

**Research article****Knowledge and awareness in mensrea of crime****Atefeh Laali<sup>1\*</sup> and Shahla Moazami<sup>2</sup>**<sup>1</sup>Master of Laws Payam Noor University of Tehran  
South Research and Technology Sciences, Tehran, Iran<sup>2</sup>Ph.D in law, Tehran University,  
Research and Technology Sciences, Tehran, Iran**ABSTRACT**

Knowledge and awareness have always been considered as one of the fundamental issues in philosophy and psychology. In the intentional crime, the spiritual element of the subject includes knowledge or awareness, the animus to commit and the animus of result or criminal intention. In this paper, the knowledge and awareness in mensrea of crime are investigated. The mensrea forms the relationship between the crime and criminal and thus the crime response of the crime is influenced by this relationship. The existence of intentional and unintentional concept as a crime descriptions is dependent to the mensrea and the nature of this element. The mensrea is characterizing, thus, achieving a precise cognition of the essence of the mensrea and its realistic and objective forms is an essential strategy. Mensrea (malice) is one of the components of the crime that among legal experts, it has two broad and limited meanings. The mensrea of intentional crimes in limited meanings includes optional crimes or the crimes that a criminal is the main factor and in unintentional crimes, this kind of crimes includes optional crimes and crimes by ignorance, but mensrea in broad meaning, includes crimes responsibility

**Keywords:** criminology, mensrea, knowledge and awareness, crimes psychology**INTRODUCTION**

While empirical researches have studied knowledge and awareness from a variety of aspects, but since there is a particular aspect in this field, there are still many uncertainties in the category of knowledge and awareness. From philosopher's point of view, the concept of knowledge and awareness is one of the clearest and most obvious concepts, not only require no definition, but also is basically impossible to define. Because there is no clearer concept to introduce it and the terms used in the definition of knowledge and awareness are not the true definition, but they are the determination of the intended instance in a particular topic. If we want to explain about knowledge and awareness, it is recommended to say: the knowledge includes the presence of the object itself or its partial form, or

its general concept to the single existence. Crime always attracted the human mind, the people's reaction to the crime was severe and associated with brutal punishment and the responsibility was a social and collective issue. Over the centuries, the classical school offered the theory of "free will," which means that the free will of the criminal caused his/her anti-social behavior. Based on this theory, the criminal commits a crime because his own will approach him to commit a crime. Then, the development of psychology led to recognize different kind of psychological and personal disorders. So the researchers of these sciences consider these crimes as the result of imbalance in the criminal's personality that arises from the interaction between the psychological and biological factors

and psychologists suggest that psychological imbalances result to personality disorders of individuals and would lead them to commit illegal acts. If there is going to attribute a crime to someone and punish him for doing this crime, in addition to legal element based on the prediction of criminal behavior in the criminal law and actus including the occurrence of action outside, the act must result from the will of the perpetrator. In fact, there must be a relationship between the act and the person involved in psychological relation (or intentional relationship) that refers to moral element (psychological or spiritual).

### **Knowledge and awareness**

Concepts such as knowledge, awareness, cognition, knowing and understanding are all used in one meaning. However, the concept of knowledge and awareness has more application and includes intuitive knowledge, acquired knowledge and presentational knowledge, because the most general concept of it equals to absolute knowledge and awareness. In some cases, knowledge is used as partial perception and sometimes it is recognized and reminded of that will.

From a psychologist's point of view, knowledge refers to process of acquiring, organizing and using mental information. Flavell (1985) in the definition of knowledge stated:

Awareness in psychology refers to psychological processes that result from the human mind and lead to "knowing". These processes include reminding, association, classification, symbolization, visualization or imagination, problem solving and imagination and dreaming. Psychologists consider awareness to be the highest level of information processing. After awareness, feelings and perceptions are important. Science means knowing, certainty and knowledge. Awareness as a synonym of science is also mentioned in the meaning of science, knowledge, knowledge and news. From some scholars' perspective, science is the qualities of senses that everyone finds it clearly in himself (herself). So as everyone knows the pleasure and pain of hunger

and thirst, he (she) can also understands the meaning of science.

### **Knowledge and awareness in crime**

Regarding the role of science in the structure of criminal intent, some jurists divided science and awareness respect to a criminal event into three categories that understanding these three steps can be effective in explaining criminal intent. Based on this notion, the first type of knowledge and awareness, is actual knowledge. The next one which is known as willful blindness occurs when a defendant deliberately close his eyes on awareness. The third type of knowledge and awareness is constructive knowledge that is expressed by the phrase "should not be known".

