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Exemption from Penalty: A Jurisprudential Study Compared to Positive Law

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Abstract

Exemption from penalty means not implementing the criminal penalty imposed on the incident if one of the legal reasons for waiver is achieved. The study has explained the concept of punishment, its divisions and purposes, the cases that call for not implementing the criminal punishment, and what those cases entail in terms of implementing the principle of forgiveness and tolerance, and the actual application of the legal purposes of punishments in Islam to deter and reform criminals, and achieve security and ensure the establishment of public order in society. The research has shown that the purpose of punishment in the Islamic system is not to take revenge on the offender or to torment him, but rather the aim is to deter and reform him, and to restore things to their proper place so that life among people may be straightened out. If this is achieved through the offender's repentance, reformation, and voluntarily returning rights to their rightful owners, then there is no need to torture him or impose punishment on him. Rather, it is better for him and for society to help him adopt upright behavior and a correct life, so that he may be a good and beneficial individual to himself, his family, and society.

Keywords: Exemption from Penalty, Islamic Jurisprudence, Sharia Penalties, Exemption from Punishment, Repentance in Jurisprudence, Sharia Pardon.

Introduction

Often, a person strays from the right path, falls into error, and commits sins and crimes that have limits set by the Qur'anic and Prophetic texts, and whose punishment has been determined. This may make him subject to punishment, but he may wake up and return to Allah, the Almighty, and know right from wrong. Does he have a chance to repent and not be punished, or has the matter been decided and the punishment must be inflicted upon him? From here, the research addresses the topic of punishments, their differences, and the reasons that lead to their being dropped.

Research Topic

This research deals with the study of the expiations of punishment in Islamic jurisprudence, and the position of positive law on them, through: defining the nature of punishments, their types and objectives, the legitimacy of their imposition, the most important areas they address, and the most prominent legal obstacles and expiations that prevent their imposition, which have diverse sources, some of which relate to the offender, such as repentance, some of which relate to the victim, such as pardoning the perpetrator of the crime, and some of which relate to the crime itself, such as the statute of limitations, while clarifying the position of positive laws and contemporary systems on them.

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Reason for choosing this research

There is a group of people who persist in committing sins out of despair and hopelessness. They do not know that God may forgive them and absolve them of their punishment, thus destroying themselves and those around them. If they knew that there is an open door to repentance and a righteous life, their situation would change, and society would be safe from their evils. Therefore, it is necessary to clarify the reasons that open the door to hope and optimism, and provide a person who has lost his way with an opportunity to return, to righteousness, and to reform.

Significance of the Research

The importance of this research lies in shedding light on an important issue in Islamic jurisprudence, namely, finding possible means to avoid Sharia penalties. It also highlights the most important reasons for waiving penalties in Islamic jurisprudence, and the position of positive law and contemporary systems on them. Its importance also emerges in demonstrating the primacy of the Sharia system in achieving justice, implementing the rules of social safety and security, and protecting human rights.

Research Problem

There are crimes and punishments prescribed by Sharia, namely the crimes of hudud and qisas, which all Sharia laws agree to protect. Meanwhile, the punishment for ta'zir crimes is left to the discretion of the ruler, depending on the circumstances of time and place, and in accordance with the standards of Islamic law, which preserve the security and stability of society. Some punishments relate to the rights of the individual, and others relate to the rights of God Almighty. Which of the punishments are dropped if all their conditions are met? Which of them are not dropped from the perpetrator? When does that happen? And does this mean that the victim's rights are lost?

Literature Review

The study by Amin and Khan (2025) seeks to conduct a comparative investigation of the abolition and moderation of punishment under Islamic Shari'ah and Positive (Civil) Law. It examines their theological, legal, and philosophical underpinnings to analyse how each system perceives justice, clemency, and punishment. This study employs a doctrinal legal approach to analyse main sources of Islamic jurisprudence, including the Qur'an, Sunnah, and traditional juristic interpretations, in conjunction with legislation and case law from secular legal systems such as France and the United States. Comparative legal theory and criminal philosophy frameworks are utilised to discern fundamental distinctions and similarities. The analysis indicates that Islamic Shari'ah perceives fixed punishments (hudud, qisas, diyah) as divinely mandated and predominantly unalterable, with exceptions based on repentance or victim forgiveness. Discretionary punishments (ta'zir) provide for judicial leniency based on public welfare factors. Conversely, Positive Law systems extensively implement statutes of limitations, clemency protocols, and rehabilitative frameworks that emphasise procedural equity and administrative efficacy. The discrepancy originates from the legal anthropology of each system—Shari'ah emphasises divine power, whereas Positive Law prioritises human action. The results corroborate the premise that Shari'ah and Positive Law employ fundamentally distinct frameworks for the mitigation and eradication of punishment. The study enhances comparative penal theory by integrating secular and religious frameworks and providing normative perspectives for cross-cultural legal harmonization.

The research study by Samara (2024) sought to identify the impediments to the enforcement of penal sanctions within Islamic Sharia law and Jordanian penal law, by analysing these obstacles through the texts of the Quran, the Prophetic Sunnah, and the perspectives of jurisprudential schools, in juxtaposition with Jordanian penal law. The study determined that Islamic Sharia diverges from certain legal constraints established by the Jordanian legislator, while aligning with the majority of these constraints, particularly concerning the avoidance of punishment based on mere suspicion, the imperative of substantiating the elements of the crime, the suspension of punishment in instances of necessity, self-defence, and victim forgiveness.

Busaeed's (2021) research examines alternative penalties and their legal frameworks, while also exploring the varieties of alternatives to incarceration within Islamic jurisprudence and their modern manifestations in Bahraini Law No. 18 of 2017, along with the limitations on their implementation. The research employed the inductive method to extrapolate juristic texts regarding the definition of alternative penalties, their rulings, and representations in Islamic jurisprudence, alongside the descriptive method to elucidate the significance of alternative penalties, their contemporary manifestations, and the regulations governing their implementation. The research concluded that alternative penalties are measures implemented by the state or its representatives as substitutes for imprisonment, designed to prevent recidivism and diminish crime rates in society, while also aiming to decrease the number of detainees and facilitate their reintegration into the community. In Islamic jurisprudence, the principal alternative penalties to imprisonment include flogging, financial fines, exile, alienation, summons, reprimand, and desertion, as well as modern forms such as community service, house arrest, restrictions on access to certain locations, electronic monitoring, participation in rehabilitation programs, and restitution for damages caused by the crime. The research indicates that alternative sanctions to incarceration should be used, contingent upon their appropriateness for the offence committed and their lack of detriment to the offender or society.

Research Methodology

This topic is studied using an analytical inductive approach, presenting the jurisprudential opinions, their evidence, and the weighting of each. This is achieved by defining the issue in general terms, then explaining the opinions contained therein, one by one. I mention each opinion, then the prominent scholars who supported it, then present their evidence. I discuss them in terms of their authenticity and weakness, and the points of objection to them, concluding with the preference for the opinion supported by the evidence and supported by the texts.

- Attributing Qur'anic verses to their places in the Holy Qur'an.
- A brief introduction to the lesser-known figures included in the body of the treatise.
- A brief introduction to lesser-known cities and countries.
- The hadiths are authenticated from the two Sahihis of Bukhari and Muslim, based on their provenance. If I do not find them in these two collections, I cite them from the four reliable Sunan collections: Sunan Abi Dawud, Sunan al-Tirmidhi, al-Sunan al-Sughra of al-Nasa'i, and Sunan Ibn Majah. If I do not find the hadith in these collections, I will cite the four reliable Sunan collections. I extracted it from all the other chains of transmission.

