J. Basic. Appl. Sci. Res., 2(11)11867-11877, 2012
© 2012, TextRoad Publication
ISSN 2090-4304
Journal of Basic and Applied Scientific Research
www.textroad.com

Principles Governing Criminal Justice

Morad Nasiri Moghanlu

Department of Law, Payame Noor University, I.R. of Iran

ABSTRACT

Justice is one of the oldest concepts that were known for human beings from the beginning of their civilization and they have tried to deploy it. Justice has many different forms such as social, political, economic, and criminal justices. Jurisprudence Scientists and scholars have considered several principles effective in criminal justice and principles such as clearance principle, the principle of legality of offenses and penalties, the principle of legality of offenses and penalties, the principle of moral responsibility and principle of personality of criminal responsibility are considered among the most important principles. Careful observance of these principles in handling the claims is promising for the realization of justice and ignoring them will waste the right of those who refer to the judiciary, and it provides the causes of injustice. Paying attention to characteristic and humanistic dignity of individuals, the full observance of the rights of defendants and keeping the life, property and honor of the people safe from violation are some of the certain results of observance of these principles.
KEYWORDS: criminal justice, rights, society, accused, judgment, guilt

1. INTRODUCTION

Humans are inherently social creatures and their natures are based on being social creatures, diversity and multiplicity of human needs are to the extent that it is impossible for each one of the individuals to supply them all and there is no choice for each one of them but to play their own roles in a collective life to provide for some of these needs. Due to conflict of interests, people's lives in the community have always been confronted with individual and group conflicts. In order to mitigate these conflicts and resolve the disputes, it was deemed that due to appealing to the establishment of government and legislation, rights and responsibilities of individuals can be explained against each other. On this basis, rulers and administrators of the community decided to make fair laws for the purpose of providing and guaranteeing the legitimate rights and freedoms of the citizens, as well as the required conditions in order to achieve justice. Criminal justice and principles governing it are among the factors that have important roles in establishing the justice in society. Principles such as presumption of innocence, legality of crime and punishment, ethical responsibility and individualistic nature of criminal responsibility all and all have their origins in justice and have been occurred to actualize the criminal justice. Now because of the importance of these principles, in this paper we try to answer the following questions about these principles as appropriate:

- What roles do these four principles have in realization of criminal justice? And what negative consequences will violation of them follow?
- What strategies are there for better and more accurate implementation of these principles?

Principles Governing the Criminal Justice

1. Presumption of Innocence

One very important principles that play a fundamental role in criminal justice is (Assuming the defendant's innocence) or (Presumption of innocence). This principle can be considered as the common legal heritage of all civilized nations (Gorbaninia, 2002; 244).

Presumption of innocence is one of the foundations predicted freedoms in Islam. The scope of presumption of innocence is not merely the legal ordinances rather it also includes individualistic assignments, and it is meant by the strong, Qu'ranic Hadith evidences that people shouldn't commit the prohibited acts within the legally prohibited scopes. And in cases where legal and sharia ban is not available, they are free to commit different lawful things (Khamooshi, 2006; 124).

No doubt, basis of this principle is justice and it is important because in criminal claims, presumption of guiltiness of defendant or his/her being charged is in conflict with philosophy of criminal law and criminal justice and whenever this principle is ignored , the rights of accused will be caught by serious injury, and thus, justice will be impaired. Failure to observe this principle in many cases leads to the oppression of the citizens. Experience has proved that in some cases, some people have been sent to prison and after a while their innocence has been proven.

***Corresponding Author:** Morad Nasiri Moghanlu, Department of Law, Payame Noor University, I.R. of Iran
e.mail: Nasiri2013@yahoo.com

It is clear that in this case, not only their dignity and natural rights have not been observed, but also they have experienced some irreversible material and spiritual damages, too. In addition, neglecting the presumption of innocence, leads to the result that the accused to be asked to present evidence, deny the charge, and prove his innocence, and most clearly this is not always possible. And, consequently, an innocent man who for any reason hasn't been able to prove his innocence will bear the punishment that he does not deserve and this is not but injustice and violation (the same reference, p.246).

Presumption of Innocence Position in Today's Rights

The presumption of innocence in international law and other countries.

Paragraph 2 of Article 14 of International covenant on civil and political rights states:

Everyone who is charged with a penal offense has the right to be assumed innocent until his guilt is proven according to the law.

Also, in this regard paragraph one of Article 11 of Universal Declaration states:

Anyone who has been accused of delinquency will be considered innocent until the time when he is found guilty during a public trial in which all the guarantees necessary for his defense is provided.

European Convention on Human Rights, that is also called convention of Protecting Human Rights and fundamental freedom, has dedicated paragraph 2 of article 6 to this principle, and has decreed:

Anyone who is charged is considered innocent unless his guilt is established by law. Under the French Constitutional law of 1958 (the accused is assumed innocent until his culpability is legally proved).