This knowledge is never in the real sense, but in only means that the defendant has practically become the source of awareness. Some lawyers believe that there are significant differences between the second case that the defendant practically doesn't differentiate about searching for results that are not important for him, and the third state in which a reasonable person has simply neglected for doing such researches. Legally, the cases of intentional reckless are actual knowledge, while the cases about mere neglect of research disregard to research, are never considered as awareness and knowledge and fall into the concept of constructive knowledge and this concept doesn't have a general place in criminal law. It should be noted that the discussion of knowledge in criminal intention isn't synonymous with the concept of perception of criminal responsibility. The perception based on criminal lawyers opinions, is one of the bases of criminal competency and it is essential for knowing a crimes perpetrator. In fact, the perception refers to general mental situation and disregards to determine the applicability, so that the person a has whether perception or not. However, there isn't going to aware of a particular subject, it is about the ability to understand and percept and the person who is supposed to have a criminal responsibility, incorporates the power to understand the phenomena and effects and the social and social consequences of his (her)

behavior, while what is considered in the structure of crime, is the knowledge of the existence of external events and their realization. That is, the perpetrator is aware of something that exists or is created. Perception is the discussion related to criminal competency and this competency considers the ability to be responsible irrespective of whether the person committed the crime or not. But the knowledge is about the stage of culpability and the realization of the crime, and only the components of material element and other aspects relating to mens era can be realized. The relationship between criminal responsibility and criminal competency can be simply stated so that the criminal competency is necessary, but it is not enough to fulfill the criminal responsibility. I have criminal responsibility when I have criminal competency. But I can have a criminal competency without criminal responsibility. However, the awareness and knowledge play a crucial role in the structure of mensrea structure of crime.

#### **Knowledge of the subject**

The knowledge of the subject means the knowledge applied to elements, nature, conditions and qualities that the legislator has established in article 290 of The Islamic Penal Code. Therefore, ignoring this law will be effective if this ignorance is real and about fundamental elements.

There was long controversy among jurists about this issue that whether knowledge is a component of mensrea of is related to the prosecution of criminal responsibility. Some jurists considered ignorance or mistakes as a criminal offense if they led to a denial of the mensrea in the criminal. Some lawyers without specifying the deprivation of criminal responsibility, believe that the general principle is that the subjective error eliminates the mental element in intentional crime. Others also believe that the subjective mistake in some cases is a barrier to crime and in some cases, it is a matter of discretionary responsibility and discussing about it under the solicitation of criminal responsibility, irrespective of the type and effect leads to mistake. The legislator of Iran didn't wrote explicitly about the condition of

knowing the subject except some terms such as intentionally or based on knowledge and awareness and also relating the knowledge to subject and judgement in some intentional crimes until approving the Islamic Penal Code in 2012. But in the aforementioned law, it has determined its stance on different opinions of lawyers about the intentional conditions of the crime. In this regard, the article 144 of this law stated that: In the realization of intentional crimes, in addition to knowledge to commit a crime, the intention to commit a criminal offense must be established. In article 140 of this law, by mentioning the terms of criminal responsibility, this law has eliminated the past attitude by removing the mentioned ambiguity. We read in this article: the criminal responsibility occurs when a person is mature and wise during a crime, except for reluctance to commit murder, which is mention in the third book of retaliation. Moreover, the legislator in the retaliation book to determine the nature of the murder cases that occur in the context of ignorance, used the article 291 and described it as quasi intentional. It is stated in this paragraph that: if the perpetrator has ignorance about a crime, as if he committed a crime in the belief that the subject of his or her behavior or animal or persons covered by article 302 of this law and assign to victim, then it would be contrary to it. But the legislators have not always adhered to their beliefs and considered the mistake of identity as an exception of intentional murder. It is stated in article 294 that: If a person commits a crime against another due to a mistake in identity, if the perpetrator and the victim are not subject to the provisions of Article 302 of this law, it is a deliberate crime.

#### **The literal definition of mensrea**

The mensrea is constituted of two terms mental and element. In dictionary, the element is defined as: fundamental, the main foundation that the objects from various classed are formed by it. The word mental in dictionary is referred to psyche, the following meanings are stated: the meaning of mental is the soul of the dare and the spirit of the soul means the heart and soul of evil and damn.

