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INVESTIGATING THE METHODS OF PREVENTING THE CRIMES AGAINST PROPERTIES IN CYBERSPACE

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ABSTRACT

Daily increasing tendencies for applying the advanced technologies, including computer and internet, have set the grounding for the emergence of the cybercrimes. Since these crimes occur in the cyberspace and are not tangible like the other crimes, the judicial and disciplinary authorities are faced with novel challenges for preventing and discovering them. In line with this, the objectives of the criminal policies positively influencing the society are actualized when the preventive measures are always given first degree importance. In terms of the spatial precedence, the preventive criminal policies should be placed atop of the criminal-penal policy because it generally prevents criminals from perpetrating crimes thereby ensures the safety of the cyberspace. Preventive criminal policy is an appropriate method of suppressing factors giving rise to crimes and deviance. Preventive criminal policy can be divided to situational and social. Our country has not joined any of the international conventions pertinent to the cybercrimes and according to the extant gaps in the domestic laws, the disciplinary and police forces are practically confronted with problems in preventing and discovering these crimes; however, the police, nowadays, can play an effective role in deterring the aforementioned crimes through its use of modern technologies that it has developed in the area of police-specific software. It is worth mentioning that social prevention plays a more pervasive and more accentuated role than the situational prevention in deterring the financial crime actualization.

Keywords: Crimes Against Properties, Cyberspace, Prevention Methods, Thievery, Fraudulence

INTRODUCTION

Virtual space is an environment comprised of computer networks, communication media and users that engage in the exchange of data and information and everybody is involved in satisfying their needs and interests. These spaces have caused the shortening of the distances and brought about a sense of spatial independency which are recounted as the most distinct difference between the real and virtual spaces because the human beings, in the real world, are restricted within the framework of space during the course of time and their scope of the activities are subjected to such realities. But, in the virtual space, the use of the novel communication technologies and computers have compensated the humans' weak points, to wit speed, memory and tiredness, as well as the work communities' problems, to wit time, cost, human force and geographical restrictions and enables the humans to send and receive their wants and replies to and from sources and destinations in a glimpse of an eye. However, virtual space, with whatever the interpretation and definition, is an extensive, innovative and intact

territory that brings its residents new facilities, freedom, opportunities, worries, harms and limitations (Khalili, 2004).

Subsequent to the changes resulting from IT, the human life has been transferred to a new space and it is currently undergoing more changes towards being transferred to newer spaces. Due to the same reason, crimes have been casted into newer forms in the society demanding newer methods for their prevention and discovery. New life will be followed by new social rules and regulations and the statutory provisions enacted by various countries for fighting the cybercrimes are to be enumerated amongst these. The present study aims at investigating the methods of preventing crimes against properties in the cyberspace (Omidi, 2009).

STUDY BACKGROUND:

Every country, according to their use and enjoyment of the IT, is exposed to the risks and threats that might be committed by the users. For instance, the US has left behind four, out of five, stages of electronic government formation. In Iran, as well, the cybercrimes have taken an ascending trend since 2001 on and the criminals, utilizing these facilities in the cyberspace, easily perpetrate certain crimes.

According to a study conducted by Pakzad (2011), computer crimes carried out in a part of the computer which is only a means of crime, lacks the originality criteria of crime perpetration and is thus regarded as a traditional crime but if the cyberspace only plays the role of facilitating or supporting the terrorist groups' interventions, cyber terrorism should hence be considered as part of terrorism so the criminalization of computer-based terrorism should be taken into consideration in the law against terrorism and the Iranian legislator should grant two completely different countenances to the cyber terrorism: one countenance as a computer crime and another as the terrorism. Thus, it was deemed appropriate if at a stage of computer crime lawmaking, an article could be enacted explicitly mentioning the cyber terrorism but the suggestion was practically dismissed for political and legal approaches to the title "terrorism" in Iran.

Shirzad (2009) states that computer crimes have many things to say from the perspective of the general criminal law. In the criminal procedure of the computer crimes, Red hat's expertise is of a great importance from the crime discovery viewpoint. Dependency on the cyberspace is getting more increasingly augmented in our country. "The content-related crimes or content crimes are the dark side of the IT and they portray disadvantages and shortcomings and such black rust can be varnished in two ways: first, by identification of the cyberspace's nature and secondly through adopting preventive and suppressive policies in proportion to the internet virtual space.

Based on Jalali Farahani (2010)'s idea, the social and economical progresses and metamorphoses cause the emergence of new crimes as well as the perpetration of traditional crimes via novel technology means and this same issue has urged the preservation of computer systems by means of enactments and coordinated enforcement of legal policies in line with deterring criminal behaviors. Bashiri and Pour Rahim (2011) opine that the commercial confidentialities are studied as a tributary of the intellectual ownership rights on the premises of the virtual and electronic world; moreover, it has been stated that every type of information possessing independent and potential or actual economical value, due to its being generally of an anonymous nature, is offered as a comprehensive and exclusive definition of business secrets.



