is a difficult work that the present study intend to investigate this matter and it is obscure angles, , especially in the competence of the military court that there are many uncertainties about it. Article one hundred and seventy of the Constitution of the Islamic Republic of Iran, refers to specifically military offenses without having to give a definition of it: "To investigate crimes related to military or security duties members of the army, the gendarmerie, the police and the Iranian Revolutionary Guards of Islamic Revolution, Military courts will be established according to the law but common crimes or crimes committed in the court bailiff public courts are dealt in general courts. Prosecutors and military courts are part of the Judiciary and subject to the principles of the judiciary. " Article 597 of Criminal Procedure Code adopted by the Armed Forces of the Islamic Republic of Iran Note 08.07.1393 and the first, second, third and fourth is qualifying and defining the emerging military crimes: Article 597 - "offenses related to specific tasks of military and police members of the Armed Forces is doing by Judicial Organization Law enforcement. Note 1-investigating crimes that Imam Khomeini and the Supreme Leader have permitted that investigate in the court of Judicial Organization of the Armed Forces, so long as they do not deviate is in the competence of the organization. Note 2-A military tasks related to regulatory offenses are crimes that members of the armed forces with respect to the law and regulations and regulatory military self-responsibility that is assigned to them based on rules and regulations. Note 3: get rid of the serving, does not prevent the crimes of employment in military court. Note 4 – crime in law enforcement positions, is a crime that law enforcers are committed while doing their legal task related to the evident crimes or implementing the order of judicial authority of Justice." some reason for these differences are the need for speedy trial and speed in decision-making and specific evidence of military crimes and the necessity of severely punished ,when the unit is in direct involvement in combat with the enemy, and preserving documents and military secrets and continual defense preparedness to safeguard the sovereignty and security of the country.

**Keywords:** Crime, Investigate, Prevention, Armed Forces Judicial Organization

## Introduction

History of human social life shows that from the distant past to deal with crimes and offenses are always thinking and achievement and in proportion to the increase in crime preventive measures, although most of the criminal type, has turned , and after passing through various stages of the criminal justice and legal experience and test different schools, now more than ever to the principle of "prevention priority on the treatment of" qualified opinion more to think about preventive measures in this regard were criminal and non-criminal, penal and legal systems in the world, although the types of penalties and punitive measures and full is full. Prevention is the common term in the literature and scientific texts pathology and social deviance, Medical and Health and as late as common in technical and vocational fields, but as far as the issue of crime and criminology is concerned, the term crime prevention of the words "prevention" and "crime" has been formed, well-known crime is defined. In its narrow sense any act or omission that is punishable by law for Security and Corrective actions taken or to be shed. "Prevention" means "preemption" and "in front of something going" and "conscious and alert" .Human social life is governed by the rules or social norms. If we use the rules that some types of behavior in certain areas as appropriate behavior and other behaviors defined as inappropriate behavior, did not follow; activities was chaos. Fundamentally, criminal measures and the prevention priority attention and they are not only an introduction, but are intended as an end to the legislator. Therefore, error and crime prevention position of first place in the religious teachings of Islam and its teachings. It should be noted in brief that in the past that meant "criminal prevention" includes a series of penalties against offenders in crime and terror has been raised. While today "prevention" and a new sense of self that includes all measures that prevent the formation of crime in society. Certainly preventive measures for crime, the criminal policy principles of Islam. These precautions set of activities Producer training, educational, social, cultural, economic and political covers. Of course, with a legal backing in the community, is indispensable. On the other hand prevention despite many pundits as one of the policies and measures in the field of social control is essential. This policy directly and indirectly for all acts and commissioning work is focused on preventing crime and therefore a "policy priori" that the types of penalties and Security and Corrective Measures that "a priori policy" is placed. What are the research, analysis and systematic study of the place of the judiciary (as the highest judicial institute) and the Judicial Organization of the Armed Forces in the prevention of crime, addition to clarifying the legal responsibilities of the judiciary in the conceptual and applied to prevent crime, the mission, tasks and organization of its affiliated entities also analyzed and evaluated. In this study, types and impact analysis of each of the affiliated organizations, the judiciary and the judiciary beyond the defined and diagnosed.

## Research background

A. Authorization senior thesis in 1393 at the University of Kerman Iranian criminal law approach to the role as well in the prevention of recidivism, as well as the role of social cases as well. In this study the issue of the role of criminal law approach being studied in the prevention of recidivism, but there is talk of the police force. Mohammad lighted in 1393, his senior thesis entitled: The role of restorative justice and in preventing recidivism, to investigate to the failure of both its shape, the rehabilitative new model was introduced in the criminal policy of "restorative justice" has been called and seeks to reform the criminal justice system and the role of restorative justice and how to implement it by others , and little reference to the role of armed forces who have not.