Results and Legal Effects of Presumption of Innocence:

Presumption of innocence principle has important effects and results that are necessary for the realization of a fair trial. Here we refer to some of them:

A. The most important effect of presumption of innocence principle is that the accused is not obliged to provide proof of his innocence, but the prosecution authority (prosecutor or private plaintiff) provided with acquisition and presentation of the reason, is obliged to prove the to prove the accused crime in the court, because he is claimant and according to this rule he is responsible to prove the guilt and he is the one who should prove the violation of law by the accused (Ashoori 2001; P. 48). Also in case of civil affairs, if in an action defendant denies the claim of plaintiff, according to this rule the plaintiff should adduce evidence to prove his action, because denying is enough for denier and in this case the judge who investigates the action, according to the principle of "ex post facto" or maintaining status quo, doesn't accept that claim. The difference is only that in case of ex post facto history is not considered, but in "maintaining status quo" rendering of judgment for the absence of a thing is based on the absence of its history (Rashadi1991).

B. The Defendant's Defense Rights

From among other effects and results of the principle of presumption of innocence is a defense right of the accused that has been predicted and established to support the presumption of the innocence. Although the concepts of the defense rights are diverse, we make reference to some of them that oversee the research preliminary stage.

1. Guarantees of Defense rights Before Interrogation

According to the special status of the investigation on the accused in preliminary investigations process, based on principles of fair trial before interrogation, accurate decisions have been predicted to support the defense rights of defendants in criminal procedure systems. Investigator judge or justice restraining on behalf of investigator judge and / or stewardship in evident crimes, are obliged to observe the above guarantees some of which will be studied here.

1-1. The Need for Presence of Enough Reasons

Considering the need for the presumption of innocence, in criminal procedure systems and in order to support the mentioned principle some special requirements have been provided in all stages of the proceedings. These requirements include the necessity to prove the charge by the prosecution and private plaintiff through acquiring and presenting the legal and legitimate reasons in compliance with the standards of fair trial before judicial authorities of inquiry and investigation.Therefore, the interrogation which is one of the sensitive measures of the preliminary investigation stage, is based on the acquisition and presentation of sufficient reason based on assigning the charge to the accused described in article 124 of code of criminal procedure by prosecuting authority and private plaintiff. According to this article the judge should not summon or arrest someone, unless there are enough reasons to do so. In this regard, it also states: The law of making the accused understand the charge should be together with Article 129 for summoning or arresting and according to the law the reasons to be enough and since the issue of making the accused understand the charge is also among the guarantees that take place before beginning the charge, so the presence of enough reasons to begin the charge will be necessary.

1-2 Note to care in remarks

The importance of interrogation and effects due to it requires the accused to act with caution and foresight in response to questions of judicial and law enforcement arrangements, and do not provide the cause of his plight. The defendant's awareness of this issue is very basic and effective in his judicial fate. But people when attend near the judicial and police authorities as a defendant, especially for the first time, they have such an abnormal spiritual and mental conditions that are not able to understand the place of interrogation and the consequences due to it and if required warnings are not given to them before research is done, most likely they will cause damage to the prestige and dignity, freedom, property and even their lives because of ungracious remarks. For this reason in criminal procedure systems, in order to support the defense rights of the persons, they have made arrangements to conduct proper and legal interrogation which is consistent with fair trial standards.

1-3. Cause **to understand the charge through reasoning**

The necessary condition for the defendant's right in rejecting the competent or incompetent charge that he has been attributed to, and also for the observance of presumption of innocence in the process of hearing, is his awareness of the subject of the charge and its reasons, because ignorance of the subject and the reasons of the charge causes prejudice to individual rights and freedoms, especially the right of defense and a violation of the presumption of innocence. Under subparagraph ((a)), paragraph (3) of Article (14) of International Covenant on Civil and Political Rights, in legal systems it is necessary for individual's charge to be brought up and the accused to be informed of it by stating the type of the charge and its causes as soon as possible in such a way and in a language that he understands. For example, if a person is wanted because of assistance in embezzlement, the judge or executive officer should express the legal concept of embezzlement, and describe the act of the accused as one of the examples of the assistance mentioned in Article ((43)) of Islamic penal code together with the reasons for the charge and make him fully understand them.

1.4. The right to silence and its announcement

The defendant's right to silence during the response to the interrogation questions of judges and executive officers of justice in the criminal procedure systems has been accepted. Subparagraph ((z)), paragraph (3) Article 9 of the International Covenant on Civil and Political Rights has asserted the right of the defendant's silence. The defendant's right to silence during the investigation is implicitly acceptable to legislator and judges and court of justice is obliged to respect this right.

1. 5. The right to take the advantage of a lawyer and its announcement

The right to enjoy the lawyer at preliminary investigation and the necessity of his legal presence and activities in defense of his client's rights, especially during the guaranteed interrogation is very fundamental in order to maintain the individual rights and freedoms prevent the disruption in regard with the right of defense. Lawyer's presence in preliminary investigations leads to the establishment of balance and realization of equality of weapons in criminal procedures. Because, the presence of experienced pursuit judges, private plaintiffs, his lawyer or lawyers and Justice Department prosecutors in procurator's office organization who have the motivation to support the rights of society and the individual damaged by the crime in the issue of gathering the reasons against the accused, requires the presence of active and prominent lawyers beside the accused for the purpose of defending his legal rights. Presence of defense counsel of the accused in the investigation causes prevention of disorders in investigations against him, and reassures him. In the following Islamic law bearing the title of "defense council at the time of hostility" the right to enjoy the defense counsel from the beginning to the end of proceedings has been permitted for accused person or defendant.

