

# The threat in Iran and United States of America criminal law

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## **Abstract**

*Iran criminal law and United States of America have considered the threat as a crime and have imposed the penalty for it. The threat importance is considered in where that from one side the persons and civilians in accordance with domestic laws and international documents are involved very important right entitled of "Freedom of speech" and the mentioned rights violation is associated with domestic and foreign criminal sanctions and on the other hand, the expression of some words or commit a certain attitude with them and in accordance with the same laws are prohibited and to be considered as the criminal threat. However, the laws of both countries have adopted different approaches regarding the circumstances realization of the mentioned crime and some of its examples, although in some criminal threat characteristics such as lack of necessity to apply the means are unlawful and have similarity in its intentionality. In order to detailed understanding of the similarities and differences of criminal threats in Iran and America laws, which leads to the identification of existing disadvantages and advantages and providing the strategies regarding the deficiencies of the current laws and trends, so we are investigating the structure and threat features in criminal law of both countries.*

**Keywords:** criminal law, threat, loss, intimidation, assault.

**JEL Classification:** K14, K33

## **1. Introduction**

The most technical and difficult governments' measure, is the criminalization some of the citizens' behaviors. On the other hand, to identify, determine and explain criminal behavior is associated with difficulties with regard to the principles of permissibility and contrary to the principle presumption of it and on the other hand, crime-solving conflicts between legitimate of the legislator with the legitimacy of criminalization by the legislature is not easy. Universal Declaration of Human Rights Act 1948 and some confessions related have paid to describe and explain human beings' fundamental rights. Moreover, Iran's constitution in the third quarter and the United States of America constitution and Bill of Rights have paid to describe and explain these rights, which some of these rights such as the right of self-determination and the freedom of expression right in both countries have supported

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and some of the other rights such as the freedom of religion right has recognized only in the United States of America. However, sometimes the behavior of some people leads to violating or restrict of rights and citizens' fundamental freedoms. For example, the threat criminalization is remarkable that in one hand it damages to the life or property or safety of persons and on the other hand makes moral and social blame. However, the governments to confront and facing with such norms violating behaviors are not involve the absolute discretion and cannot only without any measure deals with to criminalize the mentioned behaviors and consequently the penalty action in this regard, but also must be to consider a series of bases in the field of behavioral criminalization.

Apart from the mentioned principles that in the form of the crimes are the identical, the study of structure and threat effects in criminal law of Iran and America have much importance. In Iranian criminal law, article 669 of the Islamic Penal Code (Discretionary punishments 22/05/1996) has been paid to explain the criminal threat general's example.

This legal act states: " If a person in any way threaten another to kill, or to inflict bodily harm upon or honor or financial losses and or expose the secret to themselves or his relatives, with regard to this issue whether for money or property or the demand of any work to have leave them or not, he/she will be convicted 74 lashes or imprisonment from two months to two years." In the United States of America, Article 211.3 of Model Penal Code also has been expressed the criminal threat in general. This threat legal article is as follows: «A person is guilty of a felony of the third degree if he threatens to commit any crime of violence with purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience»<sup>3</sup>. Although the above rules have expressed criminal threat in general, but in some regulations or other instances have explained the other examples of threats that in the following, we explain and describe the elements of threats crime and their specific examples in Iran and America criminal law.

## 2. Threat subject

In order to the exact understanding and correct recognition of the threat concept, the awareness of the threat subject can be useful. The meaning of threat subject is an issue that threat is put forward compared to it.

Threat subject can be one or more of the following cases:

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<sup>3</sup> Markus D. Dubber, *Criminal Law: Model Penal Code*. U.S.A: Foundation Press, 2002, p. 231.

