
POSITION OF THE VICTIM'S RIGHT AT THE PRE-TRIAL STAGE: A COMPARATIVE STUDY BETWEEN THE IRANIAN AND MALAYSIAN CRIMINAL PROCEEDING LAW

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ABSTRACT: In most common law countries the public prosecutor will act on behalf of the state in prosecuting the case. In a criminal proceeding, there are only two parties involved; the prosecutor and the accused. As opposed to the common law system, the Iranian law practises a different system whereby the victim has many rights in a criminal proceeding given by the provisions of law. Iranian crimes divided into three main division, sharia' laws, public discipline and individual rights. This category give many rights to the victim in criminal process that have many effect in criminal process. With these rights victim can apply something different in criminal cases and in most of times the court should accept his request. Victim rights will apply in all steps of trial and in crime with private aspect can suspended the trial and also in crimes with public aspect can be effective in all stages. These rights considers a harmful right in proceeding that can to affect the justice.

KEYWORDS: *Victim, Victim Rights, Criminal Proceeding and Legal Systems in Malaysia and Iran*

1- INTRODUCTION

This chapter has two main aims. The first aim of this article is to investigate the role of victims in criminal procedure processes in Iranian and Malaysian criminal procedure codes. The processes include discovering, investigating and prosecuting crimes as well as the measures that need to be taken in order to analyse the criminal behaviours of the perpetrators as well as the particular roles played by the victims. This is due to the fact that the victim also has his/her own rights pertaining to the processes of a trial. This article also will attempt to identify elements related to victim protection that is crucial during trials process as a subtopic.

2- CLASSIFICATION OF THE CRIMES

Iranian criminal laws are classified into four categories (Hudud, Qisas, Dyat and Taazirat),¹ and are further divided into crime with public or private aspects, or a mix of both. However, Malaysia lacks these types of classification, and all crimes are regarded as being public, with legislators not recognizing private aspects of crimes. The Malaysian criminal procedures divide crimes into:

"Seizable offences" and "seizable case", meaning cases where a police officer may ordinarily arrest someone without a warrant according to the third column of the first schedule.

"Non seizable offence" and "non seizable case", which means cases where a police officer may not ordinarily arrest someone without a warrant according to the third column of the first schedule.²

The next classification involves cases, where it classified into two categories, namely summons cases and warrant cases.³ A summons case means a case relating to an offence and not being a warrant case, while a warrant case means a case relating to an offence punishable by death or with imprisonment for a term exceeding six months.⁴

3- PROCESS OF DISCOVERING, INVESTIGATING AND PROSECUTING

In nations that practice the common law system, the victim usually does not have a bigger role to play besides being a witness in an investigation that leads to a trial, Douglas E. Beloof made a suggestion of introducing a 'third model of victim participation', according to him: "a crime scenario should contain three main elements: fairness to the victim, the respect deserved by the victim and sustaining the dignity of the victim. Commonly, these rights are to invoke the rights of the victim to speak to the prosecutor and the judge. These rights are, by nature, due process-like rights however it is not limited to the evaluation of other types of rights."⁵

As observed in most countries, victims are not accepted as a party in a criminal process and lawmakers have been trying to find a solution for victims to be more participative in criminal

¹ Section 14 of the Iranian Penal Code (2012)

² Section 2(1) of the Malaysian CPC

³ Section 109(1) of the Malaysian CPC

⁴ Section 2(1) of the Malaysian CPC

⁵ Beloof D. Evan, 'The Third Model of Criminal Process: The Victim Participation Model' (1999) 289 Utah Law Review, p 99.

procedures. Iranian criminal laws drafted in 1982 made victims powerful parties in criminal systems that sometimes afforded them more rights than the prosecutors.

Discovering and investigating crimes along with prosecution are mentioned separately in different topics in Iran's Criminal Procedure Code (CPC). Uncovering and investigating the crime is mentioned as an initial step in a criminal procedure, which is addressed in the second chapter of CPC.

