

The Necessity of Studying the Personal and Social Status of the Accused in the Preliminary Investigations Stage in the Iranian Punitive System

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ABSTRACT

Realization of punitive justice is feasible not only in terms of criminal acts and the cases which go to the court accordingly, but also by investigating the personal and social situation of the accused. In other words, an appropriate reaction to the outlawry that directs punitive prosecution authorities' attention to the committed act, and investigating the individual and social status of the accused (i.e., the psychological, physical and family background that are effective in forming the criminal character of the accused) is necessary. Therefore, the present research attempts to discuss the necessity of studying personal and social situation of the accused in the preliminary investigations stage. The present descriptive-analytical study is library-based. The results of this research indicate that determining an appropriate, useful, constructive, effective and pre-emptive reaction, especially in the youngsters' accusations and crimes requires awareness of their individual, social and biological life.

Keywords: Punitive justice, individual situation, accused, judicial investigations

INTRODUCTION

Determining punishment is considered as one of the requirements of practicing punitive justice; and making use of institutions such as public work, fines in response to the awareness of the courts and administrative organizations is among the personal and social qualities of the offenders (Ashuri, 2010: 17). Crime discovery and the related investigations on the outlaw are among the institutional duties of the prosecutor's office. Thus, investigational measures include raising a case in order to provide necessary conditions for a just prosecution which attracted every body's attention to the character of the criminal by the advent of positivism in the late eighteen's century (Mark Ansel; 1996: 83).

In the preliminary investigation's stage, the scientific experiment of the personality which is referred to as social, psychiatric, and medical experiment, is necessary to identify the individual's psychological, social and family situation which contradicts the values supported by the lawmaker (Ashuri, 2009: 192). Therefore, it is crucial that the social and personal status of the accused be studied in the preliminary investigation stage for an appropriate reaction. The present research using descriptive-analytical and collecting library resources seeks to find responses to the question that: "is it necessary to investigate social and personal status of the accused in the preliminary stage of investigations?" It seems that one thing that justifies the necessity of discussing the people's social and individual situation in the preliminary stage of investigation is observing them with an eye on preserving their reputation.

Studying Personal and Social Status of the Accused in the Stage of Judicial Investigations

Being aware of the personal and social status of the accused in the preliminary investigation stage causes the judge to become familiar with the personality of the criminal while hearing, suspension of prosecution, interrogation, as well as determining a guarantee for punitive implementation which matches his/her personality. Thus, becoming aware of the status of the accused in the stage of investigation and prosecution highly affects the authority for investigation and prosecution in making the right decision which in turn necessitates bringing a case for personality in the preliminary investigation stage.

Studying the Status of the Accused in the Interrogation Stage

Investigating the accused is crucial in his/her conviction. By “investigating the accused” we mean any kind of question that the governmental authority asks the person who is likely to have taken part in a crime. What necessitates the study of social and personal status of the accused in the investigation stage is to preserve his/her human dignity. The legal principles which should be observed while investigating and especially interrogating the accused include: warning the accused of being careful about his/her remarks, clarifying the content of the crime for the accused, the right to adopt an attorney, clarifying for the accused that he/she has the right to be silent, etc. In order to observe these principles there should be awareness about his/her status, since in cases such as elaborating on the content of the crime, the investigator authority should be aware of the psychological status of the accused and his/her mental well-being as well as his/her level of education to elaborate on his/her charge according to his/her status and education level. It should be noted that the accused is a person whose crime has not yet been proved and he/she enjoys his/her basic rights as a free person according to the Principle of Innocence and Principle of Prudence. Therefore, in crimes where it is not necessary to arrest the accused according to the law, and the accused is a revered person based on the accuser remarks and lacks any punitive records, his/her evocation should be done through summons carefully respecting his/her reputation especially in his/her workplace or school/university, etc. As a result, bringing a personality case and gathering preliminary information from the accused and respecting his/her human dignity helps the investigation authority to invite the accused to the court based on the preliminary content of the personality case through summons. The lawmaker has required the court to warn the accused of his/her remarks, since there are people who like to exaggerate about themselves. Thus, it seems that the lawmaker has rightfully required this warning in order for the accused to be well-aware while speaking and not to give unnecessary responses that bring responsibility (Akhundi, 2009: 133).

