

The Position of criminals Personality File in Iran's penal policy in 2010s

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Abstract:

Consideration of the perpetrator's personality in the today's criminal law is very important and the actualization of the restorative justice and achievement of the punishment objectives is difficult without recognizing and perceiving it; moreover, it might even cause the expansion of iniquity in lieu of serving justice. It is for the same reason that the personality file finds importance. The personality file incorporates information about the general and special statuses of the guilty such as his or her psychological, familial, educational and social conditions. Such personality files are evaluations of the crime's human and social aspects along with the prior familial, educational, professional, psychological and physiological attributes of the accomplice as well as the motivation of the crime perpetration and, in general, the general states of the criminal. Therefore, the present study investigates the personality file as a factor influencing the correct implementation of the restorative justice as well as its effect on the commutation of punishment.

The present study is seeking to explore the issue based on a descriptive method through taking advantage of library research.

Keywords: personality, personality file, restorative justice, Iran's Islamic criminal act.

1. Introduction:

We are living in a society that has to benefit the most out of the legal order and incur the least losses. Restorative justice, now for a several years in the novel law literature, looks for ways of compensating the loss imposed to a victim and correcting and treating the criminal. The criminals should not be only approached through penal judicial policies and when they are punished it has to be not the case that they distance away from the society and be additionally penalized (Haqiqi, 2017).

Having left behind its classic teachings, the modern trial system has become completely revolutionized and it is doing its best to revitalize a type of applied modern trial system subject to explanatory intellectual streams that pivots its subjective and field studies about the perpetrator of the crimes and makes efforts to invent scientific methods to evaluate and examine the criminals' personalities. Such an intellectual evolution has been the yields of human schools in developing the applied criminal policy and justice-seeking and human-oriented approaches. Therefore, the necessity for arranging personality files so as to achieve the objective of individualizing the social reactions and determining the proper legal mandates in proportion to the criminals' personality characteristics has drawn the attentions of the thinkers and the correctors of the criminal justice cycle and this has made the lawmakers to, through coming to an understanding of the extant realities, stipulate scientific examination of the criminals' personalities as a legal requirement in the trial procedures and take the results obtained thereof into consideration in the penal fate of the

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criminals (Najafi Tavana, 2010). However, the justice is unfortunately not served in the traditional courts having the sole objective of retrospectivity and doing nothing other than suing the criminals' breach of law because they only try and sentence the criminals without paying attention to their personalities and disregarding the factors that have influences on their wills and provide for their becoming of criminals hence blemished, let alone the consideration of their familial, social, economical, psychological, physical and affective backgrounds. This is while convicting a criminal without considering his or her background and personality and the discomforts s/he has suffered is neither fair nor just (Mazlooman, 2007) and it is not even contributive to the restorative justice actualization. It is the criminal policy that emphasizes on the revival of the victim's rights and dissolution of the problems originating from the occurrence of a crime and repairing of the losses, especially the harms incurred by the victim of crime, and, also, rehabilitation of the criminal through active and free participation of victim and criminal and the local community in negotiation and conversation within the format of such mechanisms as intermediation and group and familial meetings and chain models and concluding an agreement and reaching a consensus (Rahiminejad et al, 2016).

According to what was said, the present study is seeking to find an answer to the question as to how can the personality file play roles in restorative justice and influence the punishment commutation? Thus, parallel thereto, the present study firstly deals with general issues regarding personality file and restorative justice and then evaluates the role of personality file in restorative justice and commutation of penalties and finally concludes the materials.

2. Defining Personality:

Personality literally means dignity, rank and degree and it is defined as "the fixed part of an individual's behavior; the way an individual behaves and, generally, the thing that is always with an individual and distinguishes him or her from the others" (Ebrahimi, 2012). In fact, personality is a term that everyone has at least uttered it a thousand times and possibly without having a clear scientific concept thereof in their minds. In simple terms, when we talk about an individual's personality we mean his or her characteristics and behavioral schema making him or her distinct from the others. The term "personality" is derived of the Latin word "persona", to wit mask or disguise (Amirzadehfard et al, 2017). In other words, personality is a collection of apparent and internal features of the individuals' behaviors enjoying greater stability and manifestation and being somewhat predictable to the extent that these personality characteristics make them look different (Mohammadian and Muhammad Rezapour, 2014).