Research Plan

This research examines the meaning of punishment, its intended meaning, its most important categories, and the most prominent reasons for its abolition according to Islamic jurisprudence

scholars, as well as the position of positive law on it. This research is divided into two main sections.

The first Topic: definition of punishment, explains its categories, and its objectives.

The first requirement: Definition of punishment.

The first section: Definition of punishment in language.

The second section: Definition of punishment in jurisprudential terminology.

The third section: Definition of punishment in positive law.

The second requirement: Types of punishment.

The first section: Types of punishment in Islamic jurisprudence.

The second section: Types of punishment in positive law.

The third requirement: Objectives of punishment.

The first section: Objectives of punishment in Islamic law.

The second Topic: Abolition of punishment.

The first requirement: Abolition of punishment through repentance.

The first section: Definition of repentance in language and terminology.

The second section: Abolition of the punishment of exile for a combatant.

Section Three: Waiver of the penalty for theft from a repentant thief.

Section Four: Waiver of exile from an adulterer upon repentance.

Section Five: Waiver of the penalty upon repentance in positive law.

The second requirement: Waiver of the penalty by prescription.

Section One: Definition of prescription in language and terminology.

Section Two: Waiver of the penalty by prescription and the period considered therein.

Section Three: Waiver of the penalty by prescription in positive law.

The third requirement: Waiver of the penalty by pardon.

Section One: Definition of pardon in language and terminology.

Section Two: The ruling on waiver of the penalty by pardon.

Section Three: Waiver of the penalty by pardon in positive law.

The fourth requirement: Waiver of the penalty by the death of the offender.

Section One: The ruling on waiver of the penalty by the death of the offender.

Section Two: Waiver of the penalty by death in positive law.

Finally, the research concludes with a list of sources and references, and an index of topics.

Defining punishment, explaining its types, and objectives.

This section addresses the meaning of punishment, its intended meaning, and its most important branches among Sharia jurists and positive law scholars. It discusses three requirements:

The first requirement: Definition of punishment.

The second requirement: Types of punishment.

The third requirement: Objectives of punishment.

The first requirement: Definition of Punishment.

This section explains the meaning of punishment in language, jurisprudential terminology, and law through three sections:

Section One: Definition of Punishment in Language

Punishment: A verbal noun derived from the verb 'aqāb (to punish), meaning to punish someone with evil for a sin they have committed. Punishment is called 'aqūbah (punishment) because it follows a sin.

Ibn Manzur said

: Punishment: a noun from the root word ‘aqāb, and ‘iqaab and ‘i‘aqaba: to repay a man for his evil action. It is said that he punished him for his sin with punishment and ‘iqaab: he took him by it; and from this is the saying of God Almighty: {And if you punish, then punish with the equivalent of that with which you were afflicted. But if you are patient - it is better for those who are patient}

Ibn Faris said: “The letters ‘ayn, qaf, and ba’ are two correct roots. One of them indicates delaying something and bringing it after something else. The other root indicates height, intensity, and difficulty.”

The root of this word indicates other meanings, including: confinement and inheritance. It is said: The seller withheld the goods, meaning he withheld them from the buyer until he received their price. It is said: He ate a meal that caused him illness. That is, it caused him to become ill. And from this is the saying of God Almighty: {And caused hypocrisy to follow them} That is: Their miserliness led them to hypocrisy.

Section Two: Definition of Punishment in Islamic Jurisprudence

Jurists used the term "punishment" when discussing the chapters on prescribed punishments and felonies, and provided a number of definitions that generally revolve around punishment for sin and deterrence.

Ibn Abidin of the Hanafi school defined it as: "A punishment by flogging, amputation, stoning, or killing."

Ibn Farhun of the Maliki school defined it as: “What is done by doing something forbidden, or abandoning an obligation, or a Sunnah, or doing something disliked.”

Al-Mawardi of the Shafi’i school defined it as: “Deterrents that God Almighty has established to deter the commission of what He has forbidden and the abandonment of what He has

commanded.”

It was also defined by a group of contemporaries. Abdul Qader Awda defined it as: “The punishment prescribed for the benefit of the group for disobeying the command of the Shari’a.”

Muhammad Abu Zahra defined it as: “harm inflicted on the offender as a deterrent to him and a deterrent to others.”

Ahmed Fathi Bahnassi defined it as: “A punishment imposed by the Lawgiver to deter people from committing what He has forbidden and abandoning what He has commanded.”

Anyone who looks at these definitions will find that some of them are general and include worldly and otherworldly punishment. It would have been better for the definition to be restricted to worldly punishment, so as to exclude the otherworldly recompense that only God knows. Some of them also limited the punishment to the recompense established for the benefit, even though it is an expiation for the sin, as it was narrated from him, may God bless him and grant him peace: “...and whoever is afflicted with something of that and is punished in this world, it is an expiation for him.”

Therefore, the chosen definition of punishment is: "The worldly punishment prescribed by the Lawgiver for violating obligatory commands."

The restriction "worldly punishment" excludes the punishment in the Hereafter, which only God knows.

The restriction "prescribed by the Lawgiver" excludes man-made laws and the like.

The restriction "for violating obligatory commands" includes everyone who directly commits or participates in the violation, among those obligated by the Shari'a, and excludes those who are not obligated.

Section Three: Definition of Punishment in Positive Law

Legal scholars have differed in their interpretation of the meaning of punishment, so that two approaches can be distinguished:

The first approach, in its definition of punishment, looks at the punishment itself in terms of its infliction of pain or harm. It defines it as: "A degree of pain determined by society, represented by its legislator, to be inflicted upon perpetrators of crimes pursuant to a ruling issued by the judiciary"

It has also been said: "Pain and harm to the person upon whom it is inflicted" .

The second trend: It looks at the definition of punishment in terms of its objectives. It defines it as: “The penalty decided by criminal law for the benefit of society, in implementation of a judicial ruling against someone proven responsible for the crime, to prevent the crime from being committed again by the criminal himself, or by the rest of the citizens” .

It was said: “A punishment stipulated by law to be inflicted on the offender because he committed his crime.”

It was said: “A physical reaction inflicted on the violator of the law to remove the effect of the violation, or to deter the violator and deter others from committing it” .

Considering the definitions of the two trends, it can be said that punishment in positive law is:

“The criminal penalty decided by the system, which includes intentional pain, and is imposed by the judge on the person proven responsible for the crime.”

Explanation of the definition:

"Criminal punishment": This definition encompasses all criminal punishments, whether from God or from humans.

"Decreed by the system": The positive system is the source that determines punishments. This restriction excludes punishments prescribed by Islamic law but not sanctioned by the system.

"Involves pain": The essence of the punishment must be fulfilled, which is the pain it causes to the offender, whether to his body, his property, his conscience, or his honor.

"Intentional": Meaning, the convict is intentionally harmed, not incidentally, as in some procedures, such as pretrial detention for investigation and trial. These restrict freedom and cause pain, but they are not considered punishment because the pain is unintended.

"Imposed by a judge": Given the severity of the punishment, no one other than a judge is authorized to pronounce it. In the modern era, the judicial authority is the authority to impose punishments.

"On those proven responsible for the crime": This means that punishment is linked to criminal responsibility for the crime. Punishment can only be imposed for an act that constitutes a crime, and against a person whose responsibility for that crime has been established.

This restriction excludes "precautionary measures," which may be imposed on persons who have not committed a crime, such as in cases of suspicion or vagrancy. They may also be imposed on persons not criminally responsible, such as the insane or homeless children.

This presentation of the meaning of punishment in positive law demonstrates that it agrees with Islamic law in that punishment is a measure of pain inflicted on the offender. However, it differs from it in the legislative source of punishment.

Section Two: Types of Punishment.

