

دور التوبة في إلغاء العقوبة من منظور الفقه الإمامي والقانون الإيراني

طالب الدكتوراه السيد حسن اماميان

قسم الفقه وأصول الشريعة الإسلامية - جامعة أمير المؤمنين (عليه السلام) - الأهواز - إيران

dr.imamian@gmail.com

الدكتور سيد محمد حسن ملانكة پور شوشتری

أستاذ مساعد في قسم القانون الخاص - كلية الحقوق والعلوم السياسية - جامعة الشهيد تشرمان

– الأهواز - إيران

S.m.h.malaekhepour@gmail.com

The Position of repentance in abolishing punishment from the perspective of Imami jurisprudence and Iranian law

Seyed Hassan Imamian

**Corresponding Author , PhD student of Jurisprudence and
Principles of Islamic Law , Amir Al - Momenin University , Ahvaz**

Dr. Sayed Mohammad Hassan Malaekhepour Shoushtari

**Assistant Professor , Department of Private Law , Faculty of Law
and Political Science , Shahid Chamran University of Ahvaz , Ahvaz**

المستخلص

في الفقه والقانون، تعتبر توبة الجاني إحدى مسقطات العقوبة، بشروط ثلاثة: ١- أن تكون التوبة حقيقية، بمعنى أن توبة وندم الجاني مثبتة في فعله. ٢- أن ارتكاب الجريمة يرتبط بحق الله، وإذا امتزج مع حق الناس، فلن ينسخ التوبة وحدها العقاب. ٣. وقت التوبة، يقسم توبة الجاني إلى ثلاث فئات من حيث الزمن: أولاً: التوبة قبل الاقرار أو الإثبات بالأدلة، وفي هذه الحالة تتسبب في سقوط الحد. ثانياً: التوبة بعد الاعتراف، وفي هذه الحالة الحاكم مختار بين العفو وإنفاذ الحد. ثالثاً: التوبة بعد عرض الأدلة، وفي هذه الحالة ليس للتوبة أثر على إلغاء العقوبة. وتجدر الإشارة إلى أن التوبة لا تؤثر على إلغاء عقوبة بعض الجرائم، مثل الردة من الفطرة. وفي العقوبات التعزيرية، فإن الحاكم يتمتع بسلطة أكبر، ومع وجود مصالح، يمكنه تخفيف العقوبة أو العفو عنها. لدى معظم الفقهاء الإماميين وجهة نظر مشتركة حول توبة الجاني، واستناداً إلى وجهة نظر الفقهاء المشهور، تم تطوير القانون الجنائي لإيران، وفي عام ١٣٩٢، تم تركيز القوانين المتعلقة بالتوبة، والتي كانت متناثرة سابقاً، في المواد القانونية رقم ١١٣-١١٩.

الكلمات المفتاحية: أثر التوبة - سقوط العقاب - الجاني - الحدود - التعزيرات .

Abstract

The repentance of the offender in jurisprudence and law is considered as one of the punishments, if it has three conditions, 1- It is real repentance, in the sense that the guilt and remorse of the offender is established and his action is shown in the chart. 2- The commission of a crime is related to the right of God, and if it is in common with the right of the people so that the owner of the right does not forgive, repentance alone will not be punished by abolition. 3. The time of repentance. In general, the repentance of the offender is divided into three categories in terms of time: One: Repentance before confession and the establishment of evidence, in which case it causes the fall of the hadd. Two: Repentance after confession, in which case the ruler is free between pardon and execution of hadd. Three: Repentance after the presentation of evidence, in which case repentance has no effect on the abolition of punishment. It should be noted that repentance has no effect on the abolition of the punishment of some crimes, such as apostasy from nature, it has more power over the punishments of the ruling ta'zir, and in spite of the material it can reduce or pardon the punishment. Most of the Imami jurists have a common view on the repentance of the offender, and according to the well-known view of the jurists, Iran's criminal law has been developed. And in 1392, the laws related to repentance, which were previously scattered, were expressed in a centralized manner and in one place, from Articles 113 to 119.

Key words : The effect of repentance , the fall of punishment , the offender , the limits , the punishments.