MATERIALS AND METHODS:

The current applied research paper has been carried out based on a subjective method. The study is to be recounted as a descriptive research and case study in terms of the nature of the research method. Knowing that the descriptive studies explain and interpret whatever there is and whatever existing in the real world and pay attention to the current conditions and relations, they are, in the first place, consider the present time, although the past incidents and effects, as well, connected with the status quo of the affairs, are also taken into account. On the other hand, the present study is also enumerated as a case study because it has dealt with the examination of a specific dimension of a certain phenomenon.

DISCUSSION AND INVESTIGATION:

Methods of Preventing Crimes against Properties in the Cyberspace:

Scientifically, prevention, if applied in its broad sense, encompasses a vast spectrum of the punitive and non-penal interventions in line with neutralization of factors contributing to crime and reduction of criminality. In a classification, crime prevention is divided to and discussed in two separate sets: punitive crime prevention and non-penal prevention of crimes.

✓ *Non-Punitive Crime Prevention:*

Social (background-oriented) prevention includes those set of the policies and measures that are taken in the process of individuals' development, lifestyle improvement and social and natural environment standardization so as to eliminate or decrease the factors giving rise to crimes thereby to prevent criminality. In Gossen's idea, such a type of prevention is called social because it is the yield of the social workers' prevention experiences without any participation by the police and courts of justice and it addresses the fight against the criminal adolescents' inconsistencies and their growth environment. One objective sought by such a type of prevention is the reduction or eradication of factors contributing to the crime in the social environments (Esma'eili, 2016); and, originally, they are designed for changing the conditions that pave the way for the creation of criminality in the local and residential communities. The establishment of recreational places and amusement parks, founding of educational, cultural, developmental centers, employment and business development in the neighborhoods, strengthening of the religious beliefs via effective and proper activation of the local religious centers, formation of local police, expansion of equipment and strategies like youth sports clubs and activity-based projects parallel to dismaying the actual and potential criminals from making future mistakes are examples of such a type of prevention. Another objective of the social prevention is coordination of the society members with the social regulations all of which pivot about the "individual" (Chavoshi, 2013). The main points of this type of prevention are expertise, contemplation and double effort because the intended result might not be attained even with lump sums and extravagant investments due to the extensiveness and complicity of the issue.

Social prevention is of a great importance; this type of the prevention provides for the presence of nongovernmental organizations. In compliance to the aforementioned bill, social prevention incorporates the "use of educational, cultural, economical and social strategies and methods by the government, nongovernmental and public institutions and



organizations targeting the safeguarding of the social and physical environments so that the social factors facilitating the crime perpetration can be omitted or reduced". To operationalize the objectives of the bill and parallel to the actualization of social prevention, there is stipulated a principle in article (7) of the bill which is called "Commission on Social Prevention of Crime". Paragraph (F) of the article knows "contribution to the establishment and corroboration of nongovernmental institutions, associations and people-driven formations in regard of crime prevention" as a duty of the abovementioned commission. Facilitation of the establishment of such institutions plays an unprecedented role in crime prevention (Ramezani, 2011).

✓ ***Social Prevention in the Fifth Development Plan:***

So far, from the collection of the responses that Iran's criminal policymakers have provided to the questions on crime, the quotient of the preventive and non-suppressive measures, especially the social preventive reactions, in contrast to the punitive and suppressive responses, have been very trivial and scarce; whereas, in order to fight criminality, one should eliminate or at least reduce the social grounds and birthplace of the crimes and eradicate the possibility of creating criminality through counteracting these grounds. Based thereon, the legislator, in the fifth development plan, adopting a preventive approach, has focused more than ever before on the stages preceding the crime perpetration and reformation of the regulations and such cases as the reduction of the penal justice system's intervention and prevention of immethodical expansion of penal code of law's jurisdiction so as to balance the crime and the punishment weights with the criminal's personality, enlargement of the spatial space of the corrective and education centers and transferring all the documents of the judicial files to the electronic spaces has also been underlined (Mo'azzami, 2007).

✓ ***Examples of Social Prevention:***

1) Public Education by the Radio and Television Organization Based on a Plan Enacted by the Judicature:

The experiences gained in the past several years regarding the role of media in correcting the public behaviors of the society members have urged the legislator to adopt a special approach to the issue and intensively highlight it. Thus, in Part (1) of the Paragraph (D) of the Article (211) of the fifth development plan, the legislator specifies that "public education by means of radio and television should be pursued in accordance with the plan approved by the judicature". In article (10) of the law on the fifth development plan, there is paid a careful attention to organizing the country's media space, as one of the most important culture-making instruments, for encountering the foreigners' cultural invasion as well as for counteracting the media crimes and disorders (Najafi Abrand Abady, 2003). This way, in the following sections, the effect of culture-making grounds and tools on the increase in the crimes committed by the citizens, especially adolescents, is firstly expressed and then the prevention solutions are dealt with. Therefore, it is not pointless that Paragraph (A) of the Article (10) of the fifth development plan reminds of the regulation of the comprehensive media system which was passed in 2012.