This section addresses the most important types of punishment in Sharia and law, through two sections:

Section One: Types of Punishment in Islamic Jurisprudence.

Sharia punishments are divided according to various considerations, such as the crimes for which they are punishable, the location where they are imposed, the originality of the ruling, and other considerations. The most important of these divisions are: dividing punishment according to the crimes for which they are punishable, and dividing them according to the relationship between them. The following explains this:

First: Types of Punishment by Crime

Sharia punishments are divided according to the crimes for which they are punishable into four types :

First: The prescribed punishments for the crimes of the prescribed punishments, such as flogging, exile, and stoning for the crime of adultery, flogging and the disqualification of testimony for slander, amputation for theft, and the punishments for murder, murder with

crucifixion, amputation, and exile for highway robbery, and murder for apostasy and rebellion.

Second: Punishments of retaliation and blood money: These are the punishments prescribed for crimes of retaliation and blood money, such as premeditated murder, semi-premeditated murder, manslaughter, intentional wounding, and accidental wounding. The punishments prescribed for these crimes are: retaliation, blood money, expiation, deprivation of inheritance, and deprivation of a will.

Third: Penalties of expiation: These are the punishments prescribed for sin with the intention of expiating for committing it, such as spoiling the fast, spoiling the state of ihram, breaking an oath, and zihar. The expiations prescribed for these sins are: feeding, clothing, freeing, and fasting.

Fourth: Ta'zir (discretionary) punishments: These are prescribed punishments for crimes for which Shari'a has not established a specific penalty, such as spreading heresy, lying, fraud, and monopolizing.

Ta'zir punishments range from the mildest, such as advice and warning, to the most severe, such as imprisonment and flogging, and may even lead to death in serious crimes. The judge is left to choose the appropriate punishment for the crime, the criminal's condition, and his past.

Ta'zir punishments may be imposed for hudud crimes, qisas (retribution for blood money), and diyah (blood money), for which Shari'a has prescribed a specific penalty. Ta'zir is considered an alternative punishment imposed when the original punishment is not possible, such as when the conditions for hudud are not met, or as an additional punishment added to the original punishment.

Second: Types of punishments in terms of the relationship between them:

Sharia penalties are divided into four categories based on the relationship between them.

First: The original penalties, which are those originally prescribed for the crime, such as retaliation for murder, stoning for adultery, and amputation for theft.

Second: Alternative penalties, which replace the original penalty if its application is prohibited for a legitimate reason. Examples include: blood money if retaliation is avoided, and discretionary punishment (ta'zir) if the hadd penalty is avoided.

Third: Accessory penalties, which are penalties imposed on the offender based on the original penalty, without the need for an accessory penalty. An example is depriving a murderer of his inheritance. Deprivation results from sentencing the murderer to the death penalty, and a deprivation ruling is not required. Another example is the slanderer's incapacity to testify. Incapacity does not require a ruling; rather, a ruling for slander is sufficient to establish incapacity. Fourth: Complementary punishments: These are the punishments that are imposed on the offender based on the ruling of the original punishment, provided that the complementary punishment is ruled. An example of this is: hanging the hand of a thief around his neck after cutting it off until he is released. Hanging the hand is a consequence of cutting off, but it is not permissible unless it is ruled to be so.

Section Two: Types of Punishment in Positive Law

Punishment in positive law is divided according to various considerations. This is explained below:

First: Types of Punishment by Term:

Punishment is divided into three types by term:

First: Life imprisonment: This is the term that lasts the life of the convict, such as life imprisonment. Article [14] of the Penal Code states: "Life imprisonment is: placing the convict in one of the prisons designated for this purpose by law, and employing him within it in work designated by the government for the duration of his life."

Second: Temporary punishment: This is a term that has a specific duration, such as imprisonment and confinement.

As for imprisonment, Article [16] of the Penal Code defines it as: "Putting the convict in one of the prisons designated for this purpose by law, and employing him within it in work designated by the government, according to the term of his sentence, which may not be less than three years or more than fifteen years, except in special circumstances stipulated by law."

As for the penalty of imprisonment; Article [18] of the Penal Code stipulates that: "Prisoning the convict in a central or public prison for the period of his sentence. This period may not be less than twenty-four hours or more than three years, except in special circumstances stipulated by law."

Third: Indeterminate punishment: In this case, the judge is satisfied with the sentence without specifying a specific period, taking into account its impact on the convict's life, such as placement in a labor or social welfare institution. This means: imprisoning the convict in a special place for an indeterminate period, provided that he is not imprisoned for more than a certain period. This is specific to habitual criminals and juveniles.

Second: Types of Punishment by Subject:

Punishment is divided into five types based on the subject of the punishment:

First: Corporal punishments, which are inflicted on the body of the person being punished, such as the death penalty.

Second: Penalties affecting liberty, which affect the convict's freedom by forcing him to reside in a specific place and preventing him from moving about freely, such as life imprisonment, rigorous imprisonment, imprisonment, and confinement.

Third: Penalties depriving or restricting political and civil rights, such as deprivation of the right to vote, practice a particular profession, or testify before a court.

Fourth: Penalties affecting reputation or defamation: These aim to harm the dignity of the convict and diminish his standing in society by defaming him, such as publishing the verdict in newspapers, on walls, or in public places.

Fifth: Financial penalties, which affect the convict's financial assets, depriving him of a portion of them, such as fines and confiscation.

Third: Types of punishment according to the crime:

Crimes are divided in positive law into: felonies, misdemeanors, and contraventions. The penalties prescribed for crimes are divided, based on this, into three categories:

First: Penalties for felonies, which are: death, life imprisonment with hard labor, temporary hard labor, and imprisonment.

Second: Penalties for misdemeanors, which are: imprisonment from one day to three years, and a fine exceeding one hundred pounds.

Third: Penalties for violations, which are: a fine not exceeding one hundred pounds.

Fourth: Types of Punishment by Principality:

Punishment is divided into three types, based on its principality:

First: Principal punishments: These are punishments that suffice in themselves to constitute the sole retribution for the crime. The judge is obligated to pronounce them explicitly, specify their type and amount, and their ruling is not dependent on any other punishment. These punishments include the death penalty, life imprisonment, rigorous imprisonment, imprisonment, or a fine.

Second: Accessory punishments: These are punishments that are not sufficient in themselves to constitute retribution for the crime; therefore, the ruling follows the principal punishment by force of law without the need to specify it in the ruling. Such punishments coexist with the principal punishment, whether in existence or nonexistence, such as depriving the convict of certain rights and benefits. Third: The supplementary punishment: It is not sufficient in itself to be a direct punishment for the crime, but the judge must pronounce it in his ruling. It may be obligatory and the judge is obligated to rule on it, otherwise his ruling will be considered flawed, such as dismissal from jobs in some crimes, and confiscation. It may be permissible and the judge is not obligated to pronounce it, such as police surveillance in some misdemeanors, and publishing the ruling in the newspapers.

Section Three: The Objectives of Punishment.

This section addresses the valid objectives and desired goals of punishment in Islamic law and positive law, through two sections:

The first branch: The Objectives of Punishment in Islamic law.

Punishment was prescribed in Islamic law to reform the condition of humanity, protect them from corruption, rescue them from ignorance, deter them from sins, and motivate them to obey. This is achieved by compelling them to do what they dislike as long as it serves their interests, and by diverting them from what they desire as long as it leads to harm.

Ibn Abidin said: “Punishment was prescribed for the benefit of all people, such as protecting lineage, wealth, and honor, and as a deterrent against the various forms of corruption that harm people .”