Introduction

Repentance is one of the examples of divine mercy and is an opportunity for rebellious people to return from the path of sin and transgression and provide the means of divine forgiveness and satisfaction. In the Qur'an and hadiths, one of the effects of repentance is the divine forgiveness of the punishment of the Hereafter. , And the Islamic ruler can also forgive the offender if he repents? Will the repentance of the criminals invalidate their punishment or not? Since punishment is one of the ways to protect society from the bite of criminals and perpetrators of crimes, if the punishment is abolished, will the purpose of the punishment be achieved? This article has been compiled with the aim of explaining the sayings of the jurists and the relevant laws of Iran about the cases of abortion and non-abrogation of punishment by repentance.

The concept of punishment and repentance

The concept of punishment in jurisprudence and law is the same as the literal meaning of punishment, ie rewarding and punishing acts, although in jurisprudence and law the use of this word is more used in punishing the offender and punishing him for committing a criminal act, in books. Law is about punishment: it is a field of public law that contains rules and regulations that regulate and coordinate the types of crime and execution of punishment in the country, and its purpose is to prevent operations that are considered to be disruptive of social order, and in two The form of criminal law and its substantive law are divided, the first of which is called criminal procedure and the second is called substantive criminal law (Aliabadi, ١٩٨٩, vol. ٢, p. ١).

Repentance is expressed in literal books either in the absolute sense of recourse and return, or in reference to sin and transgression. The book Al-Furooq Al-Lughuyeh states: "The fact that some lexicographers have taken repentance to mean the return of sin must be considered a general use in a specific sense" (Askari, 1412, p. 194).

Repentance in jurisprudential terms is: "Repentance from sin because it is disobedience to God and the decision to return to it" (Alam al-Huda, 1415, vol. 2, p. 266).

Allameh Jazayeri also considers repentance as regret of an ugly act due to its ugliness. (Seyyed Abdullah Jazayeri, p. 67)

In the above cases, repentance means the specific meaning of recourse, that is, recourse to sin and transgression, and if we consider the

specific meaning as a literal meaning, as some lexicographers have said, it should be said that the use of repentance in this sense will no longer be a term. In other words, in Islamic sciences, the same literal usage is used, and this usage means the absence of a specific term meaning in this word, but the use of repentance in returning from sin will be the same as the literal meaning, while it should be said that The books have mentioned that quoting the meaning in Islamic law is for the word repentance, because repentance in this sense has not existed in other laws, so in our opinion, this word literally means return in the general sense, and in jurisprudential terms it is a special return. Which has terms and conditions and effects on it, including the fall of punishment and the return of justice.

In jurisprudential sources, sins are mentioned that do not accept repentance. These sins are: imprisonment, apostasy, dawn, and intentional murder of a believer because of his faith. Regarding Sahar, the Imams consider the repentance of a sorcerer to be the annulment of previous sorcery and abandonment of sorcery, and regarding the repentance of a person who kills a believer because of his faith, most jurists believe that his repentance will not be accepted. , ١٣٨٩, c ٨, p. ٣٧٤.)

According to jurists, repentance is defined as: "Repentance is the return of sin and repentance from disobedience to God, the main pillars of which are three things: 1- Knowing that God disobeyed in the past, 2- Repentance of action, 3 "It's time to dump her and move on." (Golduzian, 2005, General Criminal Law, p. 172)

Therefore, what jurists say in the definition of repentance is the same as the definition of repentance of the jurists, that is, the return from sin and transgression.

In the following article, the conditions for repentance, the effect of repentance on the abolition of limit punishments before and after proving the crime, then the effect of repentance on ta'zir punishments from the perspective of Imami jurisprudence and Iranian subject law are examined.

Section I: Conditions for Repentance

In the narrations, elements and conditions have been mentioned for repentance, without which no real repentance would have taken place and it would have been incomplete. From repentance, there are six stages for repentance and intercession, which are:

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- 1- Repentance and remorse for past sins.
- 2- Strong determination not to return to sin.
- 3- Paying the salary that he has lost from the people, until he becomes sure of his innocence.
- 4- Performing divine rights and compensating for abandoned duties.
- 5- Melting the meat that has grown from haram to the border of growing fresh meat on the body from halal.
- 6- Taste the suffering of obedience to the limbs and joints, instead of enjoying the sins of the past.

In the book of forty hadiths of Imam Khomeini, the seventeenth hadith is dedicated to the discussion of repentance. While explaining this hadith, he says: The first and second cases can be considered as essential elements, the third and fourth cases can be considered as conditions of correctness, and the fifth and sixth cases can be considered as conditions of complete repentance. (Imam Khomeini, 1993, p. 275)

In general, repentance may be in the right of God or in the right of the people, and each type has its own conditions, which are:

A) Conditions for repentance in the right of God:

Repentance is achieved in the name of God if the repentant person repents of his sin and decides to leave the sin and must compensate for the religious acts that have been made up for him, such as prayer, fasting, Hajj, khums, etc. He should seek forgiveness by making up for worship, and in case of an apology.

