

The Concept Of Incitement And Its Position In Iran And Azerbaijan Law

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Abstract: Emotion and excitation affections are considered in special times as the cause in commission of a crime among people. In some of these cases, these excitation and emotion undergo profound alternations, so that they become similar to some of the other states. Incitement as one of the mitigating defenses of punishment has a partly long history in common law system. Against, this category hasn't been considered more in Germanic-roman law system and Islamic religious jurisprudence. Thus, in our law system that composed of Germanic-roman and Islamic law system, you can't find rules and general doctrines commanding on this excuse in form of comprehensive and formularized. Just some of incitement forms are presumable and extractible as mitigating reasons or improving punishment between formularized laws. Nevertheless, this topic has been placed clearly in different materials in Azerbaijan punishment law. In this paper, first, doctrines and rules commanding on common penalty law and as regards to Iran and Azerbaijan law system will be analyzed and investigated.

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1. Introduction

There is will act commission in all crimes including intentional or unintentional and legislation punishments just doing intentional act. Providing loss of will of act commission, crime realization is averted, there should be intentional relation between action and active person. Will, is soul of movement towards a certain work after its benefit, imagination and admission. Knowledge and purpose are used in different cases of criminal law in Iran criminal law in one meaning that contains criminally intention. Purpose consists of man's will leading towards intent that legislator has forbidden or bidden its fulfillment or non-fulfillment. So, in intentional crimes, its act and conclusion are both agent's will and want (422: 1). Intent, purpose, and will are approximately as the same as conceptual, however, they're different in usages. "Intent and purpose" are used in punishment problems but will in legal issues and transactions, and idea in worship.

Purpose is interpreted in "wise adult's intent". Purpose is namely to act special action that is based on its four commands (will arrangement): 1. conception, 2. advantage admission, 3. will (impediment improves and causes development), 4. ardency, 5. realizing the work. Thus existence of this arrangement is needed to picture realization of "being optional" on a person's done work.

1.1 In law literature, incitement term is used in two contexts:

a. First, it is considered as one of the assistance forms in commission of a crime in side of encouragement and persuasion that in this case can

be referred to the first section of article 43 of Islamic penal law (which incites or persuades or threats or allures any other person to commission of a crime or causes crime occurrence by means of complete, to allurement and deception) is punishable as assistance in crime in these cases, and as for article 33 in Azerbaijan penal law. And existence of referred headings in article 43 of Iran penal law, it is punishable in partnership in crime.

b. Second, it's considered as one of its criminal liability resolver factors or extenuating. As follows that an accused against charge invokes to innocent's assuasive speech and deed or others. For example, person A enrages person B with his/her speech and deed so that person B loses his/her authority and commits a crime against person A and in this way requests acquittal or mitigation of penalty. Here unlike the first case, reparative action is not a crime (unless under, special conditions) and it isn't determined a punishment to him/her, but instead, legislator has put existence of such incitement from injured party as reason of induced person's approval of penalty mitigation. In recent concept, incitement has been ignored by Iran's jurists and legislators. It is considerable to say that word of incitement itself has not been used directly and immediately against law of Iran. In law of Azerbaijan punishment it is used directly to incitement and affection of spirit excitation in some cases of law so that it is referred to the first concept of incitement from words like "Güclü Ruhi Həyəcan", Güclü Ruhi həyəcan qəflətən baş vermiş in two articles 122 and 129 of penal law Azerbaijan to incitement in Persian and latin

equivalent emotional (mental) excitement (298, 279:2).

1.2 Incitement justification basis

1.2.1. Philosophy of incitement justification position
Primarily, criminal liability is based on freedom of will, faculty of discrimination and man's intellection, and each position may affect on his responsibility, fit causes to limit or flaw a person's will or faculty of discrimination. In common conditions, man does his deeds based on conically and freely choice; that is, there is at least assumption on this that first, a person thinks, next chooses action or leaving action with free will. However, sometimes because of created incitement, there will appear a condition for person who loses his control power of acts and behaviors absolutely or relatively and does deeds that if he were in common conditions, he would never commit it.