Taqi al-Din Ibn Taymiyyah said: “Legitimate punishments were prescribed as a mercy from God Almighty to His servants; they stem from His mercy for creation and His desire to be kind to them. Therefore, whoever punishes people for their sins should intend to be kind to them and show them mercy, just as a parent intends to discipline their child, or as a doctor intends to treat a patient.”

The penal system in Islamic law relies on several principles to achieve the desired objectives of punishment, which can be summarized in five principles.

The first principle: Punishment deters everyone from committing a crime before it occurs. Once

the crime occurs, the punishment serves as a disciplinarian for their crime and deters others from imitating them and following their path. This is what jurists express by saying: "Punishments are deterrents before the act and deterrents after it." That is, knowledge of its law prevents the commission of an act, and its imposition after it prevents a recurrence.

The second principle: The limit of punishment is based on the needs and interests of the community. If the community's interests require severity, the punishment is severe, and if the community's interests require leniency, the punishment is leniency. It is not permissible for a punishment to be greater or less than the community's needs.

The Third Principle: If protecting the community from the evil of a criminal requires their extermination from the community or their prevention of their evil, the punishment must be the death of the criminal or their imprisonment from the community until death, unless they repent and reform.

The Fourth Principle: Any punishment that leads to the reform of individuals and the protection of the community is legitimate. Therefore, one should not limit oneself to certain punishments to the exclusion of others.

The Fifth Principle: Disciplining a criminal does not mean taking revenge on him, but rather reforming him. Punishments of various types agree that they are discipline, reform, and deterrence, varying according to the sin.

It is noted from these five principles that they are rooted in two fundamental principles:

The First Principle: Concern for the protection of the community by confronting and combating crime.

The Second Principle: Concern for the character of the criminal.

Sharia combines these two principles in its penal system. It adopts the first principle, which is the protection of the community, in its entirety, and requires its inclusion in all punishments prescribed for crimes. Every punishment must be sufficient to discipline the criminal for his crime, preventing him from repeating it and deterring others from thinking of similar acts. If discipline does not ward off the criminal's evil from the community, or if protecting the community requires the criminal's eradication, then the criminal must be eradicated or imprisoned until death. The second principle, namely, protecting the criminal's person, is not considered by Sharia law in crimes that affect the integrity of society, because protecting the community takes precedence over protecting the individual. For other crimes, the punishment is based on the criminal's personality, circumstances, morals, and conduct, with the offender's personality being the subject of judgement when imposing a penalty.

The second branch: The Purposes of Punishment in Positive Law.

Punishment in positive law has gone through several stages, during which the motives and purposes of punishment have changed. Western criminal law scholars have divided the eras through which punishment has passed according to their purposes into four eras, which are briefly:

The First Era: The Era of Individual Revenge.

This was the era of tribal supremacy, and the purpose of punishment at that time was to exact revenge on the offender through beating, killing, and expulsion from the tribe. Two principles

of punishment emerged in that era, derived from Hebrew and Roman law. The first principle was retaliation, which is revenge proportionate to the aggression. The second principle was blood money, which entails the offender and his clan offering a sum of money as ransom for the aggression.

The Second Era: The Era of Divine Revenge and Deterrence.

This era continued until the eighteenth century. The purpose of punishment in this era was to create fear and panic, and to set an example for everyone, through exaggerated terror, revenge, and defamation. Among the legally prescribed punishments were: burning, crucifixion, dismemberment, branding with a hot instrument in the fire, and wearing iron collars. Punishments were imposed on the living, the dead, animals, and even inanimate objects.

The Third Era: The Human Age.

In this era, philosophers and sociologists began working to establish new foundations for punishment. The French philosopher Rousseau began to emphasize punishment through what he called the social contract, believing that its purpose was to protect the community from the criminal and prevent him from harming others. Beccaria believed that the purpose of punishment was to discipline the criminal and deter others. Influenced by these views, the French Revolution applied them to French law issued in 1791 AD. Legal doctrines and theories emerged, which all converged on neglecting the criminal's personality and considering the crime, its gravity, and its impact on society. Therefore, they did not resolve the problem of punishment.

The Fourth Era: The Modern Era.

When previous theories failed to achieve security for the community due to their neglect of the offender's personality, the scientific theory emerged. This theory is based on completely neglecting crime and focusing on studying the criminal's personality, the reasons for his crime, his makeup, his history, and the degree of his danger. A criminal with a criminal nature is permanently removed from society or sentenced to death, even if his crime is minor. A criminal who is turned into a criminal by coincidence and circumstances is punished leniently, even if his crime is serious. A criminal who commits a crime under the influence of emotion is not necessarily punished.

The scientific theory has also failed to solve the problem of punishment, as it looks at the criminal but neglects the crime. It differentiates between perpetrators of a single crime, leaving some unpunished, while imposing the harshest punishment on others who committed the same crime.

Abdul Qader Awda says: "Positive law scholars found that the old theories failed because they focused on crime and neglected the criminal. They also found that scientific theory failed because it focused on the criminal and neglected the crime. They decided to combine the two theories and establish a new theory based on two principles of punishment: the principle of discipline and deterrence, and the principle of considering the criminal's personality. However, this mixed theory failed more than previous theories because it is based on two principles that, in most cases, contradict each other. Considering the criminal's personality in every punishment does not achieve the discipline and deterrence necessary to protect society, especially from serious crimes that affect security, order, and morals. Adopting the principle of discipline and deterrence necessary to protect society in every punishment prevents consideration of the criminal's personality in both serious and minor crimes."

The prevailing trend today among commentators on positive law is that the purpose of punishment is to discipline the criminal, reform him, and help him regain his former status in society. Although this is the primary trend, there is a second trend whose proponents believe that punishment should be a tool for eradication whenever the criminal is deemed irredeemable. A third trend sees punishment as a means of protecting society and terrorizing those who might consider committing crimes. All of these trends are based either on viewing the crime without the criminal, or on viewing the criminal without the crime, or on combining these two ideas.

Egyptian criminal law has adopted the principle that the purpose of punishment is to protect the community. This principle has been the basis upon which penalties are established for all crimes, such that the punishment is sufficient to discipline the criminal for his actions and deter others from committing similar crimes.

Egyptian criminal law has adopted scientific theory to some extent, not forgetting the criminal's personality in almost all crimes. It has established two penalties for each crime: one lighter than the other. It has also established two limits for each penalty from which the penalty can be chosen. It has also permitted judges in felony cases to substitute another penalty. It has also permitted them to suspend the execution of the penalty if the imposed penalty does not exceed a certain limit, namely imprisonment for a period of one year. This means that the law recognizes the criminal's personality when determining the penalty, but it does not oblige judges to take the criminal's personality into account when choosing and assessing the penalty. Rather, it has left them free to consider the criminal's personality if they deem his circumstances warrant it, and to disregard his personality if there is reason to disregard it.

After adopting the two previous principles, the Egyptian legislator finally saw that it was dangerous to consider the criminal's personality in all crimes, especially serious crimes. He prohibited judges from lowering the penalty below a certain limit in some crimes, and he also denied them the authority to suspend the execution of the penalty.

After this presentation of the objectives of punishment in Sharia and positive law, the following becomes clear:

First: After presenting the sequence of Western thought on the basis and function of punishment, it becomes clear that they concluded that punishment has two essential functions: the moral function concerned with the individual criminal, and the social function concerned with the interest of society. This is what Sharia law has brought and continues to provide.

Second: It is noteworthy that despite the differences in penal theories in positive law regarding the objectives and function of punishment, they agree upon one function when applied: protecting the prevailing social order. Therefore, they differ according to the prevailing systems in each place.