And about the prohibitions that he has committed, such as adultery, sodomy, drinking alcohol and other prohibitions that have the aspect of God's right, he should express his remorse and resolve to leave.

B) Conditions for the realization of repentance for the rights of the people:

If repentance in crimes related to the rights of the people is realized, which compensates for the rights that it has lost from the people, and satisfies the rightful owners, in general, the rights of the people are divided into three types:

A) The material rights of the people, in which case they must return all the material rights of the people who had wrongfully seized them to their owners, for example, return the stolen property and usurped property, and in case of loss, if it is like, its price and if it is a guardian, its price. If he does not have the financial means, he should ask for forgiveness and ask the owner of the property for permission and promise

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his God that if he is able, he will return the people's property, and if the owner of the property dies, he will go to the heirs and settle with them. And if there are no heirs, go to the ruler of Sharia.

Two) The right of the spiritual people: If he has lost the honor and thoughts of the people, he should repent and make amends, for example, if he has told a lie and misled the people, he should correct it, or if he has slandered or absent someone, he should do so appropriately. To compensate.

Three) Physical right of the people: If a person intentionally kills someone or commits a crime on another body, retaliation should be taken, and if someone is not aware of this and wants to repent and regret, and is determined not to return, then The condition for the correctness of his repentance is that he submits himself to the guardian of the tail and the insane for retribution, and in the case of unintentional murder and crime, the truth of repentance is the same (Ardabili, 1403, vol. 12, p. 394; Najafi, 1404, vol. 41). P. 111; Bojnourdi, 1401, vol. 7, p. 310)

What we are trying to find in this research is the place of repentance in abolishing the punishment of the first type of punishment, that is, the issues related to the right of God, because in the right of the people, repentance alone is not the only punishment and must compensate the damage or obtain the consent of the rightful owner. And when the owner of the right has reached his right or passed away, the issue of repentance is not raised, so the place of repentance in abolishing punishment is usually about the right of God.

Section II: The time of repentance and its role in the abolition of punishment

The most important issue in accepting or not accepting repentance is when the offender repents because repentance may be before or after the crime has been proven, and in each case the way to prove the crime may be through confession or evidence. The sentence of repentance will be different in each, so we will examine the different issues separately.

A) Repentance before arrest and proof of guilt

In this case, the Imami jurists believe that repentance before the arrest and proof of the crime causes the punishment to fall (Khoei, 1410, vol. 1, p. 185).

Some jurists believe: "If a person repents before the resurrection, the punishment will be removed from him to any extent or ta'zir." (Tusi, 1400 AH, p. 714)

As some jurists say: "If a person commits adultery and repents before the insurrection, his punishment will be nullified." (Ibn Braj, 1406, vol. 2, p. 521) and "If there is repentance before the insurrection, the punishment will be nullified, whether it is a stoning punishment or not." (Haeri, 1418, vol. 15, p. 472)

And some have claimed consensus: "According to all jurists, if a drunkard repents before the insurrection, the punishment will be revoked because of repentance, unlike Ibn Zohreh and Abu al-Salah Halabi." (Isfahani, 1416, vol. 10, p. 562)

Evidence of the words of the jurists

The proof of this promise is the verses and narrations and the consensus of the Imami jurists. Some verses of the word of God which somehow indicate the punishment due to repentance before arrest and proving the crime are:

- 1) Verse 16 of Surah An-Nisa', which says: "And among you, those men and women who (do not have a wife, and) commit that (ugly) deed, annoy them, and if they repent, and correct themselves, "Forgive God, for he is repentant and merciful."
- 2) Surah Al-Ma'ida, verses 33 and 34, which states: , Or be exiled from that land. This is their disgrace in this world, and for them in the Hereafter will be a great punishment, except those who repented before you reached them, and you should not impose a limit on them, because you should know that God is Forgiving and Merciful. »

The second verse is explicit in accepting repentance before the execution of the hadd, although it is reserved for the chapter on moharebeh. Hadd.