## 2.1 Fears of harm to life

One the main threat subjects which has formed the most discussed criminal records in courts and criminal degrees, is harm to self or life of threatening a person and in other words its physical integrity<sup>4</sup>. Such a threat subject can lead to death or the damages caused to the person's body<sup>5</sup>, for example, can be cited the threat of throwing acid, killing or wounding the person. Therefore, it is for this reason that the preamble of Article 669 of the Islamic Penal Code (Discretionary punishments 22/05/1996) is expressed the first threat subject based on to kill or soul harm. By studying the laws in the United States of America, we have achieved the above outcome<sup>6</sup>, for example, it can be noted to the Articles of 871 and 876 and 879 of Eighteenth Title the Code of Laws of the United States of America. Under this legal article, threatening issues which have been known punishable against of the President and officials that are as follows: Murder, kidnapping and inflict bodily harm which is considered as the example of life or psychological losses.

## 2.2 Fears of harm to property

One of the other discussed issues, is the threat of harm to the persons' property. Islamic criminal jurisprudence has also raised the threat of financial loss<sup>7</sup>. The Iran Islamic Penal Code (discretionary punishments 22/05/1996), in Article 669 the threat of financial losses has known as one of the threat subjects. However, there is no explanation for the financial loss amount and it is considered an absolute threat to financial losses as a crime. Although in the United States of America, the most important threat issue is murder or inflicts bodily harm, however, the threat to financial losses is also taken into consideration. For example, paragraph (d) of Article 876 and Article 877 the Code of Laws of the United States of America, as Mailing Threatening Communications, explicitly is considered one of threat issues as loss or damage to the threatened person's property. However, in other cases such as threats against the President, judges, officials and etc. the Code of Laws of the United States of America has not explicit the financial losses issue.

## 2.3 Fears of harm to petition

The meaning of the petition is the honor, dignity of the person<sup>8</sup>. One of another threat issues can be dishonor of the threatened person. Therefore, as well as

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<sup>4</sup> Gholami, Ali, Barriers factors of criminal responsibility. Tehran: University of Imam Sadeq (AS) Publication, 2012, p. 204.

<sup>5</sup> Mirmohammadsadeghi, Hossein, Crimes against the persons. Mizan Publication, Tehran, 2007, p. 484.

<sup>6</sup> Michael J. Allen, Textbook On Criminal Law. U.K: Oxford University Press, 2012, p. 171.

<sup>7</sup> Mohaghegh Damad, Mostafa, The rules of law: Criminal section. Tehran: Humanities publication center, 2014, p. 113.

<sup>8</sup> Goldozian Iraj, Explanation of Islamic Penal Code. Tehran: Majd Cultural Scientific Assembly, 2014, p. 616.

in Iran criminal law the threat issue can be subject to honor and dignity losses and also to expose of a secret, but the threat issue in the United States of America criminal law can be also considered. In the third paragraph of Article 212.5 of the Model Penal Code, one of the threat subjects is related to Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; as well as Articles 876 and 877 of the United States of America of the Model Penal Code has known one of the threat subjects is related to loss or harm honor and reputation of the threatened person.

### 3. Types of threat

Although by studying of criminal laws, it is observed that legislators could not seek to explain and classified the types of threats, but with the attention and analysis of criminal laws about the threat can be categorized the various types of threats. So, in the following this topic will discuss to explain the types of threats.

#### 3.1 Threat impact

The legislator has provided certain result in the realization of some crimes that without obtaining of this result, it cannot be considered this crime as a perfect crime. While in another series of crimes such a result has no reason and to commit an act regardless of its result has known as a perfect crime<sup>9</sup>. Sometimes the legislator knows the threat crime as only a crime and does not consider it subject to the realization of a certain result and at other times in terms of legislator if the threat causes certain result would be criminal description.

As it has been mentioned before, the threat is sometimes an independent crime<sup>10</sup> and the legislator does not consider it subject to the realization of certain results. In other words, to threat of another one is realized this crime compared to one of the mentioned issues about the threat<sup>11</sup>. In Iran criminal law and the United States of America, the following cases and legal instances can be outlined in this field type of threat.