2) Society-Oriented Prevention in Cultural Issues:

The Fifth Development Plan pays a special attention to the culture, Islamic-Iranian culture to be more precise, and its promotion in the society in such a manner that the



first chapter of the plan, specifically, and the other chapters, as envisaged necessary, posit solutions in this regard and the next five years of the Islamic Republic of Iran's system has been delineated with giving first priority to the culture and offering novel Islamic-Iranian patterns (Jahani, 2006).

With its application of such phrases as "Islamic-Iranian patterns of development" and emphasizing on them, the plan informs of a new process that seems to be different from prior development steps. On the other hand, the placement of the chapter on the Islamic-Iranian culture at the prelude section of the plan can be a sign of the politicians' intention for giving much more priority to culture in regard of the discussions on development. And, this makes the duty of the culture proctors and officials heavier. It is worth mentioning about the Article (1) of the Fifth Development Plan that it is positioned within the context of the chapter on culture because its results should embrace the entire sections of the development plan. On the other hand, the term "pattern" used therein denotes a great many of the concepts so a clear-cut image of the issue cannot be attained. In the meantime, codification of the Islamic-Iranian development pattern is more a subjective effort made countrywide so the legislator has pointed to the participation of the executive branch alongside with the "other branches" for the codification of the aforesaid pattern (Nourzad, 2010). The execution and actualization of the Islamic-Iranian pattern of progress necessitates legal warrants and requirements. Preparation and enactment of this pattern in the government cannot encompass the entire levels of governance. The secretariat of the subject of the note to the article is responsible for establishing such a proportionate tie between the various branches.

3) Specification of the Instructional Materials for Teaching Citizenship Rights:

The culture and its effect on the crime prevention are well evident in the general policies of the fifth development plan and it has been dealt with in the first chapter thereof. It is stated in the Paragraph (8) of the policies that "creating changes in the education system with the objective of its quality elevation based on the country's needs and priorities in three areas of knowledge and skill and upbringing as well as psychological and physical health enhancement of the students".

Based on this paragraph, the foundations of the individuals' compliance and in-compliance with the social values should be sought in the way the individuals are reared in the family environment and then in the way the individuals are raised in the education environment. Schools, after the family environment, are the most important social institutions contributing to the individuals' socialization and the schools' functions should be recognized as the second step in the fundamental prevention in the society. The individuals get familiar with the norms and dos and don'ts of the society at schools and learn how to interact with the other sectors and society members and are taught the ways of developing peaceful symbiosis with the others and respecting their rights. In this case, they become aware of the criminality and its outcomes via creating a law-based spirit and find out the methods of crime prevention (Ja'afary, 2006).

The mentioning of this legal article in the fifth development plan is the first step in teaching these future capitals of the country. Of course, the plan was expected to add elementary grade to secondary and high school grades. Also, it would be more appropriate if such general concepts as justice and law abidance, conformity to the



education were taught in the elementary school due to its being the period in which the children's intellectual foundations are constructed and then the more detailed and more extensive concepts could be taught in later stages (Mir Khalili, 2009).

4) Allocating Appropriate Time Tables to the Broadcasting of Legal Programs:

Every individual's personal experience as well as the scientific findings have shown that every human activity and intervention is deemed correct if performed on the right time; for example, the best time for sleeping is at night and the best time for learning is morning. The broadcasting of the programs by the radio and television according to their contents usually obey the scheduling made for the day. Of course, the importance of a program is the determining factor in allocating prime times to it. In this formula, there are two important factors: first of all, the people usually watch TV programs during certain times; second of all, the content attractiveness of the program plays a very important role in attracting viewers and listeners. The note to the Article (211) of the Fifth Development Plan expresses that "the Radio and Television Organization of the Islamic Republic of Iran in enforcing Parts (1&2) is obliged to allocate appropriate times to the broadcasting of the programs that are provided by the judicature and the corresponding organs in this regard".

Therefore, in order to prevent the contingent secondary crime victimizations stemming from the great many of the people's unawareness of the legal issues, the legislator has approved the Note to the Article (211) to outline the public education characteristics via media as below:

The scientific nature of the program: in the past imperfect experiences, the legal programs and the movies featuring judicial contents have wrongfully taught the society due to the filmmakers' unfamiliarity with the rules and procedures practiced by the courts. The continuous use of the country's Supreme Court judges, famous university professors and knowledgeable lawyers from the bar association and even a delegation consisted of the aforementioned individuals is deemed appropriate for the preparation of the legal programs or supervision of their contents and enjoyment of their guidance; the materials unrealistically internalized by the people via the radio and television programs will be accompanied by wrongful consequences and expectations which will eventually lead to an inverse trend of crime prevention and creation of corresponding files (Ebrahimi, 2001). In the end, it can be stated that social prevention plays a more accentuated and more pervasive role in financial crime prevention than the situational prevention.