### **The idiomatic definition of mensrea**

Mensrea is one of the general element of the crime, which determines the type of crime, the amount of criminal responsibility and punishment. Some legal writers of our country used the term spiritual element or moral element instead of mensrea. However in this paper, the mensrea was chosen among other words and the spiritual element and ethical element have been neglected, because in the analysis of the concept of mensrea, issues such as will, criminal intention, criminal fault which indicate the mental relationship of man and his behavior, are discussed and investigated and on the other hand, since the extent of criminal law and morality are separate in many cases, thus it seems that the mensrea is a good term.

DrMohseni writes in this regard: the purpose of the spiritual element is to commit act committed under the criminal law known as having committed a criminal offense or in committing this act, it has committed a criminal fault. No one can be prosecuted or punished if there is no criminal intention or criminal error. In each criminal proceeding, it must be established that the criminal intentionally or as a result of negligence committed a crime that was legally prohibited and refuses to do what the law requires him. In other words, the spiritual element is the psychological relationship between the perpetrator and the acts of committing.

DrLangroudi defined the mensrea as: the intention of perpetrator is in the wrongful act and his intention in intentional crimes and fault in fault crimes. Some use moral than spiritual elements that is inadequate and the Persian language doesn't tolerate the use of morality in such case.

DrSaneei about the reason for choosing the word mensrea wrote: most Iranian authors have translated the moral element by French elementary moral law which is the third element of the crime, as moral element. In French law, the application of the term "moral" is the result of close coordination between law and morality, especially in the early stages of the development of criminal law. However, using the term moral in Persian

language does not seem to be correct, because if we use the spiritual element against the material element of crime, so it seems that the legal element has also a moral aspect. Some lawyers such as Samiei used spiritual instead of moral. This interpretation is also incorrect, since as we mentioned, the extent of criminal law and morality don't correspond in many cases and criminal action doesn't necessarily have an anti-moral aspect. According to these issue, we called the third element of crime as a mensrea, because the issues like will to commit and criminal intention have psychological aspect.

Human behavior is punishable with the intention of criminal prosecution and punishment. Behavior without fault isn't blaming and imposing punishment on human without fault from logical perspective, is ugly and damn, but the amount of punishment should be different according the whether a criminal intention or a criminal fault, while it is possible that the intentional or unintentional crime may have same results. For example, the result of intentional or unintentional murder is deprivation of life, buy today in all legal systems, the death penalty is different in terms of the psychological element.

In the Holy Quran, it is stated about the difference between error and intentional sins''.. But there is no sin against you in the mistakes that you are facing, but what you are deliberately say.

It is deduced based on above verse that: there is difference between someone who does bad work deliberately and someone who does something from error in terms of calculating the behavior and the amount of blame.

The provision of justice in society and the humiliation of individuals against justice require the legislator to punish behavior that is based on criminal or criminal intent.

The novel penal law school such as the school of modern social defense and the neoclassical school, have also considered the basis of the psychological element and responsibility as human consciousness and intelligence for the consequences of committing acts. These schools, without being subjected to accepting the early

theory of the classical school of freedom of will or the theory of coercion of realization, believe that the human consciousness and intelligence to the consequences of the acts is sufficient for someone to be legally responsible for his behavior.

It is thought that the same theory, at least in terms of the realization of the psychological element, has been accepted and confirmed by many of the laws systems in the world, because when defining crimes or punishing, most of the words such as intentional, deliberate or malicious have been used. Our legislators have explicitly used the term lack of consciousness or relative ethics of consciousness as a matter of removing the responsibility during the revision of the General Penal Code of 1352, including Article 36. Of course, using the words consciousness or distinguishable power and will in the law indicates that the legislators consider the basis of responsibility as consciousness and awareness to the consequences of committing acts.

Some Egyptian lawyers in mensreadefinition, have considered the conditions of criminal responsibility, namely maturity, intellect and science as the components of mensrea and it is considered essential to fulfill the mensrea of the crime, in other words, they used the mensrea in broad meaning. Since the mensrea has different effects in each broad and limited meanings, so some effects of each one were stated briefly.

• **The legal effect of mensrea in limited meaning**

If we consider the limited meaning of the mensrea, persons without the power of discernment such as minor and insane, also have a mensrea and can commit a crime, but since these individuals don't have the power to recognize and don't have a conscious and valid will, they are not recognized as criminal responsible.