Third: Islamic law combines the advantages of positive theories while avoiding their flaws. Punishment in Sharia law is legislated for the benefit of the community, to reform individuals, to protect the community from crime, and to enable it to defend itself against criminality. This is what justice and public interest require together, as Rousseau and Beccaria saw. Punishment in Sharia law also aims to reform the offender, show him mercy and kindness, so the accused should not be neglected when determining the punishment, and this is what scientific theory has tended towards.

Section Two: Factors That Cancel Punishment

"Calculating" means "to throw" or "to cast." A pregnant woman miscarried. Jurists say that the purpose fell, meaning that her request and command for it fell.

"Calculating" means "to fall." "Calculating" is derived from the word "to fall" (saqat) (to fall) and "to cast" (musaqt), which means "to fall." "To cast" something from one's hand means to fall to the ground. "Aqta" (the knight) is the noun derived from the word "al-fāris" (the court) meaning to lift it up and remove it. It can also mean a severe incident, a setback, a stumble, or a slip.

"Calculating" means removing ownership or a right such that it ends and vanishes. It is derived from the word "al-iṣṭih" (to drop), meaning to lift and remove, such as removing slavery by emancipation or removing retaliation by pardon.

"Calculating" here means the factor that influences the non-imposition of punishment on the offender after committing a crime, whether before or after it has been proven."

This section addresses the most important reasons for dropping a penalty, its circumstances, and the differences among Sharia jurists and positive law scholars regarding it. This section covers four topics:

The first topic: Dropping a penalty through repentance.

The first branch: The definition of repentance in language and terminology.

Jurists have defined repentance as: abandoning a sin, regretting it, and resolving not to return to it.

Jurists agree that sincere repentance, i.e., regret that generates a resolve to desist, waives the punishment of the Hereafter for the offender, based on the Almighty's statement: {Say, "O My servants who have transgressed against themselves, do not despair of the mercy of Allah. Indeed, Allah forgives all sins. Indeed, it is He who is the Forgiving, the Merciful."} [Az-Zumar: 53]. However, they differed regarding whether repentance waives the worldly punishment. They differentiated between whether repentance and regret for the crime occurred before the offender was apprehended and brought before the judge, or after the offender was apprehended. They also differed on whether the crime concerned human rights or not.

The second branch: Waiving the Punishment of Banishment for the Harib

There are two cases for a repentant Harib: the first: if he repents before being overpowered; and the second: if he repents after being overpowered.

It is agreed upon among scholars that the repentance of the Harib before being overpowered waives the punishments for banditry.

The basis for this is the verse of Allah, the Highest, "Except for those who repent before you overpower them. Then know that Allah is Forgiving and Merciful." This verse indicates that if a highwayman repents before being captured, he is waived the punishments of execution, crucifixion, amputation, or banishment.

Waiving the punishment for banditry by repentance does not waive the rights of the people who have been wronged. If the Harib takes money, his repentance consists of returning it to its owners. If he is terrorized and killed, the punishment for banditry is waived, but the right of the

victim's heirs to his blood is not waived. The imam then hands him over to the victim's heirs, who may either kill him in retaliation or pardon him.

If the bandit merely went out and repented before seizing property or killing anyone, the punishment for exile is waived. However, if someone repents after being overpowered, none of the prescribed punishments are waived, as Allah, the Most High, says: {Except those who repent before you have power over them} . He makes the prescribed punishment obligatory for them, but then excludes those who repent before being overpowered. For everyone else, the general punishment remains. Also, if someone repents before being overpowered, it appears to be a sincere repentance, and afterward, it appears to be a precaution against the imposition of the prescribed punishment. Also, accepting his repentance and waiving the prescribed punishment before being overpowered encourages him to repent and refrain from waging war and corruption. Therefore, waiving the punishment is appropriate. However, afterward, there is no need to encourage him, as he has already become incapable of waging war and corruption.

An exception is made for those who repent after being overpowered by a muharib (a bandit)—one who neither killed nor seized property—whose punishment is exile from the land. The majority of jurists are of the view that the punishment of exile is waived for a muharib (a bandit)—one who neither killed nor seized property. If he repents after being overpowered by a muharib, by declaring his repentance and showing signs of righteousness, the majority of jurists are of the view that the punishment of exile is waived and that he is allowed to return to his place.

They argued that the reason for the banishment of the banished person was muharibah (banditry). If he persists in his muharibah, his exile continues. When he returns from it, repents, and this is valid, his exile is waived because the reason for it has been removed.

Repentance must be accompanied by reform of his actions, and this condition requires a period of time during which the sincerity of the repentance becomes evident. This is because God Almighty says: {But whoever repents after his wrongdoing and reforms, then indeed, God will turn to him in forgiveness...} and He says: {But if they both repent and reform, then turn away from them} . God Almighty has made the ruling conditional on two conditions: repentance and reform; so it is not valid without them, and because it is not certain that his display of repentance is a trick from the criminal.

The third branch: Waiving the Punishment for Theft from a Repentant Thief. Jurists differed regarding the effect of repentance on the implementation of the prescribed punishment for theft. The Hanafis , Malikis , Shafi'is - in one of the two opinions - and Hanbalis - in one of the two narrations - held that repentance does not waive the prescribed punishment for theft, based on the Almighty's statement: "As for the male thief, male or female, cut off their hands as a recompense for what they have earned, an exemplary punishment from Allah" - without distinguishing between those who repent and those who do not. Also, because the Prophet (peace and blessings be upon him) implemented the prescribed punishment on 'Amr ibn Samurah when he came to him repentant, seeking to purify himself from stealing a camel .

The Shafi'is - in the more correct of the two opinions - and the Hanbalis - in the other narration - held that repentance waives the punishment for theft, based on the Almighty's statement - after explaining the punishment for male and female thieves: {But whoever repents after his wrongdoing and amends, then indeed, Allah will turn to him in forgiveness. Indeed, Allah is Forgiving and Merciful.} This indicates that the penitent will not be subject to the prescribed

punishment, since if the prescribed punishment were to be carried out after repentance, there would be no benefit in mentioning it. What is most likely is that the imam will not carry out the prescribed punishment on a thief who comes repentant unless his repentance occurred before the theft was proven against him, whether by claiming that the stolen item was from him or by establishing proof of that.

The fourth branch: Waiving the penalty of exile from the adulterer upon repentance.

Scholars differed regarding the ruling on waiving the penalty of exile upon repentance, with two opinions.

The first opinion: The penalty of exile is waived upon repentance. This is the opinion of al-Shafi'i and a narration from Ahmad.

The proponents of this view cited the following as evidence:

First - From the Holy Qur'an:

Allah the Almighty says: {And as for those among you who commit it, punish them both. But if they repent and amend, then turn away from them.}

The evidence is that Allah the Almighty has stipulated that repentance and amendment lead to the avoidance of punishment.

Second - From the Sunnah:

The Messenger of Allah (peace and blessings be upon him) said: "The one who repents from sin is like one who has no sin." .

The significance of this hadith is that it is general in accepting the repentance of the repentant and erasing his sin; thus, there is no longer any reason to punish him.

It was narrated that when Ma'iz ibn Malik fled from being struck by stones, someone pursued him and struck him with a donkey's hooves, knocking him down. He then went to the Prophet (peace and blessings be upon him) and told him about his situation. The Prophet (peace and blessings be upon him) said, "Why didn't you leave him alone? Perhaps he would repent, and God would accept his repentance." His statement, "Why didn't you leave him alone, perhaps he would repent, and God would accept his repentance?" is evidence that repentance waives the prescribed punishment.

Thirdly, it is reasonable:

The proponents of this view believe that the prescribed punishments are waived by repentance. They argue that the Qur'an explicitly states that the punishment for a muharib (a bandit) is waived by repentance, and the crime of muharibah is the most serious of crimes. If repentance averts the punishment for a muharib, then it would be more appropriate for repentance to avert the punishment for crimes less severe than muharibah.