Studying the Status of the Accused in Order to Issue the Writ of Security

Obtaining security: according to Act 132 of the Criminal Procedure Law, in order to have access to the accused and his/her on time presence in cases of emergency, to prevent his/her flee or hiding or conspiracy with others, the judge is required to issue one of the punitive the writ of securitys written in the Act 132, after clarifying the charge for him/her.

The the writ of security is a constraint which restricts the freedom which is given based on law and in order to have access to the accused. Obtaining security is first official measure which is taken by the judicial authority. It should be noted that obtaining security from the accused is highly important, since on the one hand it creates the Principle of Innocence which prevents any restrictions to be imposed on citizens’ properties or freedom until the conviction is certain, and on the other hand investigation, prevention from flee or conspiracy and especially preventing from violation of the rights of those affected by the crime requires that

in some cases the freedom of the accused be limited or some restrictions or commitments be imposed on him/her or the others. Consequently, based on the above, issuing the writ of security contradicts the Principle of Innocence and preservation of individual freedom, and it is necessary that the writ of security be issued according to the status of the accused.

The judge has to consider his/her temper, age and reputation. In other words, he or she should take all aspects into account, measure all dimensions of the event and foresee the effects of the issue and obtain an appropriate writ (Madani, 2001: 244). Thus, it is necessary to study the individual and social status of the accused to issue the appropriate the writ of security. And this should be done by the experts and the results should be reported to the judicial authority.

Studying the Personal and Social Status of the Accused in the Prosecution and Suspension of Prosecution Stage

Prosecuting the Accused

The Prosecutor's Office as the representative of the society holds the duty to prosecute the accused. Therefore, the Prosecutor's Office should protect the interests of the society on the one hand, and it should consider the rights and freedom of the accused as a member of the society on the other. However, there is a question that whether the Prosecutor's Office could refrain from prosecuting some accused; and if it has such authority, what criteria should be observed. To answer this question it should be noted that methods other than prosecution by the Prosecutor's Office include: the appropriacy of prosecution, according to which the accused is prosecuted when his/her punishment is useful, since blind prosecution if the criminal without identifying the crime only leads to a waste of time and human resources. In cases where the committed crime is not major and prosecution is costly and the effects of punishment and disciplinary measures are not evident in redirecting the criminal to a decent life, the prosecution and punishment of the accused is not reasonable because it does not serve the goals of punishing measures.

The legal prosecution method, which works as follows, as soon as the committed crime meets the requirements stated in the punitive law the Prosecutor's Office must prosecute the accused and has no rights to give any comments on the appropriacy of the prosecution (Omran, Taleghani, 2007).

Suspension of Prosecution

Fear of prosecution and conviction could prevent some people who have committed a crime for the first time from repeating that crime. To this aim, the authority to prosecution should be free to temporarily suspend the prosecution before the duration that the lawmaker has considered for passing of time is over, in case he/she does not recognize the claim against the accused as useful based on the individual's character (Khazaei, 1998: 17). Therefore, the prosecutor can issue the writ of suspension of prosecution by considering the social status of the accused especially his/her psychological character and the situation that led to the committing the crime, and send the case to the court for confirming the writ (Kalantarian, 1996: 166). Although the revised law of the year 2002 has remained silent on the issue of suspension of prosecution, it is foreseen in the draft of the new Criminal Procedure Law (Ashuri, 2005: 110). So, as it was seen, usefulness of prosecuting the accused is one thing that justifies the necessity to study the social and individual status of the accused, since the prosecution authority can make the right decision only when he/she is aware of the mental/individual qualities of the accused.

CONCLUSION

One of the requirements of a just hearing is to study the individual and social status of the accused in order for the personal, biological, and psychological factors affecting the formation of the offender's character be identified and the appropriate punitive measure be taken from the side of judicial authority, accordingly. Thus, the stage of preliminary investigations is quite crucial in that it determines the direction of preliminary investigations. Note that awareness of the individual and social status of the accused by the judicial authorities of the Prosecutor's Office is a pre-requisite for making use of institutions such as aggravation, suspension of punishment, conditional freedom, exemption, issuing the writ of security because there should not be a blind reaction against the offender's criminal acts.

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