✓ Situational (Opportunity Oriented) Prevention:

Situational prevention incorporates the set of non-punitive interventions and strategies that deter crime perpetration via eliminating or reducing the appropriate opportunities for the creation of crime and depicting an inauspicious image of the pre-crime conditions and situations. The strategies applied in this method are in part concentrated on the environmental changes, criminals' control and the protection of crime victims (Mir Khalili, 2009).

Situational prevention includes the complete elimination of some dangers, reduction of some dangers by decreasing the scope of the imposed losses, mitigation of some dangers by taking security measures like installing CCTVs or increasing the number of the police



personnel for dismaying and inhibiting the crime perpetration, transferring of some dangers by the use of such instruments as facilitating insurance and other tools of the same type and welcoming some of the dangers that are inevitable and/or their removal or repelling incurs unbearable costs. The reduction of the crime perpetration opportunities and situations is accompanied by the development of physical security or designing of the buildings and neighborhoods that will eventually cause the criminal acts appear dangerous and costly. In this prevention method, the crime deterrence management is followed by the alteration and correction of individuals' lifestyles and residence environments so as to counteract the criminal operation and these preventive measures are in fact complements to the police work. Therefore, prediction, recognition and evaluation of crime risk and taking steps for repelling or mitigating the crime is called situational prevention, occasionally termed "managing the crime risks" (Zaynali, 2002).

Legislative Policies in Situational Prevention of Crimes:

Legislative policy in regard of the situational suing of crimes has not been sufficiently focused on in Iran's legal system to the extent that this lack of consideration has urged the judicature to arrange and establish the decriminalization and dejudicialization bill in respect to some matters; in such a way that the Judicature's research center placed the possibility of decriminalizing certain criminal titles in its agenda and held meetings with the crime and judicial officials and experts. In these gatherings, such crimes as infringements against the individuals, properties and ownership and crimes against the national security and public comfort and individual freedoms were excluded from the decriminalization agenda and it was decided to divide, decriminalize and dejudicialize the crimes pertaining to the following six specialized areas: "medical-healthcare, treatment and veterinary", "infringements in mine and building engineering system", "bioenvironmental breaches", "infringements pertinent to employment and social affairs" and "transportation affairs", "crimes pertaining to registry office and instruments and landed properties registration office" and the crimes pertaining to environmental area were also decided to be divided, decriminalized and dejudicialized in four parts of "air pollution", "natural resources", hunting and fishing" and "water". But, anyhow, the legislator has endeavored, in certain cases, to even succinctly concentrate more on the legislative policy of the situational prevention.

✓ ***Punitive Prevention:***

Innovation in Code of Criminal Procedure (passed in 2013): Indictment by the People-Oriented Organizations:

The people-driven organizations whose statute pertains to the protection of children and adolescents, women, patients and mentally or physically-ill individuals, environment, natural resources, cultural heritage, public hygiene and support of the citizenship rights can indict the perpetrators of the abovementioned crimes and prove presence in the entire stages of trial for offering proofs and announce their objections, if any, of the sentences issued to the judicial authorities (Article 66 of the criminal codes of procedure, 2013). The names of the people-driven organizations that can take interventions parallel to the enforcement of the aforementioned article are declared by the Justice Department



Minister in cooperation with the minister of the interior in the first quarter of every year (Note (3) to the criminal code of procedure, 2013).

Social prevention is of a great importance; this sort of prevention provides for the presence of non-governmental organizations. Drawing on the aforesaid bill, social prevention includes “the educational, cultural, economical and social strategies and methods applied by the government, non-governmental and people-driven institutions and organizations aiming at safeguarding the social environment and physical environment for the elimination or reduction of social factors of crime creation”. To operationalize the objectives outlined in the bill and in line with the actualization of the social prevention, article (7) of the bill has stipulations on a principle called “Commission on Social Prevention of Crime”. Paragraph (F) of the article knows the foresaid commission responsible for “helping the establishment and corroboration of the non-governmental institutions, associations and people-driven formations for crime prevention” (Ramezani, 2011).

The Role of the Police in Crime Prevention in the Cyberspace:

Although the jurists have given more weight to the criminal code of procedure for such reasons as preservation of social order and prevention of crime and know the discovery and suing of the crimes as the exclusive responsibility of the police, it has to be confessed that the police can be enumerated as the most important crime prevention agent because its sensitive role renders it expedient for the police to take steps far ahead of time and be qualified beforehand for encountering the likely future insecurities.

