

The Role of Repentance in Punishment Crimes

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Abstract

Repentance is one of the most important cases that makes the punishment will fall. To be able to define the role of repentance in the crimes caused punishment, we must first recognize that the rights infringed refer to God or people?

Since punishment include the cases which the person refuses to perform the act or points the other one with his act and unjustly hurt, so punishment refers to either God or people or the act which is common in people's right or God's one, and one of them is superior to the other.

Key words: repentance, Islamic penal codes, forgiveness, personal knowledge of the judge, crime extent

Introduction

A. effect of repentance in falling discretionary punishments

An Islamic legislator states in article 16 of the penal code: punishment is the discipline or punishment which is not determined the type and amount of Sharia and the prevailing view has been assigned to such imprisonment and fine, whip lash rate should be less than maximum.

As stated earlier in this article regarding the word "like" is defined as a kind of punishment to imprisonment and pecuniary penalty matters may be punished by flogging, but not limited to qualify. The reason can be found in article 42 of the penal code, as it is expressed: The following persons are regarded as accessory and punished according to the conditions and opportunities of the offending frequency and the mass hierarchy and discipline of preaching and degree of threat and punishment. Enacted legislation in this matter and the threat physical punishment penalties are taken into account. Finally, the use of that form of punishment is:

Imprisonment, pecuniary penalty, whipping, penalty and threats and like that and may be punished with passing the time in some cases and replaces to a new prisons.

One of the questions on the minds which may be on the punishment is the quality of repentance in punishment. These are several assumptions that the realization of repentance is different in each of them; if defects and physical punishment of crime does not lead to people's right like leaving prayer and fasting, repentance is realized with regretting and resolving not to return to crime and adjudication of rehabilitation and if there is people's right on punishment like usurping, embezzlement, theft of less than the minimum limit, etc. repentance is subject to the fulfillment of regret, determination of no return and pay the money to the owner of the property.

If people's right leads to the absence of others, repentance with remorse, determination not to return to sin and decrease in the right (if possible) and if you cannot find the solution, you must ask forgiveness.

on the fall punished by repentance, it must be acknowledged: if any one deserves to be punished who repents before the rise of the whip as much of his evidence and priorities unseat the ruling implies because the punishment is excessive punishment and if he repents after the uprising vigor, the governor has the right to forgive him as if amnesty penitent confession absolutely depends on the prevailing view.

In legal texts, the renowned titles of physical punishment of offenses are detected in the examples as apostate, usurping, long prayer, etc.

So, we will discuss each of the cases separately.

Apostate

An apostate person is the one who preached Islam disbelief. There are two types of apostates, natural or national. In the definition of natural apostate has been said who disbelieves after his birth in Islam, that is, one of his parents is Muslim, but the person who is a national apostate, returns of disbelief.

The famous quotation for jurists is that if an innate apostate is a man, his repentance is not accepted and his killing is obligatory, his wife died to keep people and his property is transferred to his heirs.

But if the apostate is national, repentance must be done and if he refuses to repent, he will be killed. What is the term for those wanting a national apostate, the martyr says: so repent until 30 days, this is the opinion of many Shiite jurists.

On the apostate woman, student and personal consensus, many texts indicate that the apostate woman will not be killed, but the repentance will be done, and if he repeats, he will be released and imprisoned permanently and he will be lashed at prayer times.

B. Evaluation of legislators to repent in prison

C. Repentance in crimes against internal and external security in article 512

Internal and external security issue has been a particular significance for all countries in a way that has always been considered as the most important value for the nation.

Acquired from the penal code offenses such as: espionage, rebellion and incitement to riot, assassination of political figures, collecting confidential information, encouraging foreigners to the country occupied by the enemy, the threat of bombing planes, ships and other public transportation, etc. which directly connect to national sovereignty and the basic rule of a system are considered to the category of crimes against internal and external security.

The legislator has mentioned the crimes against internal and external security in prison 1997 together and advised from the division and separation.

Maybe the reason for this segregation was that: putting some of the crimes are discussed under each of two and may be faced with doubt, even some people questioned the principle of division and have stated: the security of one unit is indivisible which may be threatened by foreign nations of a country or people, but this issue should not be a reason to distinguish between the offences.

However, the legislator in 1997 suspended the registration of repentance in article 512 and extended it to the articles 508, 509, and 512 which considering the aforementioned articles, we examine the effect of repentance:

- A. Article 508 provides: any person or group with hostile foreign governments cooperates in any way against Iran, while the enemy is not known, is imprisoned from one to ten years.