It was expected that in the criminal procedure law enacted in 1999 the legislator had considered legislative changes in criminal procedure in order to protect the right to defend and especially the right to choose the lawyer and in addition to the prediction of the mentioned right – as it was put on in the mentioned note – obliged the magistrate to declare the mentioned right to the defendant. However, the context of the note was predicted just the same as the article ((128)) of the above said law and now, a note has been added to this article that not only has ignored the issue of the duty of interrogation to announce the right to enjoy a defense counsel in investigations, but has flawed the right to have an access to the lawyer through ambiguous provisions. The note to article ((128)) states: ((In cases where the subject is confidential or presence of non-accused person, on the judge's discretion, causes corruption and also in case of crimes against the state security presence of an attorney in investigation stage will require permission of the court.)). Thus, based on his taste - that can be raised in any charge and at the presence of corruption whose territory has not been defined - the judge can interpret (confidential aspect of the investigation), and prevent the presence of counsel in investigations. In regard with the justified criticisms made to this note, in paragraph ((3)) of the single article Act on respecting the legitimate liberties and civil rights, adopted in 83/2/5 legislator has decreed: ((Courts and prosecutors are required to observe the defense rights of the charged and complainants and make the ground ready for them to take the advantage of lawyers and experts. Considering that according to this regulation, legislator has been on the position of re-expressing the definition of the defendants' right to have attorneys and at the same time the requirements said in the note for article ((128)) have not been raised, and with respect to the principle of

indecency of abrogation utterance mentioned by legislator and considering the necessity of interpreting the criminal law in favor of the accused, it can be believed that the requirements of the accused of article ((128)) have been abrogated and the right to select an attorney for the accused has absolutely been predicted

2. Illegalness of having delayed in making the charge to be understood:

If there are sufficient reasons in relation to committing the crime and attributing the charge to certain person or persons, available for the investigating judge, the accused should, according to the case, be summoned or arrested to be investigated. But in judicial procedures of the countries it can be seen that sometimes they summon or arrest the said person as a witness and after oath taking they obtain the required information from him and write it down and then at the same meeting on the basis of the acquired information and reasons they make him understand the charge. This beguiling approach is among the clear examples of disturbing the defense rights of the accused persons. Because the obtained information offered by the witness or the informed individual that has been together with oath, has put him in the ethical dogmas and perhaps he has alleged an unwanted charge in his statements. Furthermore, at the beginning of interrogation the accused person has been enjoying the required guarantees such as the right to select an attorney and announcing it during interrogation that due to be considered as a witness or informed person he has been deprived of these rights. In French Law delay in making the accused understand the charge using the mentioned method has been rejected and forbidden and this issue is the cause of cancellation of the investigation in most countries.

3. Prohibition of inducing questions

Inductive questions are among the affairs that can be effective in the morale of individuals, and they are forbidden in systems of criminal procedures. Raised questions should eliminate the irrational effects on emotions and feelings of the accused. Basically, raising such questions not only is effective in the morale of cowardly people, and they confess their uncommitted crime, but this is also true in case of normal people, too. Therefore designing questions of these types should strongly be avoided while giving interrogation. In inductive type of questions, the question is so that stimulates and leads people to accept the charge. For example, asking the person accused of committing automobile theft the question "was the theft auto by you blue or red?" is an inductive question, because it unconsciously makes the individual accept the charge of theft and think about remembering its color. The correct question is " do you accept the charge of automobile model … theft according to the reasons … or not.

3. 1.Reluctance and Compulsion

Reluctance and compulsion of the defendant to answer the questions during interrogation, is a clear example of violate the defense rights of the accused persons. Reluctance and compulsion of the defendants for obtaining the confessions takes place through physical or mental tortures. Torturing the suspects is strictly forbidden in regional and international human rights documents. The most important international conventions in this regard, is the Convention Against Torture and other degrading methods of investigation and interrogation enacted in the United Nations in 1984. In the definition of torture,Article ((1)) of the said convention states: ((Torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.))

3. 2. Prohibition of using scientific methods disturbing the right of defense

Paragraph 10 of the single act on citizenship rights states:

((investigations and interrogations, should take place based on legal scientific principles and methods, previous educations, and required supervision, and according to the law, those who ignore the orders and regulations and have appealed to illegal methods in performing their duties, should seriously be dealt with.)) As you can see, the mentioned article has considered it allowable to use the legal scientific principles and methods during interrogation. But the concept of scientific methods and their examples for the purpose of maintaining the defense rights of the accused persons have not been specified by the legislator.

Since it is possible for some people to assume that all scientific methods used during the interrogation of the accused are permitted and usable, it is necessary to clarify that according to the reasonable principles of proceedings, scientific methods that damage the defense rights are prohibited during the interrogation of the suspects.

As a result, however, considering the speed in preliminary investigation is among the principles of fair proceedings, by no means it shouldn't lead to neglect of the presumption of innocence and consequently, the loss of the defense rights of the defendants.

4. The principle of legality of offenses and penalties:

Another basic and evident principle in criminal law is the legality of offenses and penalties. According to this principle, the agent of an action will not be punishable unless the regulations governing the society consider the said action as crime. Although the action or omission may be obscene and immoral, the person who has committed it cannot be punished unless the law describes them as criminal. Because of the importance of this principle, we consider its position from the viewpoints of Islam, positive law and international law and examine its results and effects.