There are also narrations about the abolition of the punishment of the offender before the proof of the crime, some of which we will mention:

- 1- Amir al-Mu'minin Ali (as) says: "In any case, repenting a disobedient person to me is better than performing hadd on him" (Klini, 1407, vol. 7, p. 188)
- 2- Sahih Ibn Sinan from Imam Sadegh (as), who said: "If a thief repents and returns the stolen money to its owner, there is no punishment for amputation." (Previous, vol. 7, p. 220)

These were general narrations about repentance, and there are some narrations about repentance regarding some punishments that were not mentioned for brevity.

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In the Islamic Penal Code adopted in 1991, it has provided provisions related to repentance. Although the Islamic Penal Code adopted in 1392 expressed the scattered provisions of repentance in a centralized manner, in the 1991 law, in some cases, it explicitly accepts the offender's repentance and abrogates him if there is repentance before the testimony is given, there are the following legal provisions:

- 1) Article 81 of the Islamic Penal Code: "Repentance of a man or a woman before the testimony of a martyr is the Muscat of Hadd, but his repentance after the testimony of Muscat is not Hadd."
- 2) Article 125 of the Islamic Guidelines, which considers the repentance of the perpetrator of sodomy or tafkhiz or the like before the testimony of Muscat Hadd, but after the testimony it is not considered Muscat Hadd.
- 3) Article 132 of the Islamic Penal Code: "If the prostitute repents before the testimony of witnesses, the hadd will be revoked, but repentance after the testimony will not cause the hadd to fall."
- 4) Article 181 of the Islamic Penal Code: "If a person who drinks wine repents before testifying, the hadd will be revoked, but repentance after the testimony will not cause the hadd to fall."

All the above legal articles refer to the abolition of the punishment of the offender if repentance is achieved before the testimony of the witnesses, each of which has considered specific examples, but in the case of repentance, despite the fact that Article 211 of the Law on Limits and Retribution is approved. In 1982, it was clear that the repentance of the enemy before his arrest would lead to a drop in punishment, but the Islamic Penal Code adopted in 1991 did not pay attention to the issue of repentance of the enemy, although Islamic jurists, both Shiites and Sunnis, agreed that the enemy if he repents before being arrested, his punishment will be revoked, as explicitly stated in verses 33 and 34 of Surah Ma'idah.

However, in the new Islamic Penal Code adopted in 1392, there are six specialized articles on repentance, which are Articles 114 to 120.

In Article 114, the perpetrator's repentance is accepted in crimes subject to the hadd before proving the crime. The two crimes of Qazf and Moharebeh are exceptions and repentance is not accepted in them. Of course, Note 1 of this article states that if a warrior repents before his arrest or domination, this can be considered as a hadd.

Acceptance of repentance in crimes subject to hadd is one of the strengths and citations of Islamic criminal law, which deals with the process of re-offending and reforming society, but the drafters of the bill in Note 2 of this article refer to adultery that is not abrogated by repentance. But there is no mention of the illegal act of sodomy, stating that if the offender rapes 10 people and repents, his repentance is acceptable and he will eventually be sentenced to short-term imprisonment.

It seems that this is against the Shari'ah because adultery and sodomy by force are common in terms of human rights, and on the other hand, in qazf, which is just the use of the word, he does not accept repentance and does not know the limit, but in adultery and sodomy, where the act is really done, repent. Accepts.

Since repentance can be accepted when the crime has no legal aspects and repentance is not punishable under the Muscat right of the people and only eliminates the punishment of the Hereafter, it may be argued that if Majni agrees against repentance, it is possible to abrogate the hadd and this is not correct. Because the accused or his people can pressure the victim in various ways to waive their right to complain. Therefore, it seems that more attention should be paid to this comment.

B) Repentance after confessing to a crime

Most jurists believe that repentance, if done after confession, is not the only punishment, but in this case the ruler and judge are free to choose between hadd and amnesty. The most important difference between repentance before confession and after it is that if Before confession and repentance, repentance will be achieved. As mentioned, in the first type, ie before confession, repentance is considered a punishment from Muscat, but in the second type, ie repentance after confession, it is no longer considered Muscat, but in this case, the judge will be selective. Between pardon and imposition of hadd.