As it is considered this article is on the cases of crimes against the external security and any cooperation with foreign government hostile waging war against Iran if this is not the case as being at war results in the punishment of imprisonment from one to ten years so when any kind of cooperation with foreign governments under any of the topics mentioned is not in other issues, such as intelligence or collusion with foreign countries pursuant to stimulate troops, etc. we can punish the committed on the basis of this article.

- B. Article 509 refers to the penal intensified war crimes against internal and external security, since it says: anyone who committed war crimes against internal and external security of this chapter shall be committed to punishment for the same crime.

- C. Article 512 relates to stimulate people to war and destruction for the purpose of security, which is of obvious examples of crimes against national security. According

to this article: anyone who stimulate people in order to disturb national security or temptation to war and killing each other, regardless of whether or not it results in killing and plundering, he will be sentenced from one to five years in prison.

With regard to this article it is gathered that the legislator would only consider stimulation as an absolute crime and the realization of the result has not any significance for him and forecasting punishment is only for irritating. Also, to realize the crime and irritating punishment, fulfillment of the punishment in the form of/to disturb the national security is essential.

Now, according to the content of the above mentioned materials to investigate article 512 which has considered repentance for exemptions of people contained in this article, we will study:

D. This note provides: in cases where are authenticated the accused repented before achieving systems are not included the articles 508, 509, and 512.

On this note, there is a problem both in form and in substance. Problems are in a way that the first amendment applies only to the fact that this refers to article 512, but has also been noted in its provision to articles 508 and 509, and secondly, given the importance of repentance, it was appropriate that the legislator note to punishment after the word included to better clarify the message of the article, it clearly indicates that the accused person was punished after the turn of the inclusion of this material has been removed.

Substantive objections against this amendment are as follows:

1. In our country, in spite of the majority Muslim, non-Muslim religious minorities also live there, so in terms of the risks inherent in crimes against internal and external security and the importance of legislation to secure the cooperation of criminals in the detection and neutralization of such crimes defined and consequently play the importance and the role of repentance can be done in this direction, in this note the method has not been determined whether the repentance of perpetrators and non-Muslim religious minorities in Iran function is true or not?
2. As already stated, article 509 is related to the escalation of the punishment of the war and is not predicted a specific crime, so according to the provisions of this article with respect to all of these chapters is not clear whether repentance in this article only eliminates the aggravation of punishment or results in the collapse of the penalties?

In response to comments regarding the above it can be concluded that the aggravation of punishment repentance only destroys, so in this case, the court may specify a minimum or maximum punishment for the perpetrators.

Meanwhile, the legislator with mentioning this article in addition to articles 508 and 512 in the note above, in fact, according to a distinction between the war and the other is repentance. Because in articles 508 and 512, repentance is resulted in the exemption of the committed from punishment, but in article 509 just eliminates the aggravation of punishment, it seems that this separation with philosophy and the aim of forging repentance in these crimes contradicts.

3. What is the substantive difference between the articles 508 and 512 with the articles 510 and 511 which are caused by these articles?
4. The purpose of the word "achieving" is not clear in this note and it is questionable whether achieving is the same arresting or another phase.

Dr. Mir Mohammad Sadeghi states in this case:

In any case, repentance must be performed before accessing the system. It seems that achieving or accessing is a level before arresting. So as to achieve the system to the offender, his repentance would not be effective, although repentance is performed before practical arresting. For example, anyone who repents when entering in an unidentified in the air and Iran's soil in the aircraft, while security officers were present with the previous recognition to arrest him at the airport, or those who repent after the siege of the home team, cannot be accepted, because, despite not being fulfilled, arresting perpetrator available system is located.

With regard to the aforementioned cases it can be concluded that amendment of article 512 of the judgment has been unclear and obscure and demand the legislator's explanation. However, the reason for an anticipated discount or exemption from punishment for the crimes is from the risks of their potential impact and importance of the discovery of the crime which can be used to secure and maintain government, etc.

Nevertheless, it seems that since it has completed the amendments to the above, is unable to carry out this important mission. So, it is suggested that instead of a separate article is enacted by those involved in drafting the law, extend the role of repentance in exempting the punishment to other cases.

E. Repentance in crimes against public welfare of article 521

In this article, we briefly mention the articles 518, 519, 520, and 521 governing the preparation and dissemination of counterfeit coin and then examine the effect of repentance on them.

