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Transition of HIV and Committing a Murdering Act

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ABSTRACT

Distribution of AIDS in recent years and having not any treatment has can send the transition and infection of this disease to become a means of hurting people and committing crime .in case of death due to transition of HIV, the person who transmits HIV can be prosecuted for murder on the other hand, low number 206 of Islamic penal law knows one of committing a crime as when a murderer intentionally commits a murder type without aiming at killing the person .therefore, identifying the purposeful murder in these cases is based on the crime and conditions which a leg is later has considered for the type of murderous action. So, if transition of HIV brings death to the victim, it can be considered as an act of murderous type.

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Introduction

The incurable disease of AIDS is one of the most dangerous diseases which human has encountered since the beginning of life on this planet. The virus of this disease will weaken its victim against other diseases and infections by attacking the immune system of the body and disrupting its function which finally leads to victim's death .So, this deadly virus can be as a means of committing the biggest crime against the whole body of the person which is murder. On the other hand on the B part of law number 206 and B part of law number 271 of Islamic penal law has in turn identified the act murder and other physical injuries of person who act the murderous type or amputation type as intentional even though the murder or injury did not take place [1].

In the law 206 it is written the cases in which murderer does something intentionally which is considered murderous type, even though he doesn't have intention to kill the person [2]

In this part, the intention of murder is not the case and if the murder is intentional or not is the type of action which the person does .If the action is done in a way which is liable to be murderous type and can take the life of the victim, it will be intentional even if the murderer does not have the intention of murder. Thus, whenever a person pushes a person in to a deep pool and that person does not know how to swim or pushes a person of a height or shoots at a person , in case of murder or injury, even with luck of murderous intention , the action will be considered intentional .Therefore , the objective of this study is to know under what circumstances the transition of HIV can be considered as an act of murderous type and the doer will be responsible for injuries and intentional murder ,so we should deal with act of murderous type to see it transition of HIV is included in this interpretation or not [3].

The meaning murder tool and murder type act in public penal law the murder would have been. Considered intentional if the tool of murder was considered a murderous tool for example, when the person used a dagger a knife, a gun and of these type against another person .In the law number 171 of former public penal law, it is said, anyone who injures or hits another person which leads to his death if the doer did not have the intention to

kill, he would be imprisoned from 3 to 10 years of first rate crime detention only if the tool which is used is not murder tool and it is murder tool it will be considered intentional murder. The problem between the lawyer is to realize the relationship between murder tool and act of murder type or in other words to see if the act of murder type in part of 206 and 207 laws of Islamic penal law are the same meaning as murder tool mentioned in law number 171 of former public penal law. Regarding this case, some believe that «if the tool used is not murder tool and if the it is murder tool the murder is intentional taken from Islamic jurisprudence, they add to this idea that in leading jurisprudence, murder with murderous tool even without murderous entention is considered intentional became the doer is faulty and guilty of choosing the tool which wouldn't have led to the murder if he had not chosen that. Therefore, we can put the tool synonymous with the means which includes everything with spirit or without spirit and animate or inanimate. So the parts of the body of the murder or another person or an animal like a dog which is triggered by him or objects such as war guns or else or a piece of wood or stone or grind stick and water, gas, electricity, etc, may be known as murderous tools [4]. Based on the abovementioned reason, some believe that in cases that the murderer does something purposefully which is murderous, we should look at the murderous tools because this type of murder is semi-intentional but due to the fact that the tool is murderous type, the murder is regarded as intentional». But the other idea which is accepted but most of lowers is other wise .They believe that the idea behind the law number 206 of Islamic penal law about the murderous action is doing the action in a way which has the potential of taking the life or in other words the murderer does the action in away that based on commonplace and undoubtedly causes the death of the victim [5].

On the other hand, part B and C of law number 206 of Islamic penal law rejects the second part of law number 171 of the former public penal law which considers the murder as intentional .Also according to the fact that the legislator in the recently passed law has not used the murderous tool and replaced it with the word action in an absolute way and with attention to the literal meaning of criminal act which is one of the public elements of every penal phenomenon such as murder,

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it seems that leg labor's main idea is doing a type of action which the murderer does against the victim, even though, that action has caused death because of weakness or inability of the victim. In other words the sentence to do something intentionally refers to the characteristics of the murderous action not the murderous tool.