Primarily, intent is not wasted in the pose of impassioned and loss of control on behavior, and there is bad faith of common and special of both, faculty of discrimination and intellection, too – except on exceptional cases that incitement intensity is so far that crazes a person – remains lonely. But animation is a domain in which, person's free will and his power are limited in his behaviour control and as a result, element of choice is tampered and this case leads to be tampered – with criminal liability. Some people know incitement excuse criterion as decadence of behavior control faculty resulting in arousal because of incitement. In this statement, incitement is located in domain of internal abstract compulsion. As we know, the available traditional point of view doesn't know (internal) abstract compulsion, resolver of criminal liability. Because these excitement and sentiment are exposed to profound changes that are similar to some of other states, for example, due to intensity of these excitements and their being uncontrollable, a person is involved in craziness. Of course, there is loss of responsibility in this state. In practice, judicial policy of most countries doesn't know internal abstract compulsion containing interval root, cause of loss of responsibility. Because, most crimes are as a result of a type of feeling and sentiment such as anger, enmity, love and revenge, hence, we cannot know all people irresponsibility due to these reasons and do not punish them (311:3). Based on this belief, irresponsibility motivation of crime commission is usually tend to mitigate instincts and profiteering and social interests and public order protection be haves citizens to learn how to overcome anger, excitement and their other instincts, and also penal law has been enacted to control these desires and feelings [291:4]. Therefore losing behavior control cannot justify commission of crime or put an end to perpetrator's

responsibility in the form of relative or absolute because this case was due to the person's own default.

Some jurists, who have known the above mentioned statement insufficient, have justified responsibility decadence in excitation pose on the other way. In their belief, base of incitement excuse is sin collection of lawbreaker and limitation of perpetrator's intention [238:5]. According to this point of view, it is correct that he cannot be resolver of responsibility in common state of anger and excitements however, when lawbreaker himself has brought causes of perpetrator's excitation and indignation, his default collection and being blemished perpetrator's intention is responsibility resolver on some conditions. Aristotle deduces indignation as one of respectable social feeling that there may be suitable response to some of others behaviors in its limitation [238:13].

Another group beyond this and believe that a crime which happens due to excitation, in fact is committed by stimulator, not its apparent doer [6:477]. When it supplies perpetrator's incitation with gauge of motivation that loses its behavior control power, actually, doer is a tool in stimulator's hand and action is referred to him. Perhaps this deduction could be accepted in special cases that excitation intensity is such that takes away perpetrator's intellection faculty in complete form and expose it to craziness limit; however in more mitigated cases of excitation that discrimination faculty doesn't tamper with absolutely. It is not acceptable.

In personal opinion and inter natural subjective, anger due to incitement takes away control power from incited person and decreases his discernment power and accordingly his responsibility value lessens. Furthermore, a person's risk who commits a crime due to incitement and excitation resulting of that is far less than a person who does crime in indifference perfection and dominance on his enervation. In topical opinion and outer natural objective, decreasing of responsibility is on thought of mutual bargain and mutual faults, there is no move doubt that at first, it has been stimulator's fault and justice commands to decrease motivation fault of induced responsibility. And, finally, we can justify decreasing of induced responsibility with incorporation of above mentioned theories so that firstly, it is not just induced fault in crime commission (fault's contrast and outer natural theory) and at last decreases excitation due to induced's discernment power incitement and takes away his absolute domination on his action control. Basically, legislator's commands and forbiddances always notice people who understand them and are authorized in doing duties and avoidance of

forbiddance and it is this of view that freedom of will is a criminal responsibility condition and use of penalty. Spirit and exciting anarchies due to excitation leads to absolute or relative blemishing of behavior control ability and on this way, take away perpetrator's capability to call to account and punishment in form of absolute or relative. According to this, also in other cases of internal abstract compulsion can be effective on criminal liability in this way. It is on this basis that article 122 penal law of Azerbaijan Republic criminal code has brought out freedom of incitement from its traditional form and has located about "extensive spirit and mental anarchies" in which system is of effective factors on responsibility [33:7].