Shari'a al-Islam states: "If a person confesses to a crime and then repents, the judge is free to impose a hadd punishment." (Hali, Mohaghegh, 1408, vol. 4, p. 139)

Close to the same phrase can be seen in other jurisprudential books. (Ameli, Shahid Thani 1413, vol. 14, p. 350; Najafi, 1404, vol. 41, p. 293)

There is no difference in the theory that pardon is in the hands of a judge, but it is important to emphasize that there is a major difference between repentance (repentance after confession) and repentance before

the crime is proven. The hadd is invalidated, ie repentance is directly Muscat punishment, and if the repentance is correct, the judge can not punish the offender, but in the case of repentance after proving the crime by confession, this is not the case, but repentance gives the judge the power to pardon. Or punish.

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The Islamic Penal Code adopted in 1991 on repentance after confession is as follows:

- 1) Article 72 of the Islamic Penal Code: "If a person confesses to adultery that causes hadd and confesses after confession, the judge may ask him for pardon from the guardian or grant him hadd."
- 2) Article 133 of the Islamic Penal Code: "If the interrogation is proved by the confession of a person and he repents after confession, the judge may ask the guardian for forgiveness."

In both cases, the law gives the judge the power to punish or pardon if repentance occurs after confession, and specifying amnesty implies that repentance in itself will not be a punishment.

And the Islamic Penal Code adopted in 1392 explicitly states that if the offender repents after confession, the head of the judiciary can ask for forgiveness from the Supreme Leader, and if he agrees, the punishment will be revoked.

C) The effect of repentance after proof of guilt by the witness

In this case, there are two views among the Imami jurists, one is the well-known view of the jurists who believes in the non-abolition of punishment, and the second view is the abolition of punishment after repentance, which we examine in detail in each of the two views:

Famous view

Well-known Imamiyya jurists believe that if the crime is proven by the testimony of witnesses and the offender repents after that, the Imam and the judge do not have the power to pardon, and the divine limit must be imposed, as the Shari'a says: His punishment will not be nullified. "(Hali, Mohaghegh, the former, vol. 4, p. 140)

Imam Khomeini says in Tahrir al-Waseela regarding the hadd of alcohol: "If the drunkard repents after the uprising of Bina, the hadd will not be revoked from him." (Imam Khomeini, 1385, vol. 2, p. 481)

Reasons for the popular view

In this regard, there are narrations that indicate the non-abolition of punishment, including the two narrations of the electric messenger and

the narration of Talha ibn Zayd from Imam Sadiq (as), which was stated about the judge's authority in pardoning the post-confession.

Those who believe in accepting repentance after the presentation of evidence

Contrary to popular belief, few jurists such as Sheikh Mufid believe that if the offender repents after proving his guilt through evidence, his repentance will be accepted by the Imam, the most important proof of this promise can be given as follows:

Evidence of those who believe in accepting repentance after the testament

- 1) The rule of door: According to the rule of door, if there is any doubt about the implementation of hadd on the offender, his punishment will be revoked, and here we doubt whether the hadd will be revoked with the pardon of the Imam or not, according to this rule, the hadd will be revoked.
- 2) Priority of falling of the worldly eagle from the hereafter eagle: Sheikh Mofid believes that whenever a person repents truly, the punishment of the hereafter will certainly be removed from him, even if his repentance is after the establishment of evidence, while the hereafter eagle is removed. The culprit will be removed.

3) Citing the public who used the narration of Imam Hadi (as): One of the reasons that Sheikh Mofid has relied on to prove his point of view is the general interpretation of the news of the gift of the intellect, from the words of Imam Hadi (as): “[...] If the criminal after proving the crime Through the testimony of witnesses, he repents, his repentance is accepted by the Imam [because the judge, just as he has the right to punish criminals, has the same right to pardon, unless you have not heard what God has said: this is our gift, you want it for everyone (and Forgive, and restrain from whomever you want, and there is no reckoning for you (you are trustworthy)).

Sheikh Mofid believes that the narration indicates that there is a connection between the right of the Imam to perform the hadd and the right to pardon the offender, while the general public of this news can be assigned by other narrations that do not consider amnesty permissible in case of insurrection.

Rejection of the arguments of those who believe in accepting repentance after the presentation of evidence

All three reasons for those who believe in the Imam's pardon can be considered as distorted in the sense that their first reason, which is the rule of door, cannot be cited because this rule is specific to the place where there is doubt, while in our case we are in spite of the evidence. There will be no doubt about the validity of the work.

The second reason is that there are cases in which the last eagle is eliminated, but there is a worldly eagle, for example, if a person sees his wife committing adultery, then if he kills a woman and a man, according to narration sources. He will not have an afterlife eagle, but the worldly eagle will not be removed from him.