**b) The legal effect of mensrea in broad meaning**

it can be induced based on the mensrea theory that: Persons who are eligible for criminal liability can only commit crimes, and since persons with no criminal status and discriminating power such

as minor and insane don't have a mensrea, so their unlawful action is not a crime.

By studying our country's penal code, including Article 221 and the Notes of Articles 295 and 306 of the Islamic Republic of Iran, it seems that: in our criminal system, the concept and components of the mensrea correspond to the theory of mensrea in limited meaning, that is the individuals who are not responsible, such as minors and insane, can intentionally commit a crime, but since they lack the ability to recognize, their intention are considered as error. Mind, maturity and authority are among the components of criminal responsibility, and minority and insanity are the moderators of criminal responsibility and punishment.

**c) The mensrea definition from the Egypt lawyers perspectives**

Some Egyptian and Lebanese lawyers defined the broad concept of mensrea and believe that: the Mensrea includes the material aspect of crime is accomplished intentionally and deliberately by a person with criminal responsibility. The mental relation of criminal has responsibility condition with crime, in other words the mensrea is established when the crime is committed by a person who has power to recognize the crimes, that is the act of committing a crime has a psychological bases when the perpetrator can distinguish and is empowered. It is deduced from this theory: followers of this theory have considered massive meaning for the mensrea of crime, since the perpetrator in addition to the will to commit and intention of the criminal or the criminal fault, must have the power of recognizing so that his act has a mensrea.

The predominant view of lawyers on knowledge and awareness at the psychological basis of crime (for example, murder) was that the lack of clarification of the perpetrator awareness of behavior necessarily not only means there is no need to it, but also its manifestation was so obvious that the legislature considered himself to be very illogical and considered its existence to be rational. However, in Section C of Article 206 of the former law, since the issue of relative lethal

behavior is considered and in relative situations, it is assumed that people are not aware of them, thus it was necessary to consider the perpetrator awareness to victims situation, but the legislature in 1392, in resolving any ambiguity in clause (b) of article 290, explicitly stated the condition of perpetrators awareness to a deadly behavior and stated that: Whenever a perpetrator makes a deliberate act which is typically the result of a criminal act, although he doesn't intend to commit the crime or the like, he (she) is aware that this act usually causes the crime or the like. Therefore, the mensrea of the perpetrator in murder is not intended to kill, but also the awareness and realization of the perpetrator in relation to lethal nature of his behavior.

#### **Relationship between mensrea and responsibility**

In this regard, the legal experts believe that: the penalties are based on a fault that is someone who has committed a crime and intends to commit a criminal act, should have a criminal offense in addition to being guilty of criminal responsibility. In some cases, the legislator doesn't recognize the criminal acts committed by aggregation of three elements constituting the crime and cannot be attributed to the perpetrator of material acts. Suppose that a 5 years old child has the will to commit a crime of theft and steals something from a person. On the one hand, because there are three elements of law, material and psychology, the crime has been fully accomplished, but the legislator does not take responsibility for the child in different ways and does not consider the crime to him (her). In some types of insanity, a person may have a willful intention and commit a criminal act intention, but because of his (her) particular psychological state, the legislator does not take responsibility and punishment. In all cases, a person commits a crime but as he is not guilty, the legislator doesn't consider the crime to him, so he isn't responsible and isn't punished.

Thus from the criminal procedure, only a person is guilty of criminal prosecution and is punished who has committed a crime and committed a

criminal act with malice or error and has physical and rational growth and finally has a willful will.

#### **CONCLUSION**

Mensrea is the mental relationship of the perpetrator with crime and criminal competency doesn't interfere with mensrea occurrence. Knowledge's prediction and awareness of perpetrator about the internal situation of victim is the correct act and the perpetrator should know about the victim's situation. The article 290 of Islamic Penal Code, April 1, 2012, provides the possibility of multiple interpretations for law professors, judges, lawyers and etc. and it is necessary to achieve the unity of procedure in this regard and conducting necessary scientific research and approve it in the framework of law to reach to criminal justice.

The meaning of knowledge of perpetrator is both the quality of the criminal act and its illegitimacy. In other words, the assumption should be that the perpetrator has the power to properly understand the criminal act do exactly what the legislator ordered about it. In general, the perpetrator has neither ignored the subject nor its legal decree. Of course, in should be noted that the awareness of the laws in most criminal systems is absolute and irrevocable. That is, it is assumed that the citizens are aware of the rules and no one can claim against it, except in the exceptional case.

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