The CPC provides some fair and just circumstances to support both sides relating to criminal behaviours and criminal trials, which is defined in Article 2 of the bill of CPC as: "criminal trials should be fairly and justly judged and both claimer rights should be considered in the same manner and the rules should apply to all who are involved in the same or similar manner".⁶

Article 2 of the CPC (1998), divides crimes into three main divisions which are: This definition is repeated in the new CPC (2014) in the section 111-2. The role of the victim in mentioned crimes in Article 111-2 of CPC is quite different, and punishment, forgiveness and amnesty vary according to the crime and its related subjects, such as bad or force majeure situations. Victims play an important role in different areas of a criminal trial; in other words, the victim has an effective role in criminal trial in terms of uncovering, investigating and prosecuting; they are addressed in the following subtitles.

4- Discover Procedures in CPC

The best way for a victim who does not want the perpetrator to take responsibility for his or her wrongdoing is to simply 'not to report' the crime. Based on the current data, the actual crime rates are three times higher than the figures released by the police.⁷ O'hara and O'hara argued that: "An investigation can be considered a success if all the available information relevant and material to the issues or allegation of the case is uncovered."⁸

Iran's CPC as a main source of criminal procedural law and uncovering of the crime is addressed in Article 1 of Iran's CPC as the first step in criminal trial procedures "The Criminal Procedure Code is a collection of principles and requirements that prescribe how to discover

⁶ Article 8 of Iran's CPC. "rendering of judgment is only the result of criminal act, and crime can have two aspect: 1-public aspect because of violation of the society or Hudud and religious laws or in disturbance of public order. 2-privete aspect, offences against the rights of persons real persons or artificial persons."

⁷ Donald J. Hall, 1975, The role of the victim in the prosecution and disposition of a criminal case, Vanderbilt Law Review, 28(5), p 924- 925.

⁸ O'Hara C.E and O'Hara GL, 2003, Fundamentals of Criminal Investigation, 7th Edn, Springfield, IL, Chairles C Thomas, p 6

crimes".⁹ According to Islamic Criminal Law, uncovering the crime means adopting lawful measures, circumstances and conditions that observes the citizens right to be protected by the law.

According to Article 2 of CPC "a crime that has two aspects can have two claims; ... personal claim to demand rights such as retribution, false accusation, individual losses or corporate losses" the right of discovering is reserved for the person who intend to claim or demand his/her rights from judicial authority while a public claim is coordinated by prosecutors.

Article 8 of CPC addresses that; the private plaintiff can suspend the criminal case as a victim due to forgiveness due to the fact that the right is reserved and consequently the uncovering process also can be suspended due to the same rights of the victim.¹⁰ Article 727, Iran's Islamic Penal Code, also declares that there are some crimes, which can be suspended in terms of investigation and prosecution as well, provided that the victim is forgiven and is satisfied willingly. Therefore, uncovering the crime can also be suspended through forgiveness by the victim.¹¹

In addition to that, an optional right for making complaints is also reserved for victims in the CPC in "Article 65 – Legal courses to initiate an investigation and examination are as follows: A. A complaint from a complainant". It can be argued that the victim also has rights to forgive the defendant and to not proceed against the defendant. Therefore, the criminal case during the uncovering process can also be suspended through cancelation by the victim.

Moreover, the point above also can be argued through Article 4 of CPC which is as follows, "to perform and pursue a claim, crimes are divided into three groups;

1-offences the prosecution of which rests with the chief of the judicial district, whether there is a private complainant or not. Chief of judicial district may delegate the said function to anyone of his deputies;

2- Offences the institution of which is begun with a complaint submitted by a complainant, but the prosecution thereof shall not stay through remission by the complainant;

⁹ Article 1 of the Iranian CPC. "Criminal Procedure is the aggregate of rules and principles as applied in detection and investigation of crimes, prosecution of criminals, the manner of hearings and proceedings, mediation, and peace between the parties issuance of judgments, appeals, execution of judgments, and determining tasks, functions, and powers of judicial authorities, Restraining Justice, and Rights of the accused, victim and society."

¹⁰ Karami M.B. "Iran's Criminal Policy against the Victim", *Legal Overview Journal*, No 4, (1997), Tehran, p 4.

¹¹ Sabzevari H. *the Effect of the Victim in Punishment Appointment (Criminal Comparative Law)*, Jangal Pub, Tehran, 2012, p 26.