Therefore, Act of murderous type refers to the characteristics of the action without any regards to the type of the tool used in murder. Also some believe that the concept of murderous tool in Islamic jurisprudence has the same view because the Islamic jurisprudence experts have not defined a clear rule to differentiate between the tools and action of murderous type and apparently have just paid attention to the tool and object which are considered to be used for murder and they believe that the action and the tool of murder must match the intention of murder. The second Martyre in Masalek Al-Afham says, if a person hits another with an ax and kills him, the killer is killed because this action is usually done with murderous intention and Imam Khomeini also says: the author of *Rialth-Al-Masael* know the act of murder as intentional when the committed action is done with murderous intention or is done in a way which mostly ends in death even if there is no intention of murder such as throwing in fire or repeated hitting with a cane so that it causes the death of the person.

Thus it can be taken from the ideas above that the Islamic jurisprudence experts have considered the action not the tool. Now that we know the Act of murderous type pays attention to the characteristics of the action so it can be said that this action has different aspects. For example the meaning of action or action as a murderous type is an act which is committed by the doer and the murder is done based on its intensity and no other factors such as sensitivity of the organ or the tool do not have any effects or the murderous act can be the result of using a murderous tool or a combination of doer's behavior and sensitive organ such as hitting the head with a stick [6].

The Supreme Court has also defined the act of intentional murder in different cases due to the act of murderous type and sensitivity of the organ. Such as hitting the head with a stone which causes death or creating injuries with scissors in the area of the heart or sloping on the temple.

So generally the intentional act of murderous type is identified based on the injuries caused and with the tool which is used and some times based on the sensitivity of the organ which has led to death of the victim [7].

Now that we have become familiar with some of the interpretations of act of murderous type, it can be said that as AIDS is viral and can disrupt to immune system of the body, and therefore lead to existence of other diseases such as cancer and there is no cure for this viral infection which finally leads to death, so it is a murderous factor and transition of HIV to another person due to sensitivity of the person's body and threatening his health is considered as an act of murderous type. On the other hand, in medical science AIDS is in the deadly list so the transition of HIV can be considered as an act of murderous type in the murder and considered as the tool of murder. Therefore if any action such as sexual intercourse, injection of polluted blood products or else as an act of murder done, based on part A if the law number 206 of Islamic penal law, it will be equal to part B if the same law due to its mortality. For instance if a person donates blood to another person with the intention of murder and the person dies as a

result of that, the act of the person is equal to part A of law number 206 and he will be punished accordingly. But if the suspected person transmits the virus to another person for example his wife through sexual intercourse without her know, even if he does not have murderous intention and because the action is known as a murderous type, if the person dies the action is considered equal to the law number 206 of intentional murder [8-9].

Murder intention in doing act of murderous type

The other point which must be taken into consideration about doing acts of murderous type is that some believe that the intention of criminal act with murderous tool and act of murderous type in murder and doing any action which somehow leads to amputation and injury of an organ in non-murderous crimes prove that there is an intention in crime. In other words the suspect has both the intention of the act of murderous type and the result of that so in the intentional murder with the act of murderous type there is an intended murder but there is no need to prove that it means that a person who does an act of murderous type and also does that with knowledge and intention, surely has the intention to commit murder. In the three parts of law number 206 is the intention for murder and this is followed in part B and C the act of murderous type is taken from the intention of the doer and somehow the intention of the killer if murder is taken into consideration [10].

In some legislator ideas the case of wrong doing tension in these cases is proven. It means that the consideration or wrong doing intention is actualized just for the murder intention and in this situation the leg is later has predated the legal presupposition of the intention of the crime. It means that when a person has intention in doing that action, the legislator supposes that he has the intention of getting the results from that action. In other words in a murder using murderous tool and committing the action of murderous type will confirm having intention for getting result from the crime action 4.

But this idea does not seem correct based on type of part in law number 206 of Islamic penal law.

Because, firstly this claim confronts the text of part-when it says even if the person does not have the intention to kill a person and secondly due to law there has no intention of doer and if the intention of murder is proven in anyway the case will not relate to part-and goes to part of this law. Also the phrase of act for murderous type has replayed the murderous intention and in fact is a part of material crime base which is replaced by the mental base (crime intention) by the legislator 5. Therefore the person who has the intention of doing an act of murderous type might not actually have the murder intention (when the case when a person knows that he is infected by HIV and has intercourse with another person without having the intention to kill the person) but because it is considered an act of murderous type and it is dangerous and mortal to another person, therefore if a person does this to another person, this is a careless action which can not be ignored and in close of death or murder, the action is considered intention. Doing a crime as intention at due to doing an act of murderous type is because an action is done which has harmful effect on health and life of another person such as transmitting HIV even though those results were not the read intention. In other words the murderous type of the action is not far from public eye and the common place of the society knows that as the means of murder and the murderous as anything against the common place at the society. Furthermore, if we want to accept this claim a lot of rights of the killed

people will be violated. Therefore, for keeping the public principle and respecting the blood of the killed people, the legislator will not accept the claim of the murderer in not having murderous intention which is called legal crime which can not be overruled in law.