There are various definitions provided of personality in psychology. In some of these theories, the subconscious part of the individuals has been greatly valued in the belief that the mankind is ignorant of the real motivations of his behavior and deeds because they reside in the internal wisdom and subconscious faculty. In parallel, Gordon Allport, one of the first psychologists who performed precious researches on human personality, defines personality as stated in the following words: "personality is the dynamic organization of the physical-psychological systems of every human being that determines the distinctive and definite way of adaptation to the facilities of the life environment wherein the personality is striving" (Amirzadehfard et al, 2018). Also, William Sheldon, the American psychologist, defines personality as "the dynamic organization of the individuals' cognitive, passive, volitional, physiological and physiognomic aspects".

Personality is also given two meanings in law:

- It incorporates the humans and nonhumans' becoming the subjects of rights and obligations, like the business entities;
- It is defined as an abstract topic to refer to the entire affairs pertinent to the humans' essence and their entitlement to protection by the law; in this meaning personal law or the legal person are but two of the prominent traits dealt with in law (Abedini and Alavi, 2017).

3. Defining and Conceptualizing Personality File:

The occurrence of every crime entails the existence of factors contributing to the emergence of abnormalities that will finally lead to the criminal offences. These factors are divided to two sets of internal and external factors in criminology. The internal or psychological factors pertain to the very personality of the crime perpetrator and the external or environmental factors encompass the social problems and challenges. These two factors, altogether, illustrate the personal visage of the perpetrator of crime to the judge. Such a personality countenance can assist the judge in making a just decision about a convict who has fallen due to the inauspicious individual and social conditions so as to devise the proper corrective and punitive measures that might eventually prevent recidivism (Soleimani and Hajjariyan, 2018).

Nowadays, the governments, in their modern criminal policies, consider the study and recognition of offence and the reasons behind and the types of crime as the prerequisites of trying the crimes and the necessary conditions for a fair trial. In this regard, criminology, taking advantage of the findings of the other sciences, like psychology, psychiatry and sociology, makes efforts to investigate the criminal motivations and the role of the individuals' personality characteristics in the evolution of the criminal behaviors (Najafi Tavana, 2010).

In fact, personality file is an accomplishment of the modern criminology in the penal code of law in line with helping resocialization of the criminals and it has also been taken into account in the new series of the criminal procedures. Personality file contains reports by various specialists (physician, psychologist, psychiatrist, social workers and so on) (Ebrahimi, 2012). In another definition, personality file is recounted as the dossier compiled along with the other criminal files and embraces such information as the general and special statuses of the criminal like psychological, familial, educational and social conditions and it investigates the human and social aspects of the crime with an evaluation of the familial, educational, professional, psychological and physiological of the accomplice as well as the motivation of crime perpetration and, in general, the general whereabouts of the criminal. It is evident, in this sense, that the criminology, benefiting from the other sciences like psychology, psychiatry and sociology in examining the criminals' motivations, has taken valuable steps. In these files, the familial and childhood backgrounds, failures and discomfitures, family status, in terms of the relationships with parents, number of siblings, and history of parents' criminality or the judicial identity of the family members are reflected. If an individual is found having committed a crime, the reasons behind crime perpetration can be figured out via referring to the personality file and, this way, the repetition of future crimes can be deterred (Social and Crime Prevention Vice-Chancellorship, 2018).