A. The principle of legality of crime and punishment in Islam:

Quran says:

We never chastise until We send forth a Messenger.

1. Prohibition of punishment without the prior expression – that has been accepted since long years ago in Islamic Jurisprudence

Punishment against people is obscene and indecent without the prior expression. Rational reason is also indicative of the fact that He will not punish without referring to the verdict and law and its communication.

2. In Hadith-e-Raf' of the Prophet (P.B.U.H) it has been narrated:

Nine things have been removed from my community: wrong … and what judgment on it is not known …

3. Principle of Ibaheh:

According to this principle human being has the right to any kind of interference in existing outside objects unless the law forbids it. This principle guarantees the freedom of will power and is considered as a license for people in their transactional and non-transactional affairs. Thus, the presumption in everything, before its order is specified by a law concerning its necessity, state of being forbidden etc., is lawful. Similarly, in criminal issues any action or omission is lawful and permitted and lacks punishment until it has not been prohibited by a law bearing the content of punishment execution guarantee or it has not taken the form of an obligation to itself (Goldoozian, 2001; p.94).

B. The Principle of Legality of Crime and Punishment in International Laws

Also, in international laws, this principle has been referred to and focused on. Paragraph 2 of Article 11 of Universal Declaration of Human Rights stipulates that:

((2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.))

Paragraph 1 of Article 15 International Covenant on Civil and Political Rights also states:

((No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.))

In relation to this principle, Emil Garson, a French lawyer writes:

"The traditional principle of criminal law, has been one of the complete signs of libertarian criminal law in liberal countries to show that people in these communities are enjoying so rights that even the legislator itself is obliged to respect those rights (Mohseni, Bita2000; p. 312)"

1. Results and Legal Effects of the Principle of Legality of Crime and Punishment:

1. Observing the individual interests

By accepting this principle, individuals are able to measure and evaluate their own behavior and due to being informed of the crime and punishment, they can avoid committing delinquent acts.

1. Garson (Bentham) an English scientist believed that any person before committing a criminal act evaluates and compares the benefits from committing the crime with the risks due to its punishment and regarding the preference of one over the other makes decisions and may attempt to commit the act.

Therefore, the act should have already been determined as a crime by legislator so that its committer is able to evaluate the act that he is to commit, because ethical rules are not enough to determine the degree and importance of antisocial acts. Because of possessing the instincts, the man seeks to ensure his own interests, and thus, it is the duty of society to inform people that a given act or omission is of antisocial nature and is considered a crime – by serving them with previously made notices and through laws that are clear and understandable for everyone. In this case it will be possible for individuals to evaluate and compare the issue and adopting a principled criminal policy in this regard can prevent the crimes to be increased (Goldoozian 2001).

2. Observing the social interests

With respect to the principle of legality of crime and punishment, social rules and laws will gain more credibility and power and people will not be doubtful on developing the authorized and legitimate economic relationships and activities. Otherwise, caution and conservatism for preventing the possible problems and

crimes will hinder economic and technical activities and rising living standards of people. In order to eliminate discrimination, legislators should – without knowing the offender, and (prior to legislation), to whom the determined punishments will be imposed – determine forbidden acts and their maximum punishments using legal and general texts, in a full neutral and realistic manner. This method is not only in the same direction as justice, but it provides individual rights and freedoms (the same, p. 95).

2. Lack of being retroactive in case of criminal laws:

In fact, criminal laws, like other social events have come to existence due to social needs and have continued their lives, and finally will one day be changed and give their places to newer and more progressive laws. Determining the scope of criminal law during the passage of time is a relatively new issue that is not two centuries since its life in the world. In European criminal law and even in Rome criminal law, any principles or regulation cannot be seen in this regard. But, in Islamic law, since centuries ago, this principle has been recognized, and its rational basis is the rule of awkwardness of not being open in expressions and its legal documents are some of the Quarnic verses and narrations. In order to bring the principle of "lack of being retroactive in case of criminal laws" into practice, it is necessary to fully consider the principle of legality of crimes and punishment, because "lack of being retroactive in case of criminal laws" is one of the clear and indisputable results of the principle of legality of crimes and punishments. It is fully clear that if criminal laws become retroactive and refer to the acts that have been committed before the enactment of the new law, then, the principle of legality of crimes and punishments, has been violated, because if we consider the criminal law retroactive, we have recognized the action as a crime that it was not a crime and has not any punishment on the day of commitment.

Like the fundamental principle of legality of crimes and punishments, principle of "lack of being retroactive in case of criminal laws" is based on the firm cornerstones of justice and plays its role in realizing the justice and providing the individual rights and freedoms of human beings, and it is of so great importance that has been emphasized beside the principle of legality in fundamental laws of international consultations, declarations and treaties on human rights.

Despite the fact that the principle of "lack of being retroactive in case of criminal laws" is of great importance, it is not limited to it and has also a considerable effect on civil rights. In this regard, Article 4 of the Civil Code expresses: "A law shall be effective only as from the date of its coming into force, and shall not be retrospective"

Some of the lawyers also consider this principle as a result of civil code provisions and believe that the purpose of the law is maintaining the rights and properties of people and freedom of their will in concluding the contracts.