1. Article 518 provides: anyone who builds any internal or external gold or silver coins like gold coin, coins of previous governments, pound and other currencies like money that is a real deal, or enter it in the country or purchase and sell the offers, or increase counterfeit coin, is convicted from one to ten years.

This article is a legal element for preparing and promoting counterfeit coin and as we can see that the legislator has supported foreign gold and silver coins in addition to internal gold and silver coins and the material element of the crime is like gold or silver coins and currencies dealt or their entering into the country or buying and selling and/or their promoting, and finally the spiritual element is the knowledge of the criminal act.

Although the perpetrators of such acts always committed with the intent to gain illegal land, the illicit exploitation or spiritual element of the crime is not intended to disrupt public comfort and mere knowledge of the criminal act is sufficient to fulfill the offence.

2. Article 512 provides: anyone who wants to cheat in any way such as shaving, cutting, and the cases like that reduce the amount of Iranian and foreign gold or silver coin or knowledge or deliberately in promoting these coins of the company or enters it in the country, he will be convicted from one to three years.

As we can see this article refers to tarnishing gold and silver coin and it is considered a legal element of this crime. The material element of the offense including reducing the amount of gold and silver coin, promoting the tarnished coin, and also its entering in the country, the aim of the spiritual element of this crime is to cheat in addition to general malice (knowledge of the criminal act).

So if someone is not going to commit fraud and committed to tarnishing, for example he wants to do it for testing, his act will not be subject to this article.

3. Article 521 provides: anyone who builds the coins like foreign or internal current coins but gold and silver or knowingly or deliberately enter them in the country or has a role in their promoting, or buy and sell them, he will be convicted from one to three years. The legal element of this article is the promotion and development of gold and silver coins except counterfeit coin and the legislator in this article supports such coins both internal and external ones.

This article is a legal element for preparing and promoting and builds counterfeit coin but gold and silver and the legislator in this article supports such coins both in internal and external. The material element of the offense is to build similar to other gold coins or to enter them or to promote and finally to buy and sell, the spiritual element of the crime seems to be a general purpose (knowledge of the criminal act) is enough. So one of the best ways and methods to combat the perpetrators of these crimes adopted is that people are encouraged to cooperate and introduce themselves among them to the judicial and police authorities.

For this purpose, the legislator of the Islamic Republic of Iran has mentioned the aforementioned article that we will examine it in the following.

The second question, the meaning of the word discovery of the case is to discover the matter of counterfeit coin or to discover the matter of criminal involvement in it. The main difficulty appearing in this article is that the legislator exempts the offenders who have been working with agents as described above with the agreement of the court on the terms of the sentence, unless they repent before arresting and they are succeeded which in this case they will be exempted from all the mentioned punishment. In this way, the offender in the first case (cooperating without repentance) is exempted just through imprisonment and in the second case (in the case of repentance) from all the mentioned punishment, while in these articles 518, 519, and 520 has not been punished but exemption that the separation between these two cases is reasonable and significant.

It can be argued that to the legislator saying the phrase all the punishments was that in addition to mentioning imprisonment in articles 518 and 520 is referred to incidental and complementary or other punishments of the committed penalties or the aforementioned punishment in article 522, in other words, in the case of repentance, the offender will be exempted from those punishments in addition to the punishment of imprisonment in those three articles. This concept has a main disadvantage which is not consistent with the form of the article.

Note that the legislator has said at the top of the crimes mentioned in articles 518, 519, and 520 in the following article from all the punishments mentioned and therefore, no doubt remains that the purpose of all of the above punishments under the article is the same punishments mentioned in those three article said above, which is nothing other than imprisonment.

Perhaps the only reasonable interpretation that would make this distinction important is that we say granting or relieving the offender is due to his cooperation in the process of repentance closed at the discretion of the court, but in the case of repentance, the court is required that the mere holding of repentance, the offender shall be exempted from penalty. This approach actually means that we leave the emphasis of the last sentence on the phrase will be exempted instead of all. The question coming to mind in relation to this article is that what is the reason for limiting repentance in several articles? And that has limiting been deliberately or targeted or any particular reason?

The answer is although we cannot explicitly state this limitation without any particular reason, it seems that limiting repentance in several cases with great mission and high position which can be modified and return offenders, is not consistent. So it is suggested that people preparing the law and giving great importance to repentance and it can prevent the crime, and has extended it to the policy of reforming criminals and extended it to other related articles.

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