The police’s presence in the physical environment in the society is considered a factor giving rise to crime prevention. The form and configuration of the police vehicles and uniforms are threats to the potential criminals; in other words, the police’s presence in the society can be recounted as an implicit threat to the criminals. Undoubtedly, the police’s physical presence in cases where the cybercrimes are committed by the unauthorized users’ intrusion to a computer site will play an effective role in such crimes, but can such preventive measures in the cyberspace be envisioned and actualized in regard of the crimes that are perpetrated via the communication lines and on the internet featuring no physical presence on the computer sites? It seems that presence can also be proved in such spaces and the potential criminals can be threatened through heedful surfing and vigilance. To do so, there is a need for special tools and methods the familiarity with which is necessary for the computer network patrolling agents of the cybercrime units in the police organizations. Patrolling and surveillance of a suspect on the virtual space is not an easy work and no police organization, no matter how powerful, cannot accomplish this task alone rather the cooperation between several governmental and nongovernmental sectors is the prerequisite. At this stage of the job, the existence of interaction and cooperation between the telecommunication companies offering these services and the police finds twice as much importance. It was in line with the necessity of this same cooperation that the Article (13) of the Computer Crime Law draft (which was omitted in the law passed in 2009), parallel to cybercrime prevention, permitted the General Cybercrime Office of the Police Force to have constant access to the data obtained from the information exchanges and obliged the entire service-providers to cooperate with the police officers in this regard. Nowadays, the police have been equipped with



powerful software that act like antitheft sirens informing the police or the security officials of any contingent threats aiming at perpetration of criminal operations in the virtual spaces as a result of which the police can appropriately prevent these crimes. Moreover, the software provides the police with the information of the permitted users. A great many of the systems register the successful or unsuccessful attempts made by the individuals to enter a system (Razavi, 2007). Also, the foresaid systems have the ability to identify the unauthorized individuals who repeatedly type incorrect passwords. Of course, in case that the unauthorized user possesses the information required for entering the system, the abovementioned preps will be rendered fruitless with his or her intrusion and access to the files containing the passwords. Another method of crime prevention that has been long employed by the disciplinary and law enforcement forces is public education and identification and offering of special teachings to the individuals and organizations that might be at risk of cybercrimes. In fact, the use of this method is of a considerable effect in preventing crimes perpetrated in the physical environment quite the same way it substantially influences the cybercrime prevention.

The Role of Public Prosecutors' Offices in Preventing and Trying Cybercrimes:

Duties of Public Prosecutors' Offices:

Previously, the Paragraph (A) of the Article (3) of the amendment to the law on the formation of general and Islamic Revolutionary courts which was enacted by the Islamic Consultative Assembly and thus realized as not being in contradiction to the canonical rules and the constitution in this regard by the Guardians Council, specified the followings as the duties of the Public Prosecutor's offices:

"The public prosecutor's office is responsible for discovering crimes, suing culprits, trying the claims from the perspective of the divine right and preserving the public rights and Islamic limits, enforcement of the verdicts as well as tying the non-litigious affairs in accordance with the legal criteria and it is headed by the attorney general ..."

In the Article (22) of the new criminal code of procedure, the necessity for the establishment of the public prosecutor's office has been explicitly highlighted and it is also stipulated that "to discover crime, sue culprits, perform investigations, preserve public rights and file lawsuits required in the foresaid matters, enforcement of the penal sentences, undertaking the non-litigious acts and the other legal tasks, in the judicial domain of every county and accompanied by the other courts in the county, the general and Islamic Revolutionary courts as well as public prosecutor's offices in conjunction with the provincial military courts, the military courts are formed".

Based on the first part of the article, the general and Islamic Revolutionary as well as the public prosecutor's offices have been maintained with the same extant titles. On the other hand, although the establishment of the public prosecutor's offices dates back to long ago and they are formed based on precious experiences gained in trying the criminal cases and investigations and reference to the head of the public prosecutor's office is easier than referring to the judges, according to the Article (22) of the new criminal code of procedure, the public prosecutor's office enjoys countywide jurisdiction and the judicial courts do not have an institutional unit called "public prosecutor's office". In this regard, the Article (24) of the new criminal code of procedure asserts that:



“In the district-level, the prosecutor’s duties are shouldered by the head of the local judicial division and assigned to a stand-in judge in case of the latter’s absence”. Therefore, in the district-level jurisdiction, the district court is not only the prosecuting authority enjoying the jurisdiction of trying the pertinent crimes, but it is also the authority that performs the preparatory investigations, as well. It has to be stated in this regard that the district court can enter the trial and sentence issuance after the preliminary investigation phase based on the specified criteria without being in need of bill of indictment (Mohajeri, 2015). But, in sum, based on the various rules and regulations, especially according to the new criminal code of procedure, the duties of the public prosecutor’s office can be pointed out as below:

“Discovering crime, suing culprit, filing lawsuits from the perspective of divine rights and preservation of the public rights and Islamic limits, enforcement of the verdicts, trying the non-litigious affairs”. Evidently, the public prosecutor’s offices act as the most basic institutions in the structure of the criminal justice system and take such measures as crime discovery, suing and investigation and gather and keep the effects and the proofs of crime perpetration so as to safeguard the society members’ rights and social and judicial order and security (Javanmard, 2012).