Second opinion: The punishment of exile is not waived by the repentance of the adulterer.

This is the doctrine of Malik , Al-Shafi'i , Ahmad , and the Zahiris .

The proponents of this view believe that the prescribed punishments are not dropped by repentance, except for the punishment for highway robbery, as explicitly stated in the text. This is because the basic principle is that repentance does not drop the punishment.

The proponents of this view cite the following as evidence:

First, from the Holy Qur'an:

Allah, the Exalted, commands the flogging of the adulterous man and woman, saying: {As for the adulteress and the adulterer, flog each of them with a hundred lashes} . Thus, the prescribed punishment applies to both repentant and unrepentant alike. Similarly, Allah, the Exalted, says: {As for the thief, male or female, cut off their hands} . He makes amputation general for both repentant and unrepentant alike.

Secondly - From the Sunnah:

It was narrated that Ma'iz ibn Malik al-Aslami came to the Messenger of Allah and said, "O Messenger of Allah, I have wronged myself and committed adultery, and I want you to purify me." So, he turned him away. The next day, he came to him and said, "O Messenger of Allah, I have committed adultery." So, he returned it a second time, so the Messenger of God, may God bless him and grant him peace, sent a message to his people and said: Do you know of any defect in his intelligence that you disapprove of? They said, "We do not know him except as one of our righteous people of sound mind, as we see." He came to him a third time, and he sent for them again and asked about him. They informed him that there was nothing wrong with him or his mind. When it was the fourth time, he dug a hole for him and ordered that he be stoned. Then a woman from Ghamid came and said, "O Messenger of Allah, I have committed adultery, so purify me." And he sent her back, and the next day she said, "O Messenger of Allah, why do you send me back? Perhaps you will send me back as you sent back a goat! By Allah, I am pregnant." He said, "If not, then go until you give birth." When she gave birth, she brought him the child in a rag and said, "I have given birth to this one." He said, "Go and nurse him until you wean him." When she weaned him, she brought him the boy with a piece of bread in his hand and said: "This, O Prophet of God, I have weaned him and he has eaten food." So, he handed the boy over to a Muslim man, then ordered that a hole be dug for her up to her chest, and ordered the people to stone her. Khalid ibn al-Walid came forward with a stone and threw it at her head, and blood spurted on Khalid's face. He then cursed her. The Prophet of Allah, may Allah bless him and grant him peace, heard him cursing her and said, "Easy, Khalid. By the One in Whose Hand is my soul, she has truly repented so much that if a tax collector repents, he will be forgiven. Then he ordered that she be brought to the mosque, prayed over her, and buried her."

The evidence is that Ma'iz and the woman of Ghamid repented to God with an acceptable repentance, as informed by the Prophet (peace and blessings of God be upon him), and this repentance did not remove the punishment for adultery from them.

Thirdly - From reasonable:

These jurists believe that the punishment is an expiation for the sin, and it is not dropped by repentance, as is the expiation for an oath or murder.

Discussion and Preference

The punishment for exile is a punishment solely for God Almighty, and it is established by the Prophetic Sunnah and the practices of the Companions. Its waiver after it has been established by the adulterer's repentance is not established by the Prophetic Sunnah or the practices of the Companions. Rather, what is established is that if the adulterer comes to the Imam, remorseful and confessing his sin, the punishment is carried out against him, as mentioned in the story of Ma'iz and the woman of Ghamid.

The statement of God Almighty: {But if they repent and amend, then leave them alone} only indicates the prohibition of punishing adulterers with harm if they repent and amend. This was before the punishment for adultery was revealed. When God made the punishment for adultery obligatory, it became obligatory. The waiver of the previous punishment for repentance does not necessarily entail the waiver of the punishment that God Almighty made obligatory after it. As for the hadith, "He who repents from sin is like one who has no sin," it is possible that this refers to the Hereafter.

As for their argument that the Prophet's statement, "Why did you not leave him alone so that he might repent and God would accept his repentance?" means that repentance waives the prescribed punishment. This is a far-fetched interpretation that contradicts the authenticity of the Prophet's command to stone Ma'iz after he came to him repentant and confessing his crime.

There is no similarity between the adulterer and the muharib (a rebel) to the point of being compared to the other. The muharib is someone who cannot be overpowered, so repentance waives his punishment if he repents before being overpowered, to encourage him to repent and refrain from spreading corruption on earth. As for the adulterer, he is always under control and not immune to the grip of authority. Therefore, there is no reason to waive his punishment through repentance. Rather, it is the punishment that deters him from the crime. Furthermore, the claim that repentance waives the punishment leads to the suspension of the prescribed punishments, because every criminal is capable of claiming repentance.

The fifth branch: Waiving Punishment by Repentance in Positive Law.

Repentance, in law, means regret and repairing the harm caused. Just as the severity of the harm resulting from a crime increases the penalty, so too the perpetrator's regret and efforts to repair the harm they caused must be instrumental in waiving the penalty.

The perpetrator's repentance can occur either before the crime begins, during its execution, or after its completion. These are three cases:

- The first case: The perpetrator's repentance before completing the crime.

The perpetrator's repentance before completing the crime occurs when he voluntarily refrains from committing it due to his awakened conscience. In this case, positive laws agree with Sharia in not punishing the desire to commit a crime or preparing for it, which does not constitute its material components.

- The second case: The perpetrator repents during the commission of the crime

In this case, the perpetrator's repentance is irrelevant, according to the legal theory that "there is no benefit in the perpetrator's repentance during the commission of a crime." Abdul Qader Awda says: "The general rule in positive laws is that the perpetrator's repentance does not absolve the penalty. However, some positive laws do not punish the perpetrator if he voluntarily refrains from completing the crime. These laws include Egyptian law and French law. This is consistent with what some Muslim jurists say, namely that repentance absolves the penalty. Some positive laws do not absolve the perpetrator of liability for the attempt, even if he voluntarily refrains from completing the crime, such as English law and Indian law."

- The third case: The perpetrator repents after committing the crime. In this case, the punishment is due, and repentance is irrelevant.

The second requirement: Waiving punishment by prescription

Section one: The definition of prescription in language and terminology.

First: linguistically, prescription is the infinitive of taqadama. It is said: "The thing has passed in antiquity, so it is old," meaning that some time has passed. Taqaddam is a verbal noun that expresses exaggeration of antiquity.

Ibn Faris said: "Qaf, dal, and mim are a sound root that denotes precedence. It is said: something is old, meaning its time has passed."

Second: Definition of statute of limitations in Islamic jurisprudence.

The Majalla al-Ahkam al-Adliyya defines statute of limitations as: "The passage of a period of time."

Statute of limitations in hudud crimes means: "The passage of a period of time from the occurrence of a crime before it is brought before the imam, or the passage of a period of time from a ruling imposing a penalty before its execution".

This definition includes two aspects:

First: The statute of limitations for proving a crime, meaning: The passage of a period of time from the occurrence of a crime without it being brought before the judiciary.

Second: The statute of limitations for execution, meaning: The passage of a period of time from the ruling before it is executed.

Section Two: Waiver of Punishment by Statute of Limitations and the Period Considered Therein.

Those who advocate waiver of statute of limitations for punishment differed regarding the specification of the statute of limitations. Some set it at one month, because anything less than that is immediate. Others set it at six months, as Muhammad ibn al-Hasan indicated in al-Jami' al-Saghir. Abu Hanifa delegated its assessment to the judge, who should assess it according to his time, the circumstances of the crime, and the witnesses.