Now we should see what we can say about induction of dissenter of internal abstract compulsion acceptance about resolver factor's of responsibility, their argument based on necessity of feelings and excitations control learning from social people?

We can say to response of this argument, yes, we can, in some cases that excitation and other cases of abstract compulsion don't have more intensity and most common social people withstand against it, expect sporadic of people like this and call to account an accused that flinches of this importance and is committed contravention of social norms; but our discussion is where incitement intensity is so that can affects on most social common people and breaks their withstanding. In this state, man's excitation has been completely natural and part of his essence and in fact it shows inability of type of human – not a special person – in self behavior control. Does penal law expect men to react beyond their natural ability?

1.2.2. Kinds of incitement and their affection range. In each person's incitement affection range depends on two factors: incitement intensity and incited person's spiritual – mental structure. Considering to incitement intensity its affection on society common people and also incited person may appear four states below:

A. Sometimes the created incitement is so intense that divests person's realization and intellection power, so that exposes him to states near mania. In this state because of general decadence of intellection faculty, criminal liability is being tampered aside from the affection that might create incitement on other community people [77:8].

B. Incitement doesn't expose person to mania in some cases, however, its intensity is so much that: firstly, it affects on each common person in accused condition; secondly, the general public of community world act like perpetrator if they were on that position. In the other words, perpetrator's reaction displays acceptable from side of general public of community. For example, a man's reaction

that has seen his wife fornicating with somebody and murders her, in most special community people's opinion, it may be acceptable. In Azerbaijan's system, they have known this degree of incitement, criminal liability mitigating, so that will degrade person's responsibility from premeditated murder to the most uncomplicated form of punishment if there is such an excitation about premeditated murder.

C. In the third case, incitement can affect on society people and causes to divest behavior control power relatively common, but accused has overindulged on his reaction. Although perpetrator's reactions are due to created incitement, as regards to less intensity of incitement related to before cases. Society expects him to overcome to some extent rational on his anger. As a result, perpetrator's criminal liability remains in his condition, but as respects to such an incitement that could make.

Incitement in guilty person in the circle of methods thing's aggression (zorakılıq), criminal conversation (əxlaqsız hərəkətlər), intense contempt (ağır təhqir), protracted illegal acts (mütəmadi, qanunsuz və ya əxlaqsız davranış) have been considered in the article 122 penal law of the criminal Code of Azerbaijan Republic and mitigates perpetrator's responsibility and even exonerate of punishments. About other crimes, considering that maximum of punishment intensity that is executable to him.

Various people's assuasive deeds and speech affection are different and men have different reactions against incitements as regards to their sex, age, race and mental structure. Therefore, as regards to all features of an incited person that are affection on incitement affection, we should consider one common man of society with all accused features – such as age, sex, race and mental features as to be hot – tempered or not, subject vision or extroverts.

Perhaps it is impossible to state here of on characterized and clear criterion but generally, it can be said we should not consider properties and features whose creation and change are under authority of stimulated person such as hot temper, but we should consider features that accused person has no control like sex and age. In the other words it's unreasonable to say that our criterion is a hot tempered reasonable man and we should study incitement affection on him, because society expect the person to leave his hot temper so that he can communicate other people naturally. However, to consider age, blindness and, or being paralysis and creation of "a 15 year-old reasonable man, blind or paralysis" is not unreasonable.

In addition to personal features affecting on people's reaction, also type of society is also affective here. People's reaction of a society may be

different against special incitement with other community, so that a reaction is fully natural in one society and it seems to be barbaric and Bedouin. As an example, to most of special society people, it seems natural that a man's reaction who has seen his wife fornicating with other one and kills her while other societies know this reaction unnatural or it may be acceptable in some societies from general public's point of view to kill robber while robbery, whereas this act is disapproved in law of Iran. Now the question is this: Do we consider common features of each society in study of man criterion or can create a universal criterion? To choose a disassembled criterion from type of society faces to problems. First: with less of relativism, perhaps we can never say people's reaction of such Bedouin tribe or such European society is correct, meanwhile we cannot consider one universal valid criterion.