In this regard, the late Dr. Hassan Imami says: "any law is the observer of the matters that come to existence after the date of its execution and is of no effect on the matters that have been done according to the previous law, because at the time of dominance of any law, people acquire some rights that are called "fixed rights" or "acquired rights".

These rights shouldn't be eroded with the new legislation (Imami 1999; p: 4)

3.Listening to the claim of ignorance

From among other legal effects of the principle of legality of crimes and punishments is "the ignorance of the law as a pretext for the removal of criminal responsibility". As a result, not being exempted from punishment due to ignorance of the law, is some kind of opposition against the rule of obscenity of punishment without any notification which is considered as fundamentals of the mentioned principle. Although proving the claim of ignorance should be done by the accused and if somehow claim of ignorance is in relation to public and general law, then the claim of ignorance will, in principle, be acceptable and the claim will not be responsible for proving it (Katouzian, 1999; 205).

In cases where, due to the presence of Force majeure, people in some regions are not aware of the law and also, in cases where the context of the law is so ambiguous that the public infer a meaning from it other than the meaning considered by judicial authorities, not hearing the ignorance of law seems unfair. Justice demands that in such cases the courts shouldn't pay any attention to the claim of ignorance. (Katuzian, 1991; p 174).

However, the principle in the law world is that ((ignorance of the law, doesn't eliminate the obligation)).

Because the necessity of maintaining the order in social relationships is paid more attention to than respect to a person.

Some legal scholars have criticized the basis of this rule. According to this group, since the means of publishing the law is not enough for awareness of all people and most of them for different causes cannot be aware of the provisions of the Act, refusing the claim of ignorance of the law is an unfair task. Some of the lawyers have considered even the claim of ignorance of the law as plausible (the same, p 457).

Despite this, the important point is that from the viewpoint of Islam, claim of ignorance of the law has much stronger been accepted than that of positive law, because the concept of the rule of imposing punishment

toward persons without prior notification is broader than that of the principle of legality of crimes and punishments. On this basis, legislator and lawyer should communicate the religious laws to those who are required, and even communicating the religious orders is not sufficient, but its collection for them is also a condition (Bita, p 248).

4. Limited interpretation of penal codes

In terms of their social and political ideas and the school to which they belong, scientists and scholars of criminal law have expressed different theories and method in the interpretation of the law. Those with liberal ideas prefer individual interests to political and social considerations, are very cautious about the interpretation of criminal law, and believe that the judge should not go beyond the framework of the principle of legality of crimes and punishments as well as the range that has been specified by the law. These are the fans of limited interpretation of penal codes. On the contrary, some others who prefer the society's and government's interests to personal interests and freedoms believe that the aim of the law is maintaining the social order. For this reason, whenever this order is to experience risks, the judge should compare the events taken place with foreseen crimes in the law, and then determine punishments for committers. These are fans of interpretation by analogy. Some others consider the intermediate level, and believe that in interpretation of criminal law it is necessary to follow the intermediate level and in this way, they consider the extended interpretation of the criminal texts more required (Mohseni Bita 2000; p 346).

The oldest available style and method in interpretation of criminal laws that should be considered among the results of the principle of legality of crimes and punishments is limited or literary interpretation.

Whenever the scope of law enforcement is limited to the case that has strictly been expressed in the context of the law, the interpretation is called limited interpretation (Katozian 1999; p 239).

In this method of interpretation, the judge is involved with legal words and cannot perform according to the spirit of the law. Proponents of this interpretation consider this issue consistent with the principle of separation of powers and realization of their criminal justice. On the basis of this method, in case where the law is not clear and explicit, it must be interpreted in favor of the accused and not to condemn the accused, because being involved in limited interpretation is clearly a fair thing.

Although it is possible for the judge to do well in some cases of extended interpretation and realization of the spirit of the law, undoubtedly there are cases where and innocent bear a punishment, and this is unforgivable, so in order to ensure the defendant's right and realization of justice, it is necessary to adhere to limited interpretation of the criminal texts. Limited interpretation of criminal laws may cause a real criminal is not included in the law and be exempt from punishment, but his acquittal is clearly better than the case where due to the extended interpretation an innocent accused to be punished, because upon the punishment of an innocent justice will be undermined (Gorbaninian 2002; p. 231).

5. The principle of moral responsibility

The principle of moral responsibility is another important principle in criminal law, because it forms the basis of criminal responsibility for the guilty person to be punished. So, at first we refer to the position of this principle in positive law and then study the maturity and wisdom and authority - the most important factors in criminal responsibility – and finally express its results and effects.

A. The position of moral responsibility in positive law

In fact, Articles 49, 54, and 51 of Islamic Penal Code describe the legal position of this principle as follows:

1. Article 49 of Islamic Penal Code states: ((in cases where children commit a crime they will be considered cleared of the criminal responsibility.)) This article discusses the issue of maturity.

2. Article 51 of Islamic Penal Code which oversees the wisdom element states: ((Madness at the time of committing a crime at any level is a cause for lack criminal responsibility.))

3. Article 54 of Islamic Penal Code states: ((in crimes that are the subject of discretionary punishment whenever a person due to compulsion that is not normally tolerable commits a crime, he will not be punished.)) This article also oversees the issue of authority.