3. Crimes, which are prosecuted with a plaintiff's complaint and will be suspended if the plaintiff forgives the defendant. When the prosecution can be suspended, he/she can decide whether or not to forgive or to proceed and no one will be able to force him/her to forgive or to complain legally.¹²

5- INVESTIGATION MEASURES IN CPC

Criminal investigation process is an important measure after uncovering the crime, which is adopted in CPC Law. Role of the victim in preliminary investigations will be discussed and examined in this subsection. Most of legal measures in criminal investigation process are rooted in the first chapter of the Iran's CPC Law. Investigation of the crime identified as a duty of judicial officers and they must "perform initial investigations and inform the judicial authority immediately".¹³

Initial investigation is defined in Article 19, CPC, as follows:

"The initial investigations are sets of measurements taken to detect a crime and to preserve its proof and evidence, and to try the accused from the beginning of a case until it is submitted to the judicial authority. Judicial officers cannot grant a bail from the accused".

Identifying victims, witnesses and suspects is part of controlling who is involved in the crime scene. Identifying all the involved parties is of the crucial importance for success of the investigation. Judicial officers have to prepare a relevant investigation report and "inform the appropriate judicial authority about the results of the inquiry taken, if the report is insufficient, they may request supplementary action" to complete the report. After completion of report, they "will surrender all performed investigations to the judicial authority upon his admittance, and will no longer have the right to intervene unless otherwise ordered by the judicial authority or if a new assignment is referred by him".¹⁴ Investigation of women and children less than 15 years old should be done by educated woman judicial officers.¹⁵

¹² Karami M.B. "Iran's Criminal Policy Against the Victim", p 5.

¹³ Section 18 of the Iranian CPC. "Once informed a crime committed, executive officers of the justice administration shall, in case of non-flagrant offences, report the matter to the competent judicial authority and request for instructions required to the effect; shall take every measure required to safeguarding the traces of the crime and protecting of tools used in preliminary investigation and shall immediately bring the matter to attention of judicial authority."

¹⁴ Section 24&25 of Iranian CPC.

¹⁵ Section 15 of the Bill of Iranian CPC.

In Malaysia, an investigation will be started based on a report of a crime based of the sections 107 and 107A.

Section 107 of the CPC states that;

"(1) Every information relating to the commission of an offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant."

And section 107A states that:

"(1) Any person who has given information under section 107 may request for a report on the status of the investigation of the offence complained of in his information from the officer in charge of a police station where he gave the information.

(2) The officer in charge of a police station shall give a status report on the investigation of such offence to the informant no later than two weeks from the receipt of the request made under subsection (1)..."

6-VICTIMS RIGHTS IN PROSECUTION PROCESS

The victim's right during the prosecution, verdict and implementation of the verdict is addressed in the Article 8 of CPC; "In cases when the criminal case is suspended due to forgiveness of the complainant or private plaintiff, if the complainant or private plaintiff forgives after the definite sentence is issued then the implementation of the sentence will be stopped. And if part of the sentence is performed, the rest will be suspended and the effects of the sentence will be cleared unless otherwise established in law."

In section 12 CPC (2013) of this article is summarized that: "Prosecution of criminal offences with private aspect began with plaintiff by victim and suspended due to forgiveness of plaintiff."

This Article highlights the importance of the victim's role in criminal trial procedure. "The victim can suspend criminal trial at any time he/she likes and this means he/she has a power equivalent to a judicial authority."¹⁶ However, the judicial authority is not allowed to suspend the criminal trial unless specified differently by the established law.

¹⁶ Sabzevari H. *the Effect of the Victim in Punishment Appointment (Criminal Comparative Law)*, p 129.

"According to the general frameworks of the CPC, the victim can demand for his/her losses before forgiving the offender(s) and legal instrument is prepared to help victims in case of remedy processes including circumstances of value, scope and constant of loss.¹⁷

Article 74 in CPC Law addresses the rights of victims by stating that;"The complainant can request monetary compensation for his or her loss from the court, if the request is based on acceptable reasons, the court will issue the verdict for the bail, and the sentence will be definite and cannot be objected".

In Article 75 of CPC it is stated that the court's verdict of loss has to be implemented as soon as possible upon court's notification which serves to guarantee the rights of the victim during the prosecution process.

7- Suspend prosecution and research

Under normal circumstances when initiated by prosecutor the prosecution will go on as normal until the verdict is reached, but there are certain reasons that will warrant suspension of prosecution process which has already been initiated.