### Crime in the word

Crime meanings: cut out, picking fruit from a tree, carry, acquiring, sin and evil get used to something (Farahidi, 1409, 6, 119) And convict is one who has the right to cut and void and leisure over work his evil urges (explicit, 1362 Sun, Article, grace, 68-1364Sh, 1, 69), in Dehkhoda dictionary means: sin, error. (Nazem al-Atteba). Znb. Aggression. (Text Allghh) (the Aqrb Resource): Vmnh "We however Fi offense." Misdemeanor. Faction. Rebellion. Asm. Sin. Zanb. improper. Faction. penalty. Error. (Dehkhoda, 1383).

### Crime in term

Crime, jurisprudence and legal term means any act or omission that is designated in law for that penalty. According to various definitions that have been raised about the crime, do universally accepted definition of that value is not provided in time and space. The reason for this is that the mass phenomenon by scientists and researchers, foundations and various forms so what is one of numerous crimes, other times not only as a crime may not take, but it may even be considered of good practice. (Shambayati, 1384, 1, 213).

The definition of crime in Islamic law In religious literature, crime or fined and their derivatives are used as synonymous with sin and at the same literal meaning (Surah Taha, verse 74, Surah Al-Ma'arij, verse 11, Fazal Hindi, 1405, 2, 415). Some religious scholars and authors Znb sin and crime (sin) would have meant mass. (Askari, 1353, 193) Thus, the mass of so-called religious texts and jurisprudence any forbidden in our religion that God's punishment for the mundane (such as, punishment, retribution, atonement, expiation) or hereafter decreed, Whether they do the work that they are forbidden in Islam or leave the work that has been commanded. (Feyz, 68-1364, N. 1, 70-69) offense in the language of the Qur'an and consequently in Islamic jurisprudence, is to do the act or promise saying that the god has forbidden it. In other words, deeds and sayings of crime are considered to be contrary to the principles and commandments of God Almighty so in verse of Surah Al-Ma'idah XII "Yajramanakom" means work is obscene entered and the term "criminals" in verse forty-eighth of Surah Al-Qamar also refers to ugly behavior of those who live in error. This could mean the verses which of the types of crimes punishable by death, retribution members, diya, adultery, a Hadd, the theft of the Holy Quran has been entered in the affidavit. (Validi, 1372, 2, 13) .The Conference of Islamic criminal law enforcement, crime "against the commandments Scripture and tradition or from acts that lead to ruin a person or community" have been defined. (Gorgi, 1355, 1, 58) religious legal definition of the crime of aggression and violation of religious beliefs and it is inspired by God and the people's right. . So in terms of this category of crime including corruption issues that have social and personal corruption. The doctor grace to say that scholars have defined the crime: "Crime is the act of doing or saying the words of the law, the punishment prescribed by Islam it is forbidden and the verb." (Feyz, 1387) In other words, crime is a promise to do an act or say that Islamic law it is forbidden and the punishment prescribed is an act or omission that promise, that Islamic law it is considered obligatory and on leaving the criminal has been appointed. (Motahari Bidgoli, 1388).

General divisions of crime

1. Criminal offenses: criminal offense in general, every act is to be done under criminal law or leave it be accompanied with the prescribed penalty; Such as murder, fraud, theft, etc. in terms of the legal elements of a criminal offense according to the principle of legality of crimes, an act is certain that in the law. And in terms of material element of a criminal offense may be independent of realized losses and material damage. (Ardabili, 1386, 1, 121)
2. Civil offense: refers to the action that is Men-Gheyre-Hagh, and obliged the doer to compensate the damage caused to others and may not be subject to specific wording in the law such as Article 328 of the Civil Code : "Everyone is responsible and should waste another property like it or not Price Whether intentionally or non-intentionally and whether the same is wasted or interest and, if it is incomplete or defective price of property is guaranteed. "
3. Disciplinary Crime: Police Abuse is a violation of trade rules or group of persons due to join the group accepted it. In fact, a tiny community of centers of trade such as lawyers, notaries, doctors and .... such a great community based on the principles and regulations that protect the order and very survival or trade union and professional groups (Ardabili, 1386, 1, 127).

Lexical definition of Prevention

The word prevention means: "to prevent, deter, prevent and warn about the occurrence of something close to it, prevent, repel, prohibiting the plague of the prior to maintain, preserve, preserving health, disease forward to" come (Moein , 1360, 933)and in Amid dictionary: it is infinitive and means "stop." and in medicine means: "Any action that the doctor or medical officer do to prevent disease." (Amid, 1389).

### **Defining prevention in term**

In terms of etymology, the word prevention has two dimensions: (1) means "forestall, overtaking and to prevent something going." And (2) to "inform, and warn about something". But in criminology preventive measures used in the first sense, namely using different techniques to prevent the occurrence of crime. Scientifically also, before making a logical sense - that along with rational reflection experimental and empirical observations arises. "Crime prevention is a set of actions that to avoid possible harmful interactions for individual, group or both comes into action. . Such as the prevention of youth crime and the prevention of accidents on the roads "(Rajabipour, 1382, 15). It can be said that the number of definition and classification (typology) of the proposed measures is equal to the number of criminology experts.