As for waiver of punishment by statute of limitations, it is well known that punishments in Islamic law are divided into hadd (hudud), qisas (retaliatory punishments), and ta'zir (discretionary punishments). Jurists have differentiated regarding the effect of statute of limitations on their waiver as follows:

First: Jurists agreed that it is permissible to waive ta'zir punishments by statute of limitations if the ruler deems it necessary to achieve the public interest. This is because the ruler has the right to pardon the crime and the right to pardon the punishment in ta'zir crimes. If the ruler has the power to pardon the punishment, he should waive it immediately. He may suspend its cancellation upon the passage of a specific period if he deems that doing so would serve the public interest or prevent harm.

Based on this, it is permissible to cancel a sentence of exile imposed as a discretionary punishment if a long period of time has passed without it being executed.

Second: Jurists agree that qisas and blood money are not dropped due to the statute of limitations.

Third: Jurists agree that the prescribed punishments do not drop after they are proven, regardless

of how much time has passed without their implementation.

As for crimes subject to prescribed punishments that occurred some time ago without a trial, and for which there is no evidence other than witness testimony, jurists differed regarding their dropping due to the statute of limitations, with two opinions:

The first opinion: Old prescribed punishments are dropped if they are not proven except by witness testimony. This is the Hanafi school of thought, and a less acceptable opinion among the Hanbalis.

They cited as evidence what Al-Hasan Al-Basri narrated on the authority of Umar ibn Al-Khattab (may Allah be pleased with him) who said: "Any witnesses who testify to a hadd punishment without testifying in its presence are merely witnesses of resentment." That is, if witnesses demand testimony after a long, unnecessarily delayed period, this suggests that they may harbor resentment toward the person being testified against. This is an accusation that casts doubt on their testimony and renders it invalid. Thus, the hadd punishment is averted.

The second opinion: Old hadd punishments are not waived, even if they are only established by witness testimony. This is the view of Malik, Al-Shafi'i, Ahmad, the Imamiyyah, and the Zaydis.

They argued that the rules and texts of Sharia do not contain anything indicating that the punishments for hadd crimes, qisas crimes, and blood money lapse after a certain period of time. Likewise, the guardian does not have the right to pardon or waive these punishments in any way. If there is no text that permits the punishment to be waived and the guardian does not have the right to waive it, then the claim of prescription is not permissible.

Preference:

What is most likely - and God knows best - is what the majority have stated, which is that it is not permissible to drop the old prescribed punishments due to the delay of witnesses in testifying to them. There is no evidence for differentiating between testimony regarding an old punishment and testimony regarding a new one. Rather, the basic principle is that they are the same, due to the statement of God Almighty: {And those who accuse chaste women but do not produce four witnesses - lash them with eighty lashes}. This requires that it be applied to all situations, whether immediately or delayed.

Al-Mawardi said: "Every testimony that is accepted immediately must be accepted with delay, because it is one of the two types of evidence that proves adultery, so it must not be invalidated with delay, like a confession."

As for the trace of Omar, it is *mursal*: because Al-Hasan did not meet Omar. Omar himself disagreed with him in the story of those who testified against Al-Mughira for adultery, as he transferred the witnesses in it from Basra to Medina, and he heard it after a long period of time.

This is what Abu Bakr ibn al-Mundhir favored, saying: "The ugliness of enforcing the prescribed punishments of God if the period is prolonged without a valid argument is impermissible. Rather, what is reprehensible is the statement of someone who removes what God has prescribed in His Book if it has expired without a valid argument. Someone who claims that prescribed punishments are abolished if they expire and cites a specific period should be asked: What is the difference between the period he mentioned and a period that is shorter by a day or a month? He will not find a way to cite an argument to decide this matter." An exception

to this is the punishment of exile for highway robbery. A bandit who has repented and abandoned banditry a long time ago, and whose banditry was not accompanied by murder or theft, is thus an excuse for his exile, even if witnesses testify that he committed banditry and he confesses to it, because he repented and abandoned it before he was overpowered.

Section Three: The lapse of punishment by limitation in positive law

In positive law, the statute of limitations means: "the expiration of a public lawsuit and the expiration of the right to enforce a penalty due to the passage of time". This is because the passage of the appropriate time since the commission of a crime or the imposition of a penalty causes it to be forgotten, and it is wiser in this case to eliminate the penalty, as the desired benefit from it is no longer there.

This presumption of forgetfulness is a conclusive presumption that cannot be denied, as positive law established it for the public interest.

Some laws stipulate that criminal proceedings for crimes expire after a specific period of time. This is what the Criminal Procedure Code expresses in Article [15], which states: "Criminal proceedings expire after ten years from the day the crime occurred, three years in misdemeanor cases, and one year in contravention cases, unless the law provides otherwise."

Some crimes, such as adultery and indecent acts, are specifically expire after three months, as stated in Article [3] of the Criminal Procedure Code, which states: "Criminal proceedings may only be brought based on a complaint... A complaint shall not be accepted after three months from the day the victim learned of the crime and its perpetrator, unless the law provides otherwise."

Likewise, penalties stipulated in rulings issued by ordinary or exceptional courts shall be dropped if they remain unimplemented for a certain period of time.

Article [528] of the Code of Criminal Procedure stipulates that "a penalty imposed for a felony shall lapse after twenty calendar years, except for the death penalty, which shall lapse after thirty years. A penalty imposed for a misdemeanor shall lapse after five years."

By comparing the position of Sharia and the law on the lapse of penalties by prescription, we find that Sharia limits this to crimes and discretionary punishments, while the law expands the scope of lapse by prescription to all crimes.

We also find that Islamic Sharia is committed to taking two matters into account when lapse of penalties by prescription:

- First: That such a waiver does not infringe upon God's rights that must be upheld.
- Second: That established human rights are not squandered.

As for the principle of forgetting the crime, which positive law relies on to waive the statute of limitations, it opens the door wide to the squandering of much blood, wealth, and rights.

The third requirement: Waiving the penalty through pardon

Section One: The definition of pardon in language and terminology

Pardon in language: overlooking a sin and not punishing it. Its origin is erasure and obliteration. It is said: the winds erased the traces, if they eroded and wiped them out.

Jurists defined forgiveness with definitions that revolve around the same linguistic meaning, which is: the right holder dropping his right to demand it.

Section Two: The ruling on dropping the punishment by pardon

The jurists have agreed that the prescribed punishment for the right of God Almighty cannot be pardoned at all, if it reaches the judge and is proven by evidence, based on His saying: "Forgive the prescribed punishments among yourselves, and whatever punishment I have been informed of has been prescribed." It was narrated on the authority of Lady Aisha, may God be pleased with her, that she said: "A thief who had stolen was brought to the Messenger of God, so he ordered that his hand be cut off. It was said: O Messenger of God, we did not see you go this far with him." He said: If she were Fatima, the daughter of Muhammad, I would have carried out the punishment on her because no one has the right to waive God's right .

As for discretionary punishments, they are at the discretion of the ruler. Pardon and intercession are permissible if they are a right of God and not related to a human right. If a human right is related to them, it is not permissible for the ruler to overlook the victim and waive his right by pardoning the offender. If the victim forgives himself for his right, then the imam may pardon what pertains to the right of God, as the public interest dictates.

Ibn Abidin said: "The imam may pardon a discretionary punishment due to God Almighty, unlike a crime committed against a servant, in which case the pardon is for the victim".

Therefore, if the banishment is a punishment for banditry or adultery, no one may waive it by pardoning or interceding for it. If it is a discretionary punishment, it is permissible to waive it by pardoning or intercession.