4. Personality File in Iran's Penal System:

In Iran's legal system, the investigation of the convict or culprit's personality aspects is conducted by the judge and the justice department's constables, if it is deemed necessary, in the course of criminally trying him or her; but, there is no dossier under the title of personality file independent and separate from the criminal file in the crime discovery stages, the preliminary investigations, indicting and trying a crime, in its special sense to wit the issuance of a sentence, and the lawmaker has acted completely inconsiderate in this respect. However, there are various articles in our penal codes of law (Mohammadian and Muhammad Rezapour, 2014). In fact, Iranian legislator had not stipulated any mandatory rule on compiling personality files, especially for children and adolescents until the enactment of 2014's criminal procedure and the criminal files were created after conviction in the punishment enforcement stage in prisons and that was only for the sole purpose of identifying and classifying the inmates. After the approval of the aforementioned law necessitating the arrangement of personality files, the evaluations and examinations concerning the creation of the culprit's personality file, plus the criminal file, was not carried out in an optimum manner by the judge and the justice department constables (Abedini and Alavi, 2017).

Based on Article (203) of the criminal procedure, "in crimes that are legally penalized by death penalty, cutting off of the body organs, life sentence or Degree Four or higher canonical punishments as well as in the intentional crimes against the physical integrity of victims for which a third or more of a complete atonement should be paid, the prosecutor is obliged to order the social worker units to compile the culprit's personality file during the process of investigations. This file which is created in separate from the criminal file, contains the followings:

- A) A report by the social worker regarding the material, familial and social situation of the convict;
- B) Medical and psychological reports;
- C) Specificities of the personality file.

The criminals' personality file compilation should be principally ordered by the prosecutor at the onset of the prosecution with the formation of a team composed of a psychiatrist, a general physician, a psychologist, a psychoanalyst, a social worker and several social science experts who examine the physical, individual, social and psychological situation of the culprit or convict (Eshrafi, 2016).

Article (222) of the civil procedure of the general and Revolution courts enacted in 2000 on the methods of trying the criminal affairs has set the compilation of personality file for any accusation, including minor and major, at the discretion of the judge and its creation, even for the heavy allegations, has not been made compulsory. This is envisioned as a substantial shortcoming of the current rules of procedures (Mo'azzenzadegan, 2012).

Prediction of personality file compilation should be absolutely attributed to France's criminal procedure. Generally in Iran's criminal procedure, the compilation of the personality file during the trial and before the issuance of a conviction verdict in regard of the personality characteristics consideration has only been summarized to cases like article (37) of the new punishment law with consideration of the criminals' statuses and states". In Iran's law, corresponding to the article, the quality of the commutation of or exemption from punishment "has been made only dependent on the crimes the penalties for which can

be mitigated via considering the whereabouts and moods of the criminal” (Soleimani and Hajjariyan, 2018).

In Iran’s legal system, the personality file is taken into consideration for following cases:

- Recognition of punishments more appropriate for the convict so as to simultaneously enforce commutation (Article 22 of the penal code of law)
- Investigation of the social status and the life histories of the convict and the states and moods that have caused him or her to perpetrate a crime so that the punishment enforcement can be suspended (paragraph (b) of article (25) of the Islamic penal code of law)
- Predicting that the defendant would not possibly recommit the crime so as to enforce the rulings of the conditional release (paragraph (3) of article(28) of the Islamic penal code of law)
- Recognition of the entitlement for commutation regarding the crime accomplices in proportion to the crimes performed by each (the note to the Article (42) of the Islamic penal code of law)
- Recognition of the dangerous moods of the insane individuals for preserving them in proper localities till the dismissal of the dangerous state (article 52) of the Islamic penal code of law)
- Recognition of the dangerous states of the criminals so as to take safety and corrective measures in respect to them (article (1) of the safety measures, enacted in 1961)
- Recognition of the degree to which criminals are deemed dangerous so as to figure out the need for keeping or treating them in criminals’ asylums or not (article (4) of the safety measures law, passed in 1961)
- Recognition of the perpetrator’s experiential dread for the enforcement of the alternative punishments in cases like articles (224&614) of the Islamic penal code of law
- Recognition of penalty commutation expediencies in unforgivable crimes based on the private plaintiff’s forgiveness after the issuance of a decisive verdict and upon the pleading by the defendant (article (227) of the criminal code of procedure) (Ebrahimi, 2012)