Article 511 of Islamic Penal Code (Discretionary punishments 22/05/1996): "Whoever with intent to disrupt national security and disturbing public opinion with the threat of bombing of aircraft, ships and public transport or claims that the mentioned means are bombing, in addition to damage reparations to the government and people, will be sentenced six months to two years"<sup>12</sup>.

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<sup>9</sup> Ardebili, Mohammadali, General criminal law. Second volume, Tehran: Mizan Publication, 2014, p. 40.

<sup>10</sup> Norbaha, Reza, General criminal law context. Tehran: Dadafarin publication, Norbaha, 1999, p. 234.

<sup>11</sup> Aghaeinia, Hossein, Criminal law: Crimes against persons (Felonies). Tehran: Mizan Publication, 2007, p. 198.

<sup>12</sup> Mirmohammadsadeghi, Hossein, Crimes against security and public safety. Tehran: Mizan Publication, 2013, p. 131.

Article 871 of the Code of Laws of the United States of America: " (a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in the order of succession to the office of President of the United States, or the Vice President-elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President, or Vice President-elect, shall be fined under this title or imprisoned not more than five years, or both...."

In this article, the criminal law of the United States of America also subject to the threat of mentioned officials have been authorized and its realization is not subject to any certain result.

In contrast to the above issues, in some cases the legislator has been attended the threatening behavior that must be appeared the certain result, so that the title of criminal to be fulfilled and in other words, a threat absolute doesn't make the fulfillment of the title of criminal and the certain outcome must be created by it. In Iran criminal law and the United States of America, the following cases and legal instances of threat is considered effective:

Article 694 of Islamic Penal Code (Discretionary punishments 22/05/1996): "Whoever to enter by force or threats at home or another home, he/she will be sentenced in prison to a penalty of six months to three years and in a case that there are two or more perpetrators and at least one of them are armed, they will be sentenced in prison to a penalty of one to six years." As it is observed, threat effects, does not fulfill Article 694 of the mentioned law, but the threat must be led to the entrance to the home or another home.

Article 876 of the Code of Laws of the United States of America: "(a) Whoever knowingly deposits in any post office or authorized depository for mail matter, to be sent or delivered by the Postal Service or knowingly causes to be delivered by the Postal Service according to the direction thereon, any communication, with or without a name or designating mark subscribed thereto, addressed to any other person, and containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined under this title or imprisoned not more than twenty years, or both...".

Despite the subject threat of Article 871 of the above law which was realized the crime with regard to any threat. In this legal article, the threat should be effective and through the threat, the threatened person's property must be extorted.

### **3.2 Threat forms**

The form of expression and the threat induce in the audience may take different forms, though most of the conducted threats are carried out in the form of speech against individuals. In Iran criminal law with regard to the phrase "In any

way threat" on top of Article 669 of the Islamic Penal Code (Discretionary punishments 22/05/1996), the threat realization is not subject to a certain form and can be take place in any form of verbal, written and behavioral. In the criminal law of the United States of America, we are seeing such an approach and the threat realization is not subject to a certain form and the statute book and courts decisions, each one have a reason for accepting and realizing threats criminal in any form of verbal, written and behavioral. Therefore, in the following of this section, we will express each one of the form of the threat.

### ***3.2.1 Verbal***

Often the threat is applied in terms of verbal and most discussed complaints in this regard are subject to the use of threatening words in case of orally. The meaning of being verbal of the threat is that the offender applies the terms and phrases of his/her mouth that involves of threat; for example, the phrase "I will kill you", "I will fire you," and etc. will be declared from the offender's mouth. In Iran law has been implied to this type of threat<sup>13</sup>, however, there is no explicit to threat verbally in Iran criminal law. In the United States of America like Iran criminal law, there is no explicit about verbally or orally of the threat, but the use of the phrases "Only Threatening" as well as the issued decisions about verbally threats is confirming acceptance of this type of threat in the United States of America. In *Watts's v. United States* in 1969, the accused person was an 18-year-old person, he replied [Orally]: "They always holler at us to get an education. And now I have already received my draft classification as 1-A and I have got to report for my physical this Monday coming. I am not going. If they ever make me carry a rifle the first man I want to get in my sights is L. B. J."<sup>14</sup>