B. Factors of criminal responsibility (maturity, wisdom and authority)

Responsibility may be imposed on the criminal person only when he is mature, wise and independent and these, are considered as evident principles of today's criminal law. Therefor a child, a mad, and a miserable person lack the criminal responsibility. Nowadays, exemption of children and the mad from punishment is very clear and obvious issue for those who live in 21st century and the imagination of animals or dead bodies to be tried will be a surprise. However, we find in the history that in ancient times when human knowledge and criminal law had not been developed very much, the important thing in prosecution of the crimes was the role and objectivity of the crime – and not criminal responsibility of the criminal person as it is meant nowadays. On those days, according to general belief the criminal person would have been punished in any case, and it didn't make difference whether he as wise, mad or with authority and or a miserable one in the state of emergency. Even it was possible for them to bring an action against the dead, exhume them and whip their bodies. On those days, punishing the animals was also a common thing. In an era when such unjust thoughts ruled over the

societies and all of the offenses were prosecuted, Islam attributed the responsibility to the person convicted and this was also true only when the requirements of wisdom, maturity and authority were available. Thus, upon the acceptance of moral responsibility, Islam established one of the most important and innovative principles of criminal law on those days. According to Islamic jurisprudence, in all offenses one of the conditions of punishment is having a moral responsibility and no one will be punishable unless he possesses the mentioned moral responsibility. One who commits a crime will be punished only when owns the general conditions of religious obligation. That is, being mature, wise, independent, and having knowledge on the state of being forbidden. That is why children and the mad are exempt from punishment and they should be corrected and castigated, and encouraged to do good things.

Also, if a person is forced to commit a crime, he will be exempt from punishment. Jurists have stipulated that if a person commits robbery in the famine years, they will not tolerate the penalty for the theft. Looking deeper into the techniques of Islam, it will clearly be known that Islam is a system that different institutions such as systematic, legal, economic and criminal ones constitute it and each one of them are in close relationships with the others. It is difficult to accept if one of the institutions is closed the activity of other entity will be fair.

Helpless person is not punished and the one who is minor and mad shouldn't be punished, because it is a cruel act, also we can say: in a society where righteous economic, moral and educational principles do not rule, it is doubtful – at least in case of some defendants – indicting them for moral and economic crimes (Gorbaninia 2002; p 216).

In their speeches, some scholars have also referred to this issue, such as the martyr Allameh Seyyed Mohammad Bager Sadr who states:

Clearly, the punishment of cutting the hands of burglars in a capitalist society where a lot of people have been entrusted to an unknown fate and all around it is full of injustice and aggression, it is cruel, but if Islamic society and the bright background of Islamic economy are provided and the community lives in the light of Islam, undoubtedly in this case it will not be cruel to deal with the thief in such a manner, because the leading Islamic economy, has provided for him all means of success and happy life and has eliminated from him any act that had forced him to commit robbery (Sadr, 1971; p 381).

C. Results and effects of moral responsibility

The most important result and effect of this principle is that the presence of the crime alone, cannot be the cause for guilty person to be punished. Committer of a criminal act should be recognized as the one who bears criminal responsibility in order for being punished in a fair manner. Therefore a child who is still not a mature, a mental patient who has lost his wisdom, and an independent individual who has lost his power due to force and urgency cannot be questioned and punished. In reality, criminal responsibility is a link between the crime and punishment and criminals crossing the link bridge are recognized as responsible persons and are punished in proportion to their act or omission.

4. The principle of personal criminal responsibility

Another important and fundamental principle in modern law is the principle of personal criminal responsibility. At first, we will explain the position of this principle in Islam and positive law and then wil study its results and effects.

A. Position of the principle of personal criminal responsibility in Islam:

In Islamic rule everyone is responsible for his own actions and no one's violations can be attributed to others. In this regard Quran says:

((No soul can carry the sins of another soul.)) (Fater: 18)

B. Position of the principle of personal criminal responsibility in positive law:

Article 5 of the Code of Criminal Procedure states:

(The criminal prosecution only to the agent, partner and vice president will be charged.)

The provisions of this article is indicative of the fact that only the guilty must be punished.

C. Results and effect of principle of personal criminal responsibility

From among the most important results and effects of the mentioned principle is that punishments are only applicable in case of committers of the crime and anyone is questioned about the fault that has been committed. In other words, results of convictions and punishments must only be attributed to the criminal himself and by no means, its effects must not be transmitted to his relatives and others, because exceeding the responsibility of punishment from the committed person to others is cruel. In old times, the principle of personal criminal responsibility hadn't been considered; not only the sinner was prosecuted, but his family wasn't also immune from aggression and his family members were also responsible for the act of guilty one. Before the advent of Islam, in Peninsula the criminal responsibility of criminals and consequently applying the punishment were not unique to the committer, rather the responsibility had group and collective concept, and included also the friends and relatives, who had not any role in committing the crime, but nowadays, the principle of personal criminal responsibility is such an important responsibility that it should be considered as one of the basic principles of criminal law that realization of justice will not be possible without it.