Second, to assume that we accept one Bedouin tribe's reaction is illogical against special incitement and it needs correction, should we resort to penal law in this state? Is penal law prophecy to contrast with a normal behavior and accepted by general public? Surely not; criminologists suggest a solution on such cases that making culture and changing the present position. In other ways, most people accept the new points of view. It is on this time that we can do penal opposition with before normal behavior as necessary that now it is in form of an abnormality. Therefore it's observed that we should consider particular features of each society in study of common man's criterion.

1. Incitement sides

One of other problems discussed based on excitation (incitement), is its sides namely stimulator and be incited. Is it necessary, doer of assuasive action is scathed person of commissionable crime or also third part can be discussed as stimulator? On the other hand person should act or set of actions due to incitement be related to accused person or doing actions to third party also can cause to incite accused person?

Response to the first question depends on opening a based problem as regards to incitement freedom that we have discussed before. Is there freedom basis in incitement excuse just for leaving behavior control or a compound of a scathed person's error and leaving behavior control leads to freedom? Provided that we allow the first point of view, incitement is not necessary to occur about the scathed person and incitement is reliable by third party too; even leaving control on behavior is possible to appear due to natural conditions such as face to heavy traffic of cats. But if we accept the second point of view, because the scathed person's error is condition of

incitement freedom realization, occurrence of his incitement is necessary and form of single or other's assist and so, incitement is not from the third parties or by affective natural factors on responsibility.

Law of Azerbaijan has adopted a special approach on this case. Article 122 of this law refers to "to be incited to leave control on behavior" not just because "perpetrator leaves control on his behavior". Thus to legislator of Azerbaijan, excitation occurrence is necessary due to intentionally man actions and natural conditions and situations cannot cause to realize this excuse; the reason of stimulating word of aim to kill in article 122 (Qəflətən baş vermiş güclü ruhi həyəcan vəziyyətində qəsdən adam öldürmə) and article 129 (Qəflətən baş vermiş güclü ruhi həyəcan vəziyyətində qəsdən sağlamlığa ağır və az ağır zərər vurma) is another confirmer of this point of legislator to speech or deed not natural factors. But considering loss of decree of doer of this action in scathed person, incitement seems to be acceptable for the third parties.

About second question (be incited person), doing actions related to doer has been known necessarily. However, a more logical approach is acceptable and it is not necessary for excitation's of person, necessarily suasive speech or deeds are related to perpetrator and as an example, annoying of person's relatives like wife or child, also can cause to fulfillment of incitement (Same:5).

2. Stimulating behavior features

2.1. Stimulating behavior essence.

Provided that we know criterion of excitation's excuse in the scathed person's error, stimulating action should have had offender and illegal essence. But considering more correct point of view that is known just because of leaving behavior control, apart from the scathed person's error as incitement basis, it is not necessary for stimulating speech and behavior to have unlawful essence and even natural factors contain stimulating factors.

The last mentionable point in this part is topical mistake on incitement. If accused imagines Set of unreal external events which could lead to incite him if they were Present by mistake and do criminal actions based on: Is there possibility of demanding incitement excuse? Considering that unreal imaginations can also lead to leave control on behavior, the response is positive to this question; just considering common man's criterion, such a mistake is necessary to be a standard mistake this means that if any common man were on that position, he could make a mistake.