Evidence indicating the prohibition of pardoning the punishment of exile for the crime of adultery is found in the hadith of al-'Asif, which states: "My son was a slave to this man, and he committed adultery with his wife. I was informed that my son was to be stoned, so I ransomed myself from him." With one hundred sheep and a slave girl... The Messenger of Allah (peace and blessings be upon him) said, "By Him in whose hand is my soul, I will judge between you according to the Book of Allah. The slave girl and the sheep will be returned, and your son will receive one hundred lashes and be banished for a year." The evidence is that the Messenger of Allah (peace and blessings be upon him) invalidated pardons based on compensation because they violated Allah's ruling regarding the obligation to implement the prescribed punishment. He clarified the necessity of implementing flogging and banishment on adulterers.

Section Three: Waiver of Punishment by Pardon in Positive Law

Legal scholars have defined pardon as: "The relinquishment by society, or the victim in some crimes, of their right to impose punishment on the guilty party after he has committed the criminal act, and a judge has ruled that punishment is due."

It has been said: "It is society's waiver of all or some of its rights arising from a crime."

It is noted from these two definitions that the first focuses on pardoning a sentence after a verdict is issued, while the second focuses on pardoning the crime itself, by refraining from bringing it to court or dropping the lawsuit filed in its regard.

Positive law grants the right to waive a sentence to two persons: the head of state and the victim.

The first issue: Waiving a sentence by a pardon from the head of state.

Article [148] of the Egyptian Constitution states: "The President of the Republic has the right to pardon or mitigate a sentence. A general pardon, however, can only be granted by law."

The head of state may issue a decree pardoning a specific person or group of persons by name for a specific crime. This is known as a personal pardon. This pardon requires waiving all or part of the sentence or replacing it with a lighter one prescribed by law. Ancillary penalties and other criminal consequences resulting from a conviction are not waived unless the pardon order specifically states their waiver.

A general amnesty is a pardon for specific crimes that occurred under specific circumstances or over a specific period of time. This amnesty occurs either before or after a ruling, and in both cases, it results in the expungement of the lawsuits filed and the rulings issued in their regard. Article [76] of the Code of Criminal Procedure states: "A general amnesty prevents or suspends the proceedings of a lawsuit or expunges a conviction. It does not affect the rights of third parties unless the law issuing the amnesty provides otherwise."

The law regulates the procedures for amnesty in certain crimes and its effects.

Article [470] of the Code of Criminal Procedure states: "Whenever a death sentence becomes final, the case papers must be submitted immediately to the President of the Republic through the Minister of Justice. The ruling shall be executed if an order for amnesty or commutation of the sentence is not issued within fourteen days."

Chapter Eleven of Book One of the Penal Code is entitled "Pardon and General Amnesty."

The second issue: Dropping the sentence through the victim's pardon. Positive law allows a victim to pardon and waive the crime committed against them by dropping the lawsuit they filed and waiving their right to punish the perpetrator. This has been implemented in the law, as in Article [10] of the Code of Criminal Procedure, which states: "Anyone who files a complaint... may waive the complaint... at any time until a final judgment is issued in the case, and the criminal case shall expire with the waiver." The law also allows the victim to pardon the sentence by suspending its execution in certain crimes, such as theft between spouses and relatives, and in the crime of adultery. Article [312] of the Penal Code states: "A person who commits theft to the detriment of his or her spouse, ascendants, or descendants may not be prosecuted except upon the victim's request. The victim may waive his or her claim at any stage. He or she may also suspend the execution of the final judgment against the perpetrator at any time he wishes. A husband may pardon his or her wife if she committed the crime of adultery with his or her consent to continue living with her as before. Article [274] of the Penal Code states: "A married woman whose adultery is proven shall be sentenced to imprisonment for a period not exceeding two years, but her husband may suspend the execution of this sentence by agreeing to her remaining with him as before."

This pardon entails the waiver of the penalty for the woman who committed adultery, since she was an accomplice to the crime with the wife. If the sentence is waived for the wife, who is the original perpetrator of the crime, it must also be waived for the accomplice. The victim's right to pardon for a crime is not transferred to his heirs after his death, except in the case of adultery. Article [10] of the Criminal Procedure Code states: "If the complainant dies, his right to waive the right shall not be transferred to his heirs, except in a case of adultery, in which case any of the complainant's husband's children may waive the adultery case."

From the above, it is noted that Sharia and law agree on the legitimacy of pardoning a penalty,

but they differ significantly in the powers, scope, and authority of such pardons.

The basis of this disagreement is the consideration of "God's right." Islamic law treats crime as a violation of God's right, and builds on this three principles:

First principle: If this right is stipulated, it may not be waived by pardon or otherwise.

Second principle: If this right is not stipulated, the imam may consider its implementation in his capacity as the implementer of God's law.

Third principle: If God's right is related to a violation of a human right, then the crime entails two rights: God's right and the victim's right. As for God's right, the imam shall fulfill it according to the first and second principles. As for the victim's right, no one else may pardon it.

Positive law, however, has not recognized this right. By God's will, it was limited to two people: the first: the people, represented by the ruling authority, and the second: individuals. This opened the door to forgiveness for all crimes, such as adultery, murder, theft, and others for which forgiveness or intercession is not permitted under Sharia law, provided the imam is informed.

Fourth Requirement: Waiving the Punishment Upon the Offender's Death.

First Section: The Ruling on Waiving the Punishment Upon the Offender's Death.

There is no disagreement among jurists that punishments are waived upon the offender's death if they are physical and related to the offender's person, because the subject of the punishment is the offender himself, and it is inconceivable that it could be executed after the offender's cause has ceased to exist.

Section Two: Waiving the Punishment by Death in Positive Law.

Positive law agrees with Sharia law in waiving corporal punishments upon the offender's death and not requiring his heirs to bear the remainder of the punishment after his death. This is a fundamental principle of criminal law: a crime cannot be represented in court, a punishment cannot be represented in execution, and if a person dies, his person is erased from existence, and his work in this world ceases, all personal obligations are waived.

The penalty for the offender is also waived if the victim dies before the lawsuit is filed. This is stated in Article [7] of the Code of Civil Procedure, which states: "The right to file a complaint expires with the death of the victim." Therefore, if the husband of the adulteress dies before the lawsuit for her adultery is filed, this waives the penalty for adultery.

This is because the husband is the sole holder of the right to demand punishment for his wife's adultery. This is a clear violation of Sharia law, as the punishment for adultery belongs to God Almighty, and He, glory be to Him, is alive and never dies.

Conclusion

The research demonstrated the extent to which Islamic law prioritizes the criminal system, and its precedence over man-made laws in addressing crimes and deviations that threaten the stability of society and harm its members.

Throughout my research, I was keen to present the necessary theoretical mechanisms to demonstrate the legally mandated waivers for punishment and their reapplication, contributing to opening the door of hope and optimism for all who hope to find an opportunity for upright living and a peaceful life.

The research revealed that the purpose of punishment in the Islamic system is not to take revenge on the offender, but rather to deter and reform him, restore things to their proper place, and restore life among people. If this is achieved through the offender's repentance, reformation, and voluntary restoration of rights to their rightful owners, then there is no need to torture and punish him. Rather, it is better for him and for society to help him adopt upright behavior and a healthy lifestyle, enabling him to become a righteous and beneficial individual for himself, his family, and his community.

Among the most important findings of the study are:

1. Sincere and sincere repentance is one of the most important reasons for waiving the crime of highway robbery and theft, unless they involve a crime against life or property.
2. The victim's forgiveness is one of the most important reasons for waiving punishment in personal crimes.
3. Waiving punishment in Islamic law does not mean forfeiting the victim's rights.
4. Corporal punishments are waived for the deceased and are not transferred to any of their heirs.
5. The prescribed punishments are averted by suspicion. If the suspicion is strong, it waives the prescribed punishment for the offender.

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