The legislator points them out in the Article 13 of CPC:

"One–Death of the accused or charged person in cases of individual punishment.

Two – Forgiveness of the personal plaintiff or complainant in forgivable crimes.

Three–Those given amnesty.

Four– Abolishment of the legal punishment.

Five–Time lapse in cases envisaged by the law.

Six-repentance accused in cases envisaged by the law.

Seven-validity of the closed case.

Note–: In the case of preventive crimes, if the accused develops permanent madness before sentencing, the pursuit is stopped. But if the accused develops periodic madness, pursuit stops until he/she recovers from the illness. In the case of offenses requiring retribution, measures are taken according to related regulations."

¹⁷ Karami M.B. "Iran's Criminal Policy against the Victim", p 8.

Paragraph "B" of this section asserts forgiveness of forgivable crimes by the plaintiff. That is to say, as some processes require a complaint to be filed by the victim and cannot be started without a complaint, termination of the file in each step of investigations (from the beginning to execution of the verdict) depends on the opinion of the plaintiff. This is important because today the majority of offences have a public dimension, but in the case of some crimes the legislator values the private dimension of the crime. Therefore, due to some social reasons whenever the victim betakes his/her rights, the public shall also stop pursuing or punishing the accused.

There are some issues considering the forgiveness of crimes by the plaintiff:

1-Forgiveness has to be decisive and unconditional; conditional forgiveness does not count.

2-Forgiveness is irreversible and the victim cannot change his/her mind and ask for pursuit of the defendant when he/she forgives the offense¹⁸. However, in the case of pursuit the plaintiff can once again ask for the pursuit of the accused¹⁹.

1-Announcing forgiveness and abolishing the complaint is a right and whoever uses this right shall be eligible to it²⁰. Therefore, the retarded and infant people cannot forgive someone directly²¹ and their guardians are in charge of this task²². In this regard Dr. Safai says: "Although some people are capable of using this right, they have no right to implement it. A person who is deprived of this right is called a retard. Generally, psychos, retarded, slow witted people and

¹⁸ Akhundi, Mahmoud, the Criminal Procedure Code, Tehran, Publishing Organization of the Ministry of Islamic Culture, 1989, vol. 1, p. 205

¹⁹ Section 101 of the Islamic Penal Code states: "Forgiveness has to be decisive and conditional or suspended forgiveness is only accepted when the conditions are met. Note 1: conditional or suspended forgiveness does not prevent pursuit or sentencing, but in the case forgivable crimes punishments are actualized when conditions are not met. In this case, the defendant is set free with warrant..."

²⁰ The word "eligible" refers to the person's capability of interpolation. That he/she has to deserve the right to execute verdicts. Not all human beings are capable of doing so because a group of people who are retarded and their rights are defended by their guardian or protector.

²¹ Akhundi, Mahmud, the Criminal Procedure Code, 1989, vol. 1, p. 163

²² Note 2, article 101 of the Islamic Penal Code: "The forgiveness by a random guardian is accepted at the discretion of the court judge."

children are not eligible to access parts or all of their rights²³. Hence, this right can be used by a guardian appointed to a retard who lacks a legal guardian.²⁴"

8-Victim's Right to Object to Suspension and Cessation of Prosecution

If the court judge concludes that the accused has not committed the crime or there is no adequate proof to prove his/her criminal act, and if the judge does not consider the action a crime, he can issue a verdict to stop prosecution. The verdict is delivered to the plaintiff with the approval of the attorney general. Consequently, according to the Article of the Criminal Procedure Code the plaintiff has ten days to object the verdict which is when the case will be referred to the criminal court to review the objection. Verdict to cease prosecution will be issues if:

1. Accused is insane at the time of committing the crime
2. Accused is forgiven
3. Dies during prosecution.

After receiving the file, the criminal court studies it and makes one of the following decisions:

1-It approves the previously issued verdict.

2-If it believes that the evidence and proof provided by the plaintiff are adequate and realizes that the decree issued by the court is illegal; it revokes cessation of prosecution and issues a verdict for prosecution. It also sends the file back to the court in which case the court is obliged to follow the order of the criminal court and take measures to prosecute and interrogate the accused. It completes the file and sends it back to the court.