The other condition which the legislator knows as essential in part (b) at law number 206 of Islamic penal law is the act of murderous type and as it is mentioned before it means that the action is murderous to a normal person (a person who is mature, healthy and able of doing his things).

In this case branch 27 of state supreme court in the written judgment number 1/5/26-270 states that; due to the coco-terms of the case and looking assertively at the case and with attention to the straight and clear contusion of the suspect which has the head and bloody of the victim with iron bar which broke the skull and clavicle bone, his claim which says he did not have murder intention will not be accepted and even if it is accepted, it will be according to part b at law number 206 of Islamic penal law.

With this explanation, it can be said that at the moment HIV is harmful and murderous type.

Necessity or unnecessary of doers knowledge to the fact that transmitting HIV is deadly or not. Another question which is posed about the act of murderous type and accordingly the transition of HIV is that whether it is necessary for the doer to know that his action is deadly or not. In other words it a person has an intention toward another person in an action which is murderous and result in death of the other person but the doer does not have the knowledge that his action is deadly, can we consider this action as an intended murder? Some may defense that since the legislator has not referred to the knowledge of the does, there is no need to pay attention to that part the important thing is the act – murderous type which is done. but this deduction does not seem right. Some at the Islamic jurisprudence experts like mohghegh and the writer at jaw her-AL-ELM consider it important that the doer had the knowledge that his action was deadly or not. therehgrous leader MR KHouei.

Has also constitution important and it the doer had ben unawar of that his action was deadly the murder is considered as semi intentional MR Marashi on this case believes that intended murder is one of the two followings;

1. The killer had intention to kill.
2. The killer dose an action at murderous type and knows that his action is deadly.

The author of Jawaher-Al-Kalam says: intended murder happens in two cases. Either a mature person does an action with the intention of killing another person or with the intention of injuring him, but the action causes murder and the person is aware of that even though he did not have the intention to kill the person.

On the other hand in part ٣ of law number 206 in which the legislator has emphasized on the necessity of the action to be murderous and replaces it with intention of the result, the knowledge of this part is also necessary to confirm that the action was intentional. The law office of the judiciary office in many different ideas has emphasized on the awareness of the doer about the deadly effect of his action. As it is mentioned about the transmission of HIV. If a person transmits HIV to another person with awareness and intention, this crime is intentional and he might be sentenced to death (if the person dies) or blood money and if there is no intention based on the

case it might be semi intentional for which the doer must pay the blood money.

As it is mentioned and due to above-mentioned explanations HIV is a killer type when it is transmitted via one of the ways to another person's body, so proving whether the crime of transmitting HIV to another person is intentional or not needs the proof of two cases.

- 1- Awareness of the person about the danger and mortality of the disease.
- 2- His awareness about the transmission ways. So for example if it is proven that the person knew that his blood is contaminated with HIV and has caused death of another person by transmitting it, he had been unaware that his action would have transmitted HIV, we can not consider his action according to part B of law 206 and identify his action as intentional.

The other important point is that as we cannot ignore the lack of knowledge about the act of killer type because the legislator has not mentioned it clearly in part ٣ of law 206, it also does not mean that he cannot prove his unawareness about this issue.

In other words in part B of law 206 the awareness of the doer is presupposed due to the murderous characteristics of the action and proving the unawareness of the doer (which is against the presupposition) is on the doer.

Therefore if a person causes another's death but he can prove his unawareness about the murderous characteristics of this disease or the ways of transmitting it, he can be exonerated from the intended murder's responsibilities. It also appears that accepting the claim about unawareness and proving that needs the commonplace judgment due to situation and conditions and the awareness of a normal person in this case must be considered.

For instance, A person has AIDS and know that there is possibility of transmitting this virus to another person through him but he is unaware of the ways of transmission and also does not take any precautions in his relation with others. As a result he transmits HIV and kills another person. So it seems that in this case there is a possibility of condemning him for intended murder because of the act of intended murderous type.

The other case which must be attended is that as there is a time gap between transmitting HIV and evolution of the harms, this does not cause the relation between the killer factor and its results to disappear.

This time gap does not cause not to consider HIV as a murderous type and as a result consider the death as unintentional.