2.2. Revenge and incitement difference

Incitement contains delicate and fully accurate domain and it is possible to be mistaken with vengefulness on many occasions. Mainly, a reaction that happens in time of excitation by stimulated person is a kind of vengefulness. But difference of vengefulness in special meaning and incitement excuse is this, that vengefulness happens in a time that person is in natural position of dominance on his becomes and actions their Control; But incitement excuse includes vengeful actions that happen in absolute or relative decadence time and loss of person's ability in his behavior control. Surely, the period of time between stimulated persons reaction and incitement enjoys much importance, provided that this period is so long that causes to relieve his anger and excitation. The next actions come among vengefulness deserves to be punished. The approach of law of Iran about this is to use the term of a sudden reaction. As it's said before, in current law of Azerbaijan a law context that defines incitement are articles 122 and 129 of penal law.

"Whenever there will be reasons on Change of premeditated murder such as being sudden that based on jury can be understood that the accused has been incited and loses his behavior control (whether with behavior speech and or both of them), answer of this question is on jury's responsibility if created incitement is so much that causes any logical person to act as accused method, and jury should consider set of behaviors and speeches as respects to affect on one logical person". Being sudden is as existence of this condition in this article.

2.3. stored incitement.

The condition of being immediate reaction caused to form rather, a new subject is namely stored incitement. The purpose of stored incitement is a set of incitements that at once show themselves and culminates after the last incitement that is usually little. Many jurist and courts disagree with concept of stored incitement. Referring to condition of being sudden and immediate of reaction, they state creation of time interval between incitement and reaction causes to eradicate being incited person's exciting pose and his next act is vengefulness [277, 5]. Also about stored incitement, the time interval among incitements one by one causes being incited to turn to normal pose related to any of them, and therefore accumulating of incitements mainly is not correct. So the thing that has been discussed as stored incitement, we should just deliberate the last incitement if there are conditions related to incitement excuse about it, the accused person profiles from this excuse and otherwise not (69:10, 72).

To response to this criticism, the process of stored incitement concept expresses that the pose of this incitement is according to new psychology findings. Psychology observation has been shown in many cases of mental pressure on self-conscious or oneself conscious man has been collected on him and at once time shows themselves by creating an adequate position. Therefore exterior calmness that may appear after one by one of this mental pressure is not as continuous removal of their affection.

4. Self constituted incitement

The purpose of self-constituted incitement are cases that accused person's behavior or speech is such a thing that accession of stimulating reactions of the scathed person is predictable and here upon actions, the accused person attempts to commit crime. In the other words the scathed person's stimulating actions are due to the accused first act and is affected by it. For example, at first the accused person begins to insult and curse to opposite side and opposite side also curses mutually, and then the accused person begins to batter him because of the infuriation due to this scathed person's act. Now the question is this: Can we bring in such excitation in incitement excuse domain?

As we know the basis of incitement excuse is to lose behavior control due to excitation that also results in stimulating behavior. Logically, requisite of realization of this chain term is to be unpredictable stimulating behavior of the scathed person; because whenever the accused person can predict the scathed person's stimulating actions before, at once encountering is lost with stimulating behavior and as a result the possibility of losing sudden control on behavior is less. Of course, as regards to the scathed person indulges on reaction to the accused person's first action so that the accession of his reaction is not predictable, it is possible to recourse to incitement excuse.

As something was said, evidently the accused person practices actions on cases to accession stimulating reaction from the scathed person with prior intent through this way to use freedom of excitation, incitement excuse is not able to invoke. Then, in order that we justify stimulating actions of a side's reaction and his response becomes including of law freedom, it should have two features below:

1. Consists of an unacceptable and illegal attack.
2. Immediately done before stimulated person's commission of a crime so that committed crime is treated as a kind of replying to one potential attack or contempt.

3. Incitement in law of Iran. In law of Iran, incitement excuse has never been ruled orderly and standardized in form of one general rule. You can see cases among codified law that legislator has known excitation involved in criminal liability directly or indirectly. In some cases, the existence of excitation has been caused to criminal liability removal of commission of crime and in some other cases to mitigation of penalty.