3-Defective research: In this case the court considers the research to be defective and announces that it is not possible to use them to discover the truth. Hence, it issues a verdict and

²³ Safai, Seyyed Hussein, Basics of Civil Rights (vol. 1, persons and properties), 2th Ed. Mizan Press, 2003, p. 79

²⁴ Article 1207 of the Civil Code. Note: "The following person are considered as under disability and are forbidden to take possession of their property and their pecuniary rights:

1-Minor children.

2-Persons who have not matured.

3-Lunatics."

asks the court to conduct desired investigation and then send back the file to the criminal court to review the objection of the plaintiff and either approve or reject it²⁵.

9-The right to apply for judge replacement

Judge rejects directions is related the judge who is in office tasks with the goal of justice and the rights of the oppressed and tries to create social stability.

To decide the jurisdiction of judges is a disposal of the judiciary and nobody in this case does not allow commenting nonetheless, in order to avoid any question of public health and handle or that if some feared leaving the magistrate court that the neutrality dispute referred to him, every one of his fights have the right companions refused to another magistrate to deal with fights.²⁶ Even in cases where the objection is not raised, the magistrate rejected, the magistrate shall consider it and personally to his procrastination in this regard will be considered a violation of the law.²⁷

10-Conclusion

Hence, considering the above mentioned, it could be concluded that the role of the victim is of great importance since the victim is granted so many rights. Sometimes these rights somewhat restrict judges in implementing justice and defend the interests of the public, but also sometimes blocks the implementation of justice, particularly because these rights cover both forgivable and unforgivable crimes. It seems that if the crimes are unsuitable for society the government should have right to consider them and punish the criminal but in this situation police and judges have many barriers for prosecution and investigation of the case. So making efforts to reduce these rights but still preserving the private human rights is required.

²⁵ Article 270: In addition to the points raised by this act, interrogation can be objected in the following cases:

- a) When a verdict for cessation of prosecution is issued at the request of the plaintiff.
- b) When a verdict for detention is issued and followed and the warrant is increased at the request of the accused.
- c) When a warrant verdict is issued at the request of the accused.

Note: Those who live in Iran are allowed to object to the verdict within ten days but those who live abroad are allowed to object to it within one month.

²⁶ . Shams , A. ; Code of Civil Procedure , the fundamental period , Tehran , Drake , 1386 , first edition, vol 3 , p 38.

²⁷ . Karimi , A. ; Code of Civil Procedure , Tehran , Majd , 1386 , first edition, pp. 209.

Nowadays, in Malaysian rules any criminal act that done by the criminal is considered as a crime against states right and actually there is not recognize crimes against the victim.²⁸ Common law system is a system that police has right to prosecute accused and do not know victim or his family as third party in criminal procedure until thirty years ago. From 1980 started a revolution in the rights of victim and suggestion many issues to improve victim rights and role in criminal procedure. These rights are, the right to protection victim in any stages of criminal process,²⁹ the rights to obtaining information of criminal procedure. The victim needs procedural information to determine how to enforce his rights and the victim probably wants to know what actions have been taken.³⁰ The victim impact statement in sentencing and parole stages.³¹ And many others rights that known victim rights in criminal procedure and increasing each year.

Unfortunately unlike Iranian legislator, Malaysian legislator did not update his rules by these new issues and still follow the old rules. Now withstanding, by new issues that accepted victim as a party in criminal process, in most criminal systems specially in common law if Malaysian legislator adopt these issues and recognize victim rights in criminal process and accept him as a party in process, it can be very useful for justice and encourage the victim to participate in criminal process more than before.

²⁸Nasimah Hussin, the rights of victims of crime under Malaysian law: Legal Framework and Prospect for Reforms (2010) *The International Journal of Interdisciplinary Social Sciences*, vol.5, issue 4. P 42

²⁹ Helen Fenwick, *The Rights of Victims of Crime: Protection from Harassment and Intimidation*, (1996), *Journal of Criminal Law*, vol. p 84

³⁰ Matti Joutsent , *Listening to the Victim: The Victim's Role in European Criminal Justice Systems*,(1998), *the Wayne Law Review*, Vol. 34:95, p102

³¹ Elizabeth e. Joh, *Narrating Pain: The Problem with Victim Impact Statements*, 2001, *Southern California Interdisciplinary Law Journal*, vol. 10:17, p 20

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