In the bill of Islamic penal law it is clearly mentioned that the time gap between the murderous action and the committed crime does not reject intention of the crime such as death as a result of a deadly disease transmission¹.

So, when a person knowingly transmits HIV to another person and this person dies after a while due to this disease, the action of the doer is intended murder even though 3 or more years has passed since the crime was committed.

Therefore as it is mentioned, the phrase (act of murderous type) which is written in law 206 of Islamic penal law pay attention to the characteristics of the action and if the death occurs immediately after committing or later, does not affect the

murderous type of the action. On the other hand when we say act of murderous type we do not mean the act of quick murder.

So, according to what is said, it seems that when the person who transmits HIV does not have the death intention but with the intention of polluting the other person transmits HIV or if the person does not have death or transmitting intention but does the action with the knowledge that his action is a way transmitting in case that the victim dies, he will be prosecuted as a murder of an intentional murder because his action was murderous type. But the last case about intentional crimes and due to the following intention which the legislator has written in part 2 of law 206 of Islamic penal law, doing an act of murderous type is in relation to some people and in accordance to their special conditions. Therefore as transmission of HIV is considered an act of murderous type toward another normal person, analyzing the mental base of that is out of part C because part C talks about acts of murderous type which is not murderous towards a normal person.

Committing intentional murder an act of murderous type in Islamic jurisprudence and Iran's law has similarities with the laws of England in that if a person does not even have the murder intention but has the intention of causing heavy physical injuries to another person, but the victim dies, he will be considered intended murderer. In England for committing intended murder having the intention with preplanning and decision are necessary.

This expression has two interpretations.

1 Murderous intention 2 the decision and intention to cause bad physical injuries. It means that the person must identify the bad physical injuries as a probability of his action. For example shooting at a person without murderous intention but he knows that the victim may suffer serious injuries which means having bad intention with preplanned decision.

Therefore the parliament of England has claimed over a case that only murderous intention or causing serious injuries are enough for preplanned criminal decision.

In another case about the effects of serious physical injuries for confirming the death intention it says: if the probability of death or serious physical injury is high, this probability can be considered as an undoubted clue for having murderous intention or intention to cause serious injuries. In other words, the purpose of the doer without having intention for the result can be perceived even though prediction does not mean the intention but only an action from which the intention can be perceived.

So, in England if a suspect only has the intention of transmitting HIV to another person not killing him through sexual intercourse or polluted syringe, some of the English lawyers consider this action as causing serious physical injury.

In Germany the court convicted a man to causing serious physical injuries, because after doctors informing him of his AIDS, he had sexual intercourse with different people none of whom were infected.

In Australia transmission of HIV will be prosecuted under the titles of putting people in risk irresponsibly or causing serious physical injuries. Therefore in 2005 a person was sentenced to 12 years of prison due to transmission of HIV and (causing serious physical injuries).

In America unlike Australia and England, some states have passed specific laws for knowingly transmitting HIV and in the traditional penal law they are not after finding criminal titles for prosecuting this action.

Conclusion

About mentioned murder and based on part B of law number 206 of Islamic penal law, the behavior of a person who does an action intentionally which is of murderous type is known as an intentional murder even without having the murderous intention. In general an act of murderous type in an intentional murder refers to the harms which sometimes cause the death of the victim due to the means and titles which are used in murder and sometimes because of the sensitivity of the organ which is hit in a normal person.

Transmission of HIV can be an act of murderous type and a factor for intentional murder. Because the act of murderous type pays attention to the characteristics of the action and can have different aspects. Therefore, as HIV disrupts the immune system of the body and there is also no cure for that and with regards to its dangerous identity it is considered as an act of murderous type.

On the other hand, considering the crimes of transmitting HIV and identifying it as a killer type due to part B of law number 206 of Islamic penal laws, needs the proof for the knowledge and awareness of the person about the danger and murderous characteristics of this disease and the ways of transmitting it.

So when the person who transmits HIV does not have death intention but does that with the intention of polluting the other person or when the person does not have death or polluting intention but is aware of the fact that his behavior causes the transmission of HIV, if the other person dies, he will be known as intentional murderer and will be prosecuted for committing an act of murderous type.

Also the time gap between the transmission and appearance of the harms of the disease will not cause not to consider HIV as a killer type factor and also not considering the resulted death as unintentional.

On the other hand committing intentional murder with an act of murderous type in Islamic law has similarities with countries like England and Australia where committing a murder with the intention of causing serious physical injuries are considered as intentional even if there is no intention for murder.

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