There are difficulties in Iran’s legal system regarding the enforcement of the plan (identification of the culprit or convict’s personality in –specific manner, the compilation of personality identification file and, finally, adoption of a decision and making of suggestion regarding the culprit or the convict based thereon. The followings are but some of the most important of these barriers:

A) Legal Barriers:

- The lack of sufficient requirement for the compilation of the personality identification files
- The lack of diversity in the punishment enforcement mandates

B) Judicial Barriers:

- Instructional weakness and the judicial system’s negligence of the issue’s importance

- Unspecialized and nonscientific appointments and installations
- The large volume of the criminal files and subsequently the defective individualization of the judicial decisions

C) Executive Barriers:

- The insufficiency of the financial facilities
- Absence of laboratories equipped with up-to-date technologies and specialized personnel

Therefore, the threefold branches of the country should device a proper timetable so as to take appropriate measures in line with resolution of these problems (Mohammadian and Muhammad Rezapour, 2014).

5. Restorative Justice:

Restorative justice is a model of justice that is laid upon the foundation of restoration and compensation. In this model of justice, the victim of crime plays an active role and s/he is given the ability to face the criminal and propose his or her demands. In this model, the criminal should be helped to compensate the harms and damages s/he has caused to the victim in an optimal manner and organize his or her relationships with the victim and also s/he is to be aided to make up for the damages s/he has caused to the social order. Therefore, in this model, the individuals are valued (Shiri, 2007). The English criminologist, Tony Marshall (1996), suggests a definition of restorative justice that is being widely applied in an international level. Corresponding to his definition, restorative justice is the process in which the entire individuals who play a role in relation to a certain crime gather about to collectively make decisions in regard of the way the crime effects and results and the problems resulting thereof should be treated in a futuristic approach and finally come up with a solution. The definition is well-illustrative of the restorative justice and is hence envisaged fruitful and yielding (Maxell and Morris, 2004). In a simpler definition by Bismore and Welgreue, “restorative justice is any measure that is, before anything else, headed towards the enforcement of justice via compensating and restoring the damage and harm created as a result of the crime perpetration”. This way, these two writers underline the crime from the view angle of the damage it has caused and not from the perspective of its breach of a formal-legislative norm and the justice has to place the compensation of such a damage and harm in cooperation with the other party atop of its agenda (Najafi Abrand Abadi, 2004).

It can be stated that restorative justice was first became the normal procedure of such countries as northern American countries, Australia and New Zealand in an experimental-scientific manner with its taking of various forms like intercession, meetings or group familial sessions, restorative or curative, corrective or healing sessions, gatherings or circles and so forth. In fact, the civil institutions and judicial authorities and the police of these countries made efforts within the format of group and local initiatives as well as within the framework of dejudicialization mechanisms to resolve the lighter criminal disputes without resorting to the courts or continuing the judicial processes. The proponents of the restorative justice were predominantly in pursue of two major objectives: firstly, providing for the soothing of the victim of crime and, secondly, creating the feeling in the criminals regarding the idea that their crimes are fairly tried. Based thereon, the compensation of the victim’s loss and damage is the essential subject of the restorative justice and, of course, the compensation is not mere payment of money to the victim rather it might take the form of an offender’s instruction, assignment of certain works, treatment

and so on. The restorative approach, speaking of supporting the victims of crimes the way it is considered in Iran's criminal policy as paying attention to the position and role of the victim in the criminal justice and providing him or her with proper support is enumerated a relatively new issue in the criminological sciences. The party involved in the criminal phenomenon that had been left unnoticed in the traditional criminal justice is now being turned into the fundamental issue of the restorative justice (Shateri, 2011).