Regardless of the verdict and substantive opinion, Supreme Court in this regard as well as the accused arrest by the informational authorities, the United States of America in terms of their statements were fulfilled the threat offense against the President under Article 871 the Code of Laws of the United States of America, so the accused words and phrases was stated in form of verbally and orally, therefore the threat offence realization in the United States of America and in the mentioned case is accepted in form of verbally.

### ***3.2.2 Writing***

With the advancement of science and to encourage people and citizens to learn and acquire the knowledge and consequently the ability to read and write on behalf of them, there is the possibility of threat realization through writing. In Iran and the United States of America criminal law, the threat through text writing like a verbal threat also will be punishable. Although the regulations of these two countries

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<sup>13</sup> Jafari Langroodi, Mohammadjafar, *Elements of civil law and criminal law dictionary*. Tehran: Ganj e danesh Publication, 2003, p. 237.

<sup>14</sup> Thomas J. Gardner, terry M. Anderson. (2012). *Criminal Law. U.S.A: Wadsworth*, 2012, p. 231.

did not pay attention very strictly to separate the threat through written and spoken and other forms of it. However, in the United States of America criminal law with regard to threat issue, in some parts, has been implied to the written threat.

For example, Part I of Article 871 of eighteen Title of the Code of Laws of the United States of America has declared the explicit to the realization of writing threat: " (a) Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat...." As it is observed, in the above-mentioned legal article, explicitly the written threat, as an example, it is known punishable. Moreover, the ideas in the United States of America, which was issued by the courts, have been sentenced the written threat offender. In a Elonis controversial case against the United States in 2015, the record (File) was investigated and plausible in October 2014 by the United States of America Supreme Court regarding the threat realization. Here, regardless of the nature and content of the verdict, the manner and practice of the threatening words that led to his prosecution by the competent authorities is investigated.

Anthony Elonis was a theme-park worker in Pennsylvania. In 2010, his wife left him, taking their two children. Soon after, he was fired from his job. He began posting on Facebook that he was thinking of killing his wife.

Regardless of the applied threat nature in the above-mentioned file and the made decision study of the occurred offense spiritual element by the Supreme Court of the United States of America, so that the manner and practice of the threat was in terms of writing and hoc institutions in the United States are dealt with the mentioned case as a type of threat.

Therefore, with regard to the above legal articles and also the decisions made by the courts of the United States of America can be stated that the threat via writing is one of the known methods of this crime and in Iran criminal law also with regard to the application of the threat phrase in the mentioned legal articles, the writing threat is also punishable.

### ***3.2.3 Behavioral***

One of other types of threat in terms of form, is behavioral threat. This means that the threatening person without any explicit threat by using of the term or writing, by applying and using of specific movements, to inspire his/her intension to the audience and consequently committing the mentioned movements, creates the fear caused by threat in the audience. For example, a threatening person by showing his/her weapon or with hand and leg movements or a particular pose to threat the audience and due to doing the mentioned behavior, fear caused by threat in the audience is obtained, such as a person to show his/her clenched fists with the intention of the body damage in the near future to another person or with his/her hand to remind cut throat sign to the audience. In Iran criminal law, the legal articles are intended in relation with threat and have not implied to this type of threat.