3-1. Incitement criminal liability femoral

Murder in marriage bed as article 179 of penal code approved in 1304, whenever husband would see his wife with a foreigner man in one marriage bed or in a pose that is as existence of a marriage bed and would commit to kill or injury or beat one of them or both, he would be free of penalty. Legislator has deduced no common rule about incitement excuse but he has described just one of the excitation states and has declared that murder in this position, doesn't make perpetrator face to penalty. There is also similar of this article in Islamic penal law. As article 630 of this law, whenever a man sees his wife fornicating with a foreigner man and knows woman's obedience, he can kill her at once and if the woman is not absolutely unlawful, just kills the foreigner man; therefore, we just consider this material from point of view that we have already said about incitement excuse.

A. It has been said three main justifications about recourse of perpetrator's freedom: Most of the jurists have discussed on this problem in subject of legitimate defense and thus some know perpetrator: action, legitimate defense against violate to honor and reputation. However, absolute judgment to pass of murder even if with woman's obedience is not adaptable with legitimate defense. So some put it in more general frame of legitimate defense and dividing in common and specific legitimate defense know this act of killing some of instances of common legitimate defense whose aim is exclusion of denier and protect of society morality [511:11, 512].

Nevertheless, above mentioned features have much similarity to attack conditions on legitimate defense? We should notice that firstly legitimate defense consists of exclusion of an attack which has not been finished yet while use of legal freedom of incitement happens when crime had been committed after occurrence of incitement that on this form. We cannot treat it as defense but it is a king of revenge. Secondly, when legitimate defense proves that there is adequate defense with attack, while accurate conditions of legitimate defense isn't accomplished, particularly in a case that intensity of

incited reaction is not legitimate and perpetrator just deserve to use mitigate legal freedom and not legitimate defense charters namely unqualified immunity of penal. Therefore, in such cases legal freedom due to incitement under takes role of alternate of legitimate defense in penal law of Iran.

3-2. Incitement; to mitigate punishment

At present about an extemporal false accusation of sexual intercourse and article 22 of Islamic penal law, incitement caused to mitigate of penal of person and is ferret to below: An extemporal false accusation of sexual intercourse.

Conclusion

1. Regards to criminal liability which is based on two elements of faculty of discrimination and freedom of will, decadence and be tampered with behavior control power is justifiable of relative or absolute decadence of responsibility in pose of excitation.
2. Range of incitement affection depends on intensity of incitement and spiritual mental structure of incited person and may include different degrees from absolute divestment of criminal liability to loss of its decadence.
3. To demand incitement excuse, obtaining two personal criterion (perpetrator's excitation in each special case) and typical criterion (possibility of society common people to be incited is necessary).
4. Being immediate reaction is not condition of obtaining incitement excuse, but the condition existence of excitation pose and relative or absolute divestment of faculty of behavior control that of course, as regards to gradually mitigation of excitation pose, the affection between brought incitement and reaction in most cases causes to reaction exit from group of incitement excuse and change it into vengefulness.
5. In none of incitement cases that have been discussed if penal law of Iran, doctrines and basis of incitement excuse such as typical and personal criterion hasn't been considered and even legislator of Iran has not refilled to basis of freedom or removal of liability.
6. As regards to considering incitement in penal law of Azerbaijan particularly in articles 122 and 129 is assumed in crime with in tent and in form of sudden and intentionally that typical criteria of criminal conversation, intense contempt, aggression and continuingly to expose to aggress on has been contingent.
7. The set of subjects discussed about incitement excuse needs reconsideration in old point of view and making decision on a new approach in the rights of Iran. It's better for legislator of Iran to eliminate specific cases incitement excuse as article 630 and

section 3 of article 22 of Islamic penal law and instead assigns doctrine and rules of incitement excuse in model of one or some articles in part of bound of penal responsibility so that be govern on all kinds of penalty. As an example, we can replace in law of Iran from adapted law in this paper (Azerbaijan). In castigation penal as regards the legislator has a choice of making decision on kind and intensity of penalty; to use particular regulations of incitement excuse faces no problem.

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