Thus, apparently, considering this same issue, the legislator has stipulated in the Article (25) of the new criminal code of procedure that “the specialized public prosecutor’s offices, including the state workers’ infringement, security crimes, breaches of medical and pharmaceutical rules, as well as computer, economical and citizenship rights violations are formed under the supervision of the county’s public prosecutor’s office, if it is deemed necessary by the head of the judicature”.

So, unfortunately, the legislator has failed to pay due attention to the environmental matters and, unlike economical crimes and so forth, the special trial of such crimes has been neglected in the Article (25).

The Initiation of the Interventions by the Public Prosecutor’s Office:

In connection to the social crimes and offences as being considered as the public crimes and the divine rights, the public prosecutor’s office commences its measures as soon as being informed of the crime perpetration. The reports by the justice department law enforcers, announcement by individuals or officials can be means of acquiring the information by the public prosecutor (head of the public prosecutor’s office. In regard of the breaches to the people’s rights, the requests made by the plaintiffs are the permits to the initiation of the legal interventions by the public prosecutor’s office and such requests can be offered through filing lawsuits. In this regard, Article (3) of the amendment to the law on the general and Islamic Revolutionary courts’ formation states that “... the interventions of the public prosecutor’s office are commenced by the complaints offered by private plaintiffs concerning the crimes that are more of a private nature ...” (Mohajeri, 2015).

In the Article (64) of the new criminal code of procedure, as well, the plaintiff’s complaint or a private claimant’s complaint is a propeller to initiate the indictment (Article 64 of the criminal code of procedure, 2013). Of course, it was more appropriate if “the plaintiff’s complaint was considered as a means to the initiation of investigation not commencement of indictment. It can additionally be expressed that the initiation of



indictment does not mean the culprit's indictment merely based on the complaint rather the indictment, as used in the above sentence, conveys the idea of suing the culprit in regard of the subject of the indictment and the culprit will be indicted after sufficient proofs and evidences were gathered" (Mohajeri, 2015). After the crime perpetration was announced or reported and upon a lawsuit being introduced by a private plaintiff, based on the type of the crime and the degree of its importance, the public prosecutor, and in his absence his deputy, requests the solicitor general or the interrogator to commence investigation and gather proofs and evidences of the crime followed by the indictment of the accused. The request is offered within the format of referral of the complaint to the solicitor general or interrogator. The position to which the complaint is referred begins his or her interventions according to the procedures and guidelines s/he has been taught. In case that the proofs and the documents signify the perpetration of the crime by the accused, s/he will be indicted following which asseveration is made against the accused with the completion of the legal stages and conclusion of the investigations as envisaged appropriate by the public prosecutor. The asseveration is called bill of indictment and litigation against the accused.

With the filing of a lawsuit in a court, the public prosecutor's job is temporarily closed in regard of the file after which the public prosecutor's office shoulders the responsibility of enforcing the verdict issued by the court (Article 484 of the criminal code of procedure, 2013).

The Performance of the Public Prosecutor's Office:

The public prosecutor's office as the authority initiating the criminal trials carries out its investigations and organizes the interrogations based on certain regular criteria and regulations; the upcoming sections try to briefly express the way this penal institution acts.

1) Stages of Investigation in the Public Prosecutor's Office:

The criminal code of procedure or, in other words, the process of investigating the crime till the attainment of result, is comprised of three stages:

Stage One: preliminary investigations; Stage Two: trial and issuance of a sentence; Stage Three: enforcement of the penal verdict.

The preliminary investigation is, per se, composed of several other stages; in other words, there are several stages to be taken in the interval between the crime perpetration to the trial in the court and having a clear distinction of these stages is of a great significance. These stages are: 1) crime discovery; 2) investigation and examination of the crime and collection of the proofs and documents related thereto; 3) suing the person accused to the perpetration of crime and preventing him or her from getting away; and 4) adjudication of the criminal lawsuit.

The general and Islamic Revolutionary courts were responsible for carrying out all of the abovementioned stages except the stage four which had been topically revoked (Article 27 of the criminal code of procedure, 138). Although there had been created in some of the exceptional trials such issues as the prosecuting attorney (the head of the judicial district)'s epistle which was read in the first session of the court, the responsibility for carrying out the abovementioned stages was again assigned to the public prosecutor's office with the revitalization its revitalization.