## **Military Crime and its divisions**

The military is the person that employed by employment law in any of the armed forces or by virtue of law, public or military service, in one of the periods necessary, caution is served or stored. Criteria and standards to identify current laws have specific war crime and general crime is a war crime distinguishing season is the existence of two features combined together in a criminal act. One of the two, however, is the legal entity that is the subject of the offense and the offense of armed forces members. Article-one of the Penal Code crimes Armed Forces adopted on 9/10/1382 stipulates that offenses related to specific tasks of military and police members of armed forces in military courts' jurisdiction. The second describes the situation in which the conditions and circumstances of the actual crime. Article 172 of the Constitution has held that offenses related to specific tasks of military and police, military crime and Note 2 of Article 597 Criminal Procedure Code of the Armed Forces in implementing the above-mentioned principle, offenses related to specific military tasks have been defined as follow: "It means offense which members of the armed forces in relation to the duties and responsibilities of the military and police that their responsibility is to the law and regulations, are committed. Article 597 of Criminal Procedure Amendment Act 1393 in the implementation of the above-mentioned principle, offenses related to specific military tasks have been defined "Military and police offenses related to specific tasks except members of the armed forces as crimes court bailiff Justice dealt.

Generally, military crimes can be divided into two categories:  
1. Crimes military

2. Joint military crimes.

The first batch of pure and purely military offenses belong solely to the military and the civilians for committing the crime is not considered. Basically, the punishment for certain crimes, crimes Armed Forces Military Penal Code is predicted. Such as desertion and disobeying and etc. The second category crimes that are not specific to the armed forces, whether military or a civilian commission of the crime committed it be known it was determined to punish the crimes, crimes such as forgery called joint military and embezzlement and etc.

## **Examples of military personnel in the Armed Forces of the Penal Code**

In Article 1, the first chapter: "Basic Materials" states:

"The military courts to military offenses related to specific tasks and security of all persons under the law abbreviated" system "called, disputes:

- (A) Staff of the Armed Forces of the Islamic Republic of Iran and affiliated organizations.
- (B) Personnel and organizations affiliated with the Islamic Republic of Iran.
- (C) staff and members of the Iranian Revolutionary Guards Islamic Revolution in Iran and affiliated organizations to mobilize Iranian Revolutionary Guards Islamic Revolution.
- (D) employees of the Ministry of Defense and Armed Forces Logistics and its affiliates.
- (E) Law enforcement personnel of the Islamic Republic of Iran.
- (F) duty personnel until the end of its service start date.
- (G) students, the issue of employment law, armed forces, military and police training centers at home and abroad, as well as educational centers of the Ministry of Defense and Armed Forces Logistics.
- (H) those who are temporarily in the service of the Armed Forces of the Islamic Republic of Iran's armed forces, according to employment law, in the mentioned period are members of the armed forces.

## **Judicial Organization of the Armed Forces military role in the prevention of crime**

In accordance with paragraph "5" Article 156 of the constitution of the Islamic Republic of Iran, one of the tasks of the judiciary is to prevent crime and armed Forces Judicial Organization judiciary is important regardless of the treatment and the fight against criminals and outlaws any results will not be positive and constructive. It is obvious that preventive measures as vaccination against crime and regulatory military units can be expressed in two ways: 1. The sum of these measures is primarily related to when the offense has not been fulfilled yet. 2. Another part of the proceedings relating to the time after the crime. The part that should be considered more than anything else is the Judicial Organization of the Armed Forces adhered, measures of crime bits of this stage of military units and basic regulatory guidance they play a major role. The bits actions

after the crime, the offender in order to rebuild his military regulatory community is very important and necessary. Because these measures are also falling crime rates, reform criminals and ultimately prevent recidivism is important fantastic. If a military court investigating judge and litigation completely succeeded in its original mission, although some may have an impact on crime prevention, but all the real issues related to crime and criminal justice agencies do not communicate directly or indirectly, the main task and the task is difficult, but the root of many crimes elsewhere and seeking other means of drying up or lack of development of mankind. In other words, crime prevention terms of size means it takes several appropriate measures many of these measures are the main demands of the mission area and direct the Judicial Organization of the Armed Forces abroad and it must be in other institutions such as family, service units and searched the extraordinary role in education research and regulator are negative or positive.

## Conclusion

The most important way of prevention of crime among armed force is the establishing a strong and sensitive selective core and also holding cultural classes, ideological and effective training and full and routine investigation to the livelihood of the personnel among the armed forces. Judicial Organization of the Armed Forces can be one of the most pioneering organs that discuss strategies to prevent crime, both scholarly and practical. Head of the Judicial Organization of the Armed Forces decriminalize relies on the use of inter-organizational factors outlined and states that prison is incurable pain and as additional service in the Armed Forces Judicial Organization penalties, demotion, transfer to the place of residence instead of taken prisoner is away as well as parole, pardon or commutation of the sentence suggested the program that is intended to reduce the incarceration rate.

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