Therefore, it is observed carefully in Iran criminal law, the legislator in the first paragraph of Article 607 of the Islamic Penal Code (Discretionary punishments 22/05/1996) has been implied to this type of threat. However, the mentioned legal article regarding to rebellion towards of the government officials' states that:" Any attack or resistance that acts with the knowledge and awareness of the government officials during their duty doing, is considered rebellion and their punishment is as follows: 1- When rebel to threaten, shows his/her weapon, takes to imprisonment from six months to two years.... "In this legal article, the accused has not only any explicit to threat by words or writing, but with the intention of threatening and fear of the audience, show his/her weapon.

Adopting such an approach in Iran criminal law show that behavioral threat and even with the gesture if Taking into account the legal requirements, will be punished<sup>15</sup> and Article 669 of the above mentioned law can be interpreted that the legislator's intention of the phrase " In any way threat to..." includes of the behavioral threat. Of course, as it is observed such a threat must be having all the characteristics of the behavioral and written threat such as being illegal, have caused fear and deliberate.

In the United States of America criminal law, the situation is largely similar to Iran criminal law and the behavioral threat has been considered by legislators. This type of threat can be done by an act or gesture.

The interesting point is that the behavioral threat in the United States of America is considered an independent criminal as "Intimidation". The criminal intimidation which is also interpreted as a threatening behavior, is defined as a behavior that you knowingly, intentionally to put the others in a position of fear of the body damage<sup>16</sup>. However, the mentioned crime definition is different in the United States of America. In the first paragraph of Article b147 Michigan racial intimidation law has been referred to this type of threat.

With regard to the above explanation can be stated, although in Iran and the United States of America criminal law, particularly have not implied to the threat through gestures or movements, but by taking into consideration of the legal article associated with threat and considering certain rules and regulations such as the defiance of a government official in Iran criminal law and intimidation in the United States of America criminal law can be stated the crime such behaviors when they have included the other characteristics of the threat.

#### 4. Conclusion

With regard to the above explanation and review of Iran and the United States of America criminal law in relation to the threat subject, can be achieved the following results:

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<sup>15</sup> Aghaeinia, Hossein, Criminal law: Crimes against persons (Spiritual character). Tehran: Mizan Publication, 2007, p. 199.

<sup>16</sup> David Alan Jordan, U.S Intelligence Law: A comprehensive Multimedia Law. U.S.A: Legal Publisher, 2010, p. 1762.

*First:* The issue of criminal threat in Iran law is wider and more extensive than America criminal law and for example honor and validity and financial losses in addition to life losses under Article 669 of the Islamic Penal Code (Discretionary punishments 22/05/1996) Iran can be the subject of any criminal threat. While in America Criminal Law and pursuant to Article 211.3 of the Model Penal Code, merely violating crimes can be subject to threat subject and in certain and limit cases has been noted to financial losses that this issue shows being comprehensive of Iran criminal law in this section.

*Second:* The most important feature of the threat in America criminal law that is «With purpose terrorize another», specifies this point that if the threat is not associated with this purpose or at least not to create fear in the audience, this crime is not intended, while in Iran criminal law, this issue has not implied to this important matter and it is necessary that the Iran legislator implies to this issue.

*Third:* Although the Code of Laws of the United States of America, in Chapter 41 of the first section has paid from the eighteenth Title to explain the threat specific cases in Articles 871 to 880 and Iran criminal law has paid also in 4 legal articles to explain the criminal threat, but there are the specific issues such as threat of children, the accused that the regulations of both countries are faced with a vacuum. Of course, there are some of the threat examples that have been paid in Iran criminal law, while in America criminal law has not been paid for it and vice versa, for example, can be implied to the threat criminalization of officials and the President in America criminal law and lack of explicit to it in Iran criminal law and in addition to the threat criminalization of the threatened person in Iran criminal law and lack of explicit to it in America criminal law. Although in such cases can be referred to the criminal threat general articles, but criminalizing of these certain cases helps to increase the efficiency of criminal law. In general, it can be said that the criminal law of these two countries in the field of the threat criminalization has several similarities and differences that their investigation can significantly help in the completion of the existing imperfections.

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