As for the enforcement of the verdicts, it had been stated in the Article (281) of the codes of procedure pertaining to the general and Islamic Revolutionary courts regarding the criminal issues (Article 281 of the criminal code of procedure, 1999) that the court is responsible for enforcing the verdict. From the onset, as well, the Article (27) of the same law stipulated that the court head or the prosecuting attorney is obliged to perform the necessary investigations in person, i.e. the judge was responsible for the aforementioned stages from the beginning till the end, except the stage four that had been made revoked in the general and Islamic Revolutionary courts and only the judge was allowed to vest certain assignable duties to the investigator judge and the court's law enforcers under certain conditions. But, with the establishment of the public prosecutor's office, the enforcement of the verdicts issued by the court, as well, was assigned to this office. Article (484) of the new criminal code of procedure also confirms this same issue (Mohajeri, 2015). It is staged in this article that "the enforcement of the penal verdicts is the duty of the prosecutor and the 'penal verdict enforcement vice chancellorship', headed and supervised by the prosecutor, can take the responsibility on his behalf in the general public prosecutor's offices in regions where it is deemed appropriate by the head of the judiciary.

Note (1): the "penal verdict enforcement vice chancellorship" can in cases of necessity establish a specialized unit(s) for the enforcement of the verdicts; Note (2): the "penal verdict enforcement vice chancellorship" or a unit thereof can take position in the prisons and/or the criminal penitentiaries via it being approved by the head of judiciary. The method of settling down in prisons and the duties of the vice chancellorship are specified in the rulebook that is prepared within six months of this law being made indispensable by the Minister of the Justice in cooperation with the head of Prisons and Security and Corrective Interventions Organization and then it is to be approved by the head of the judiciary". Therefore, in the public prosecutor's office system, the courts are assigned to try the cases and issue sentences and the rest of the stages and verdict enforcement are carried out by the public prosecutor's office.

2) Preliminary Investigations in the Public Prosecutor's Office:

Investigation literally means doing research and examination to find out the reality of a matter (Mo'een, 1996). In the criminal code of procedure, passed in 1911, no definition had been provided for the preliminary investigation but in the code of procedure pertaining to the General and Islamic Revolutionary Courts in regard of the criminal issues, passed in 2008, Article (19) was devoted to the same matter. The article states that "the preliminary investigation incorporates the collection of interventions taken for the discovery of crime and recording the effects and the proofs of the crime and suing the culprit from the very beginning of the suing process to the delivery to the judicial authorities ..."

The definition that is provided by the legislator of the preliminary investigations is undoubtedly imperfect and incommensurate because, based on the above definition, the measures taken by the investigating judge, lie outside the inclusion circle of such investigations (Shamlou Ahmadi, 2004). Due to the same reason, some of the jurists, in defining the security measures, opine that "the preliminary investigations



encompass the series of interventions and examinations that are performed personally by the justice department's bailiffs or by the order and upon the referral of the issue to the judicial heads and/or by the investigating judges as well as the other qualified judicial heads in line with facilitation and preparation of substantiations, including the proofs of crime justification as well as the other proofs benefiting the accused based on the principle of innocence; the main objective sought in the preliminary investigations is preparing the file and facilitation and acceleration of the trial at court (Ashoury, 2016). The preliminary investigations include three sets of judicial measures: A) collecting the crime's evidences and documents and premises; B) preventing the accused from running away, hiding and destroying the crime evidence; and, C) making announcement about the accused person's guiltiness or innocence.

But, the definition offered for the preliminary investigations in the new criminal code of procedure is more complete than the former law. Article (90) of the new criminal code of procedure states that "the preliminary investigation embraces the set of the legal measures that are carried out by the judicial head parallel to preservation of the effects and the signs of the crime and raking of the evidences thereof as well as the identification and finding the criminal and preventing him or her from running away or hiding".

Based on the abovementioned definition, submission of a report to the judicial authorities, including the public prosecutor's office, is not considered as the termination of the preliminary investigations.

3) *Processes of the Preliminary Investigations by the Public Prosecutor's Office:*

In the preliminary investigation stage, the prosecutor takes measures in person or, case specifically, by vesting the authority to the bailiffs. With the accomplishment of these measures, the case is made ready to be delivered to the court upon the issuance of an indictment. The processes that are completed at this stage are: 1) crime discovery and gathering of crime proofs and evidences through searching the houses, inspection of the places, interrogation of the witnesses, examination of the place, inquiring the experts and specialists, local investigation and so forth ... 2) Suing the accused till gaining access to and interrogating him or her and then case-specifically specifying mandates for ascertaining the culprit's presence in future like release on 24-hour surveillance and/or issuing criminal security orders including the release on personal recognizance, fixing bail together with a surety, fixing bail only and/or order of temporary detention and ... 3) Final declaration like issuing the decree for suspension of the prosecution, order of nonsuit, culpability order and issuance of indictment writs.