Also, if a person is forced to commit a crime, he will be exempt from punishment. Jurists have stipulated that if a person commits robbery in the famine years, they will not tolerate the penalty for the theft. Looking deeper into the techniques of Islam, it will clearly be known that Islam is a system that different institutions such as systematic, legal, economic and criminal ones constitute it and each one of them are in close relationships with the others. It is difficult to accept if one of the institutions is closed the activity of other entity will be fair.

Helpless person is not punished and the one who is minor and mad shouldn't be punished, because it is a cruel act, also we can say: in a society where righteous economic, moral and educational principles do not rule, it is doubtful – at least in case of some defendants – indicting them for moral and economic crimes (Gorbaninia, the same p 216).

In their speeches, some scholars have also referred to this issue, such as the martyr Allameh Seyyed Mohammad Bager Sadr who states:

Clearly, the punishment of cutting the hands of burglars in a capitalist society where a lot of people have been entrusted to an unknown fate and all around it is full of injustice and aggression, it is cruel, but if Islamic society and the bright background of Islamic economy are provided and the community lives in the light of Islam, undoubtedly in this case it will not be cruel to deal with the thief in such a manner, because the leading Islamic economy, has provided for him all means of success and happy life and has eliminated from him any act that had forced him to commit robbery (Sadr, 1971; p 381).

C. Results and effects of moral responsibility

The most important result and effect of this principle is that the presence of the crime alone, cannot be the cause for guilty person to be punished. Committer of a criminal act should be recognized as the one who bears criminal responsibility in order for being punished in a fair manner. Therefore a child who is still not a mature, a mental patient who has lost his wisdom, and an independent individual who has lost his power due to force and urgency cannot be questioned and punished. In reality, criminal responsibility is a link between the crime and punishment and criminals crossing the link bridge are recognized as responsible persons and are punished in proportion to their act or omission.

4. The principle of personal criminal responsibility

Another important and fundamental principle in modern law is the principle of personal criminal responsibility. At first, we will explain the position of this principle in Islam and positive law and then wil study its results and effects.

A. Position of the principle of personal criminal responsibility in Islam:

In Islamic rule everyone is responsible for his own actions and no one's violations can be attributed to others. In this regard Quran says:

((No soul can carry the sins of another soul.)) (Fater: 18)

B. Position of the principle of personal criminal responsibility in positive law:

Article 5 of the Code of Criminal Procedure states:

(The criminal prosecution only to the agent, partner and vice president will be charged.)

The provisions of this article is indicative of the fact that only the guilty must be punished.

C. Results and effect of principle of personal criminal responsibility

From among the most important results and effects of the mentioned principle is that punishments are only applicable in case of committers of the crime and anyone is questioned about the fault that has been committed. In other words, results of convictions and punishments must only be attributed to the criminal himself and by no means, its effects must not be transmitted to his relatives and others, because exceeding the responsibility of punishment from the committed person to others is cruel. In old times, the principle of personal criminal responsibility hadn't been considered; not only the sinner was prosecuted, but his family wasn't also immune from aggression and his family members were also responsible for the act of guilty one. Before the advent of Islam, in Peninsula the criminal responsibility of criminals and consequently applying the punishment were not unique to the committer, rather the responsibility had group and collective concept, and included also the friends and relatives, who had not any role in committing the crime, but nowadays, the principle of personal criminal responsibility is such an important responsibility that it should be considered as one of the basic principles of criminal law that realization of justice will not be possible without it.

Result of the crime and punishment must only be for the person who was committed, and others who have not any role in the crime must be immune of offensive. (Gorbaninia, the same)

There is an exception to this principle and that is the subject of ضمان عاقله. According to the articles 305, 306 and 307 of Islamic Penal Code on pure involuntary manslaughter that must be proved by clear reasons, or knowledge of the judge, and also oral injury and crimes more than that and also in voluntary and semi-voluntary crimes that are considered as pure error, male relatives of the malefactor are responsible for the blood money of the injured party and this is called knoledge.

The question here is: Whether knoledge guarantee violates the principle of personal criminal responsibility or not.

In this regard, Islamic scholars have offered different views that we refer to some of them as follows:

Some have considered the blood-money civil responsibility alone, and believe that blood-money has by no means criminal aspect and is not considered as punishment for criminal, rather it solely compensates for damage and thus cannot be considered offender of the principle of personal criminal responsibility and they believe: (This order is among the signature orders of Islam that are not in conflict with law provisions and personal nature of the punishment, because generally, paying blood-money is a civil responsibility and by no means is considered as criminal aspect (Mar'shi 1992).

Others have considered the blood-money as an exception to the principle of personal criminal responsibility, but the exception whose aim is providing and establishing the absolute justice, is the same base that the principle of personal criminal responsibility is based on it, because it is not possible for an action to realize the absolute justice according to the principle of personal criminal responsibility in error cases, rather practicing it will lead to the great injustice.

Some others believe: blood-money is an obligation for عاقله, but it is not considered as punishment for them, thus it shouldn't be considered as an exception for the principle of personal criminal responsibility; rather it is some kind of help among the relatives. Therefore, from among the knolegdable people, blood-money is not obligatory for the poor and debtor. It is never possible to consider a blood-money that the knolegdable people tolerates for the purpose of helping the killer of the involuntary murder, so that no extortion to be made for him and the killer, as punishment, rather it is a good and handsome deed and is considered as noble moral acts (Audi, 1994, p 281).