Brice White points to five attributes of the restorative justice:

- 1) Restorative justice is an invitation to perfect participation, consensus and general agreement in comparison to classical criminal justice that holds up a formal court to try a criminal for the crime s/he has perpetrated and without consensus and conversation about the ancillary aspects of crime
- 2) It is seeking to repair the relations that have been disrupted by the incidence of a crime as compared to the classical criminal justice that is looking for any opportunity to create pain, deprivation and inability for the criminal.
- 3) It is an effort made to create regret and the adverse consequences of the classical criminal justice are deemed more punitive in contrast to the devastative rehabilitating regret of the restorative justice.
- 4) The restorative justice aims at corroboration of the society for preventing crimes from happening in future as compared to the terrifying criminal justice adopting a retrospective approach and aiming at punishing the crime perpetrated.
- 5) The penal reactions of the restorative justice are manifold and humanistic (like the verdict of a punishment to repair the victim and the society's damages, asking to be excused, daily pecuniary punishment, surveillance suspension and serving the public interests) as compared to the classical criminal justice whose reactions are limited to incarceration, whipping, banishment, execution and others of the type (Sarikhani and Khaqani Esfahani, 2013).

In fact, restorative justice is a sort of return to the concept of justice; it is the very old and subtle concept that is overshadowed by the other approaches. The advent of such an approach in the present era and the pervasive interest shown in it have made us hopeful to the future of justice (Maxell and Morris, 2004).

The functionaries and supervisors of the restorative justice have come to the conclusion that the victims' satisfaction of the approach is for the reason that they were not essentially allowed to take part in the traditional criminal trial process. They could attend the court as witnesses but they were never seen as decision-makers in the trial process and could not actively participate therein. On the other hand, in the restorative justice, the victims that have been present in intercessional programs between the criminal and victim have been found interested in terminating the process the way they had wished (Qolami, 2004).

6. Personality File and Restorative Justice:

It is endeavored in the personality file to provide for a general recognition of the criminal and this can assist the judge in adopting a punishment in proportion to the correction and treatment of the criminals and it is envisaged as a crucial step in line with individualization of the punishments and observation of the fairness and justice in criminal trials. It is generally termed "restorative justice" (Eshrafi, 2017). In fact, the accurate recognition of the criminal's personality, that can be attained by the judge via compilation of the personality files and inquisition of the specialized notions of the experts from various sciences and then considering them in the personality file, can assist him or her to better

realize the various factors influencing the criminal act and determine the quota of each of these factors as well as the share of the perpetrator's will and the crime motivations so as to finally come up with the best strategy to encounter the criminal (Shafi'ei and Allahi, 2017). In personality file, the objective is not investigation of the crime rather it is gaining an overall insight about the criminal that can aid the judge in issuing an appropriate punishment sentence so that the criminal can be corrected and treated and this is regarded as a significant step towards the individualization of the punishments and observation of the fairness and justice in the criminal procedure and it is reminded as the restorative justice policy (Mohammadian and Muhammad Rezapour, 2014). Consideration of the criminal's personality and the genuine recognition of the criminal, the quality of the crime committed and other cases of the like can contribute to the judge trying the criminal case to make proper decisions with the objective of rehabilitation of the criminal followed by making use of certain strategies within the format of commutation or intensification of the punishment as well as making use of such other statutory provisions like punishment suspension. Article (22) of the Islamic penal code of law stipulates that:

In case that the commutation considerations are found verified, the court can mitigate the canonical and/or deterring punishments and/or transform them to another type of penalty if it is envisaged more appropriate for the convict ...