It is also noteworthy that performing all of the abovementioned interventions in regard of a single culprit is not necessary; because, as a specimen, if the culprit is found innocent, the culpability order is not issued and/or if s/he is absent, the issuance of writ of criminal security is cancelled. Therefore, the entire or some of the aforementioned measures are taken case-specifically in regard of a criminal case in the preliminary investigation phase (Mohajery, 2015). On the other hand, the preliminary investigations are case-specifically carried out by the prosecutor,



prosecutor's deputy, solicitor general or the interrogator. Of course, Article (92) of the criminal code of procedure, passed in 2013, expresses in this regard that "the interrogator is responsible for the preliminary investigation of all crimes. In regard of the crimes other than what is specified in the Article (302), in case of the interrogator's absence, the prosecutor, as well, can shoulder the entire duties and authorities described for the interrogator. Under such circumstances, if the prosecutor refers the preliminary investigations to the solicitor general, the issuance of writs of criminal security leading to the culprit's detention should be brought to the notice of the prosecutor on the same day they are issued and the prosecutor is obliged to, at most within 24 hours, give a quote in this regard.

Note: in case of the interrogator's absence or in regard of his being excused of fulfilling his duties and also if another interrogator is not available in the public prosecutor's office in investigating the crimes specified in the Article (302) of this law, a judge, as requested by the prosecutor and as appointed by the head of the judicial area, performs the foresaid task only until the aforementioned situation persists". Of course, it is worth mentioning that the initialization of the preliminary investigations is pended only on the case referral to the prosecutor because the prosecutor holds the tenure for suing the crimes and criminals and the commencement of the preliminary investigation is meaningless unless the investigation request is referred to the interrogator by the prosecutor and this has also been confirmed in the Article (89) of the criminal code of procedure, passed in 2013. The reverse holds true only when the interrogator bears witness to the perpetration of a crime in which case s/he can commence the investigations and immediately informs the prosecutor of the process whereabouts and then s/he can keep on investigating if the case is referred to him or her by the prosecutor (Mosaddegh, 2013).

CONCLUSION:

The criminal policy of every country is comprised of a collection of penal and non-penal interventions performed by the society against the phenomenon of crime. The countries have made efforts to express these interventions within the format of the general and all-inclusive regulations so as to form it into a mould that can be utilized by the entire government organs and the formal and informal social institutions can regulate their programs accordingly. In our country, the development plan rules that are derived of the system's general policies, announced by the supreme leader, have also offered criminal policies alongside with the expression of the objectives and vistas in the face of the society in regard of crime and punishment and the corresponding objectives are planned to be accomplished till the end of every development plan. Preventive criminal policy is an appropriate way for suppressing the factors giving rise to crimes and deviations. Preventive criminal policy can be divided to "situational" and "social". Situational prevention incorporates the creation of situations delimiting or eliminating the individuals' freedoms and controlling their behaviors in the cyberspaces so as to prevent crimes. Social prevention encompasses the offering of strategies and adoption of methods for combating the factors contributing to the crime and deviation emergence. Social prevention is the duty of the government which offers suggestions and rules and regulations so as to make the citizens



aware and informed of the crime-related topics. According to the importance of the discussions on prevention and based on the need for instigating the legislator to have a more careful consideration of the issue and also in a short glance at the Fifth Development Plan, it can be stated that the government, more than before, is directed in this law towards the creation of various economical and cultural mechanisms so as to guide the society towards withdrawing from perpetrating crimes.

In enforcing the preventive policies in the society, the primary and important objective should be discovered in the first step and then policies can be made for its accomplishment. The most important thing that the society members expect from the governing system is the creation of full-scale security. Thus, the major goal of the prevention is supporting the society members' security. In the Fifth Development Plan, the legislator outlines its preventive measures in chapter eight solely in general terms and single-phrase expressions such as the standardization of the legal mandates and so on.

The daily increasing tendencies to the utilization of advanced technologies like computer and internet have provided for auspicious grounds and conditions of cybercrimes. Since these crimes are committed on the cyberspace hence not as tangible as the other crimes, the judicial and disciplinary authorities are confronted with new challenges for discovering and preventing these crimes. Our country has not joined any of the international conventions pertaining to the cybercrimes and according to the extant gap in the domestic regulations, the disciplinary forces is practically faced with problems in preventing and detecting these crimes; however, the police, using novel technologies created within the area of police-specific software, can play a very effective role in preventing the aforesaid crimes from happening. It is worth mentioning that social prevention plays a more accentuated and more pervasive role than the situational prevention in deterring the economical crimes' actualization.



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