Conclusion

In today world's positive law, criminal justice and principles governing on it are of extraordinary importance. Thinkers and scholars of jurisprudence have considered different principles effective in criminal justice, but from among them principles such as presumption of innocence, legality of crimes and punishments, moral responsibility and personal criminal responsibility are the most important principles, because they are considered the common legal heritage of most of the civilized nations of the world.

Careful observance of these principles to address the criminal claims, can promising for the establishment of relative justice in the legal systems. Undoubtedly, realization of justice is the basis for all of these principles and if they are ignored and paid little attention to, the rights of those who refer to judiciary will be violated and the justice will be undermined. Some of the results from these principles are as follows: taking the human characteristics and dignity into account, having the right to select an attorney, prohibition of detention with no reason, prohibition of torture, prohibition of desecration, and prohibition of inhuman treatment during the investigation and punishment, and immunity of people's life, property and honor from violation.

Despite the importance of these principles in the providing the criminal justice, realization of these principles in a justified manner requires the establishment of observance of reasonable balance among the rights of misdemeanants, those who have suffered from misdemeanor, and the rights of society, because in this case it will be possible to eliminate a damage that has come to existence due to commitment of the crime among the misdemeanants, those who have suffered from misdemeanor, and society and establish a relative peace in the light of this restoration.

Considering what was said, it seems that observance of the following points by the legislative and the judiciary leads to prevent infringement of rights of those who have suffered from crimes and abuses of opportunist individuals.

First point: Considering that one of the principles of fair trial is observance of the principle of speed in preliminary investigations and at this stage it is of great importance, by no means it shouldn't be the cause of ignorance from presumption of innocence principle and consequently, elimination of defendants' defense rights.

Second point: In the principle of legality of crimes and punishments, since it is not always possible to offer a comprehensive and complete definition of corrupt practices, as a result some of the corrupt practices that are harmful to the society may not be included in the definition made by legislator and in this way, professional criminals who are always considered serious damages for society, knowing about the failure in law, attempt to commit acts contrary to the law. Therefore, in such special cases it seems that, inspired by the principle 167 of constitution, legislator may add a single act to Islamic Criminal Code and specify the duty of the judge in involving with such criminals. It is worth of nothing that in such a special case if the judge is careful and alert, he can select the right way due to rational interpretation and perceiving the spirit of the law and prevent the abuse of people who violate the legal gaps. Since in this problem interests of the society is considered, it is surely consistent with the spirit of justice, and not only does not conflict with the principle of legality of offenses and penalties, but it is an indicative of intelligence of judiciary system in defending the rights of society and realizing the justice. At the end, in order to better and more accurate performance of these principles and preserve individual and social rights of people and realization of criminal justice in society, the following practical suggestions are offered:

Suggestions:

1. Specializing the courts and judges of the courts to accelerate, facilitate and care in investigating the judicial cases.
2. Attracting and selecting and employing the righteous, effective and faithful people as judicial staff, and continuous supervision on their functions
3. Preparing and compiling appropriate rules concerning the form and concept, so that problems and failures in current rules to be minimized and responsive to the needs of society explicitly and clearly
4. Rectitude of judicial authorities in order to create confidence and attracting the satisfaction, cooperation and human partnership

REFERENCES

1. Amin, E. 2006. Judicial Justice paper, Etemad-e-melli newspaper.
2. Ashoori, M. 2001. Presumption of innocence paper and its effects on criminal affairs, Law and political sciences faculty magazine, No. 29.
3. Audi, A. Q. 1994. Aljnayy Altshry al-Islam, the C-1, Beirut: Institute Alrsalh.
4. Ghorbannia, N. 2002. legal justice, Farhang-e-Danesh va Anishe' Moaaser Publication, 1st edition
5. Goldouzian, I. 2001. The Shoulds of general criminal law, Tehran: Mizan Publication.
6. Imami, S. H. 1999. Civil rights, vol.4, Islamiyeh Publication, 11th.
7. Katouzian, N. 1999. Rights philosophy. Vol.2, 1st edition, Tehran, Sherkat-e-sahami-e- enteshar press.
8. Katouzian, N. 1991. An introduction to the rights science, 3rd edition, Tehran: Sherkat-e-sahami-e-enteshar press.
9. Khamooshi, S. M. 2006. Jural and Legal study of the principle of crimes and punishment being the rule, Tehran: Amirkabir press.
10. Marashi, S. M. H. 1992. Paper of Juristic opinions of jurists around the legal and Jural issues Rahnemoon publication, No.7
11. Mohseni, M. 2000 The general criminal law course, vol. 1, National university of publication.
12. Mo'menzadegan, H. 2006. Ensuring the rightsof the accused, Sharg Newspaper.
13. Noorbaha, R. 2006. Background of general criminal law, 17th edition, Tehran, Ganj-e-danesh Publication.
14. Rashadi, M. 1991. Presumption of innocence in practice of the court of public and revolutionary tribunals in civil affairs, Dadgostar publication, No. 18.
15.. Sadr, S. M. B. 1971. Economists, Final study about Islam Economic School, Mohammad Kazem Moosavi, Tehran, Borhan publication.
16. The holy Quran.
17. Zeraat, A. 2004. Code of criminal procedure in current legal system, Tehran: Khatt-e-sevvom publication.