Corresponding to paragraph (3) of the article, the special states and situation subject to which the accused has perpetrated a crime like the instigating behavior and utterances of the plaintiff or the existence of other noble motivations in the perpetration of the crime are all effective in the reduction of the criminals' amount of guilt. The legislator emphasizes on the identification of the factors under the influence of which the criminal has perpetrated the crime and, in fact, the stress has been placed on the personality recognition of the accused and in cases such as this the prosecutor is asked to mitigate the punishment considering these factors to the extent that is deemed in proportion to the culprit's personality. Although the stimulating utterance and behavior of the plaintiff as well as the existence of a noble motivation was exemplarily mentioned, it does not forbid the prosecutor from not considering the other internal or external factors that are found influential on the crime perpetration in specifying a proportionate amount of punishment. The intentions of the legislator regarding the special situation of the culprit and/or his or her past records as inserted in the paragraph (5) of the same article are not clear-cut. But, the idea that strikes the mind is that the legislator's intention of the expression of the paragraph is the individual's position in the society and his or her special conditions of his or her life and personality. As for the culprit's past history of conviction, considering the fact that the compilation of personality file has not been so far made mandatory in Iran's criminal procedure and it is not deemed as a compulsory subject, it can be stated that by the culprit's past record, the conviction history of him or her is intended, including its being found effective or not. But, the culprit's fame and prestige are effective in the amount of punishment s/he is sentenced because the determination of punishment is in such a manner that it has to best serve the correction of the criminal. So, the paragraph (3) of the article (22) of the Islamic penal code of law implicitly points to the necessity for the creation of personality files. Paragraph (5) of the same article that emphasizes on the acquisition of trans-legal information on the criminal and study of his or her background in stating that "it is not possible by any means other than personality file, verified by social-workers, for

a judge trying a criminal case to sentence the culprit to a punishment proportionate to his or her personality (Shamlou and Gouzali, 2012).

In article (58) of the Islamic penal code of law, passed in 2014, the legislator specifies the conditions of granting parole. The first condition is that the prisoner should have behaved properly during the enforcement period of the punishment. It is evident that parole can be only given to the ones who have been corrected and can enter the society. The justification of the criminals' being corrected or not cannot be solely performed though paying attention to the apparent matters rather there are specialized individuals who carry out investigations regarding the psychological and social affairs of the convict and would finally come up with ideas by way of which the judge is ascertained of the criminal's correction. Also, paragraph (b) of the article (58) stating that "the corrected criminal should not return to the perpetration of crime again" is obtained from referring to the personality file as a product of the corresponding specialists' ideas (Abedini and Alavi, 2017). Therefore, compiling personality files for the criminals causes more reasonable strategies to be accordingly adopted and, subsequently, more wise and rational measures can be taken in line with normalization of such maladapted individuals and this way the road can be paved for their return to the community.

7. Conclusion and Suggestions:

According to the abovementioned materials, the present study dealt with the investigation of the role of personality files in restorative justice and their effects on the commutation of punishment and its influences can be observed in restorative justice plans and its enforcement methods. It seems that it is not true to convict a culprit with no consideration of his or her past history and personality and the social effects s/he has been incurred and the restorative justice is not served in case of doing so. Therefore, the judge should not only pay attention to the perpetrated crime and forget the psychological, social and physical factors encouraging a criminal to commit an offence. In confrontation with the offenders, the judge should not be solely in search of the legal examples thereof rather he should act like a physician who before proceeding to any other measure diagnoses the disease and then prescribes the appropriate drug otherwise not only the disease is left uncured but it also might be exacerbated leading to the waste of the patient's life and/or outbreak of the disease. That is because since the restorative justice's plans are based on conversation and exchange of views, emotions and experiences of the crime shareholders they are in need of full-scale recognition of the criminal's psychological and apparent characteristics.

In sum, with the investigation of the usefulness and positive effects of personality files, the need for requiring the compilation of personality files is justified in the restorative justice that claims dynamicity and creativity. The existence of such a feeling of needfulness has encouraged the general interest of the countries and international organizations worldwide in the determination of strategic standards and principles in regard of the restorative justice and the necessity for the creation of personality files that has also attracted the attentions of the criminal and penal justice jurists from every corner of the globe. Therefore, it is suggested that the justice departments should pay a greater deal of attention to the importance of the personality files and set the grounding for the executive preparations so as to require and ease the compilation of the personality files based on the opinions of the experts from various specialized fields, like physicians, psychologists, criminologists and so forth. It is only by means of personality files that the courts can gain an insight over the personality characteristics of crime perpetrators so that they can come up with more

appropriate punishments in proportionate to the criminals' personalities following which the restorative justice can be better served.

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