The third reason for this statement is not justified because it is a general narration and the general narration is assigned by specific narrations in this regard, such as the narration of Imam Ali (as) who says: "Once the evidence is established, the Imam will no longer be able to forgive." (I do not attend the jurisprudent, vol. 4, p. 62)

In any case, the narration of Imam Ali (as) is special, and the narration of Imam Hadi (as) is general and always specific to the general.

Islamic Penal Code on Repentance after the Insurrection

The relevant laws of the Islamic Republic of Iran, approved in 1991, were based on the well-known opinion of Imami jurists. Some of the laws in this regard are:

- 1) Article 81 of the Islamic Penal Code: "The repentance of a man or a woman who commits adultery before testifying is Muscat, but his repentance after testifying is not Muscat."
- 2) Article 132 of the Islamic Penal Code: "If the prostitute repents before the testimony of witnesses, the hadd will be revoked, but repentance after the testimony will not cause the hadd to fall."
- 3) Article 181 of the Islamic Penal Code: "Whenever a person who has drunk wine repents before the testimony is given, the hadd will be revoked, but repentance after the testimony has not caused the hadd to fall."

In the law adopted in 1392, in Articles 114 and 115, the sentence of repentance before proving the crime and after proving by confession is explicitly stated that in the former Muscat and in the latter it can be pardoned, if there is a reference to the effect of repentance in the fall Punishment is not proven by evidence after the crime has been proven, and the lack of legal expression in this regard implies that the sentence has not been commuted.

Section III: The Impact of Repentance on the Fall of Punishment

What has been said so far has been about the effect of repentance on the fall of a punishment, but is the discussion about the fall of a ta'zir punishment the same as a punishment of punishment or different? There are three main views:

First view: The similarity of limits and punishments, according to this theory, punishments are the same as limits, and all the previous details apply here, that is, if he repents in court before the crime is proven, his repentance is accepted and his punishment is nullified, if later. If the penitent confesses, the execution of the punishment or amnesty will be at the discretion of the judge, and if the punishment is proved through evidence, there is no escape from the execution of the ta'zir punishment and the judge cannot overturn the punishment.

This view can be deduced from the words of Sheikh Mufid at the end (Mufid, 1400 AH, p. 714) and Ibn Idris in Sarayer (Ibn Idris, 1410, vol. 3, p. 478).

The second view: the lack of effect of repentance in the fall of the punishment of ta'zir, this view can be obtained from the words of the jeweler who says: "Punishment and its amount in any case is at the discretion of the judge and most of the common types are related to imprisonment" (Najafi, Ibid., Vol. 41, p. 390)

According to this view, given that the ruler, considering the expediency, can pardon or punish someone who has sinned or abandoned an obligation, whether he has repented or not.

But the problem with this view is that, firstly, in the implementation of limits that are more important than punishments, for example, in adultery, if the penitent repents before the testimony or confession, how can a person be committed who commits a sin far less than Is adultery not removed from him by repentance?

Secondly, as Abu al-Salah al-Halabi believes that the philosophy of ta'zir is to restrain and forbid sinners (Halabi, 1403, p. 416), and now, despite the repentance of the offender, there is no longer any issue for ta'zir, because the goal has been achieved.

Third view: Absolute fall of ta'zir with repentance, the first martyr says: "Ta'zir is abolished by repentance in any case, contrary to the limits which in some cases is the cause of the fall of punishment, which is repentance before the resurrection" (Ameli, the first martyr , 1403, vol. 2, p. 144)

According to this view, if the offender repents, whether before or after the proof of the crime, or if the proof of the crime is through confession or evidence, his punishment is abolished.

Article 115 of the Islamic Penal Code adopted in 2013 regarding the effect of repentance on the fall of the ta'zir punishment states: "In sixth, seventh and eighth degree ta'zir crimes, if the perpetrator repents and his remorse and correction are proven to the judge, the punishment will be revoked. In other offenses punishable by a fine, the court may apply mitigation provisions.

Note 1- The provisions regarding repentance do not apply to those to whom the provisions of repetition of ta'zir crimes are applied. »

Also, Article 19 of the same law states in the grading of ta'zir punishments: "Ta'zir punishments are divided into eight degrees ..."

Thus, the legislature has determined the scope of the effect of repentance on the fall of the punishment, and the ruling party is not so open as to abolish or enforce the punishment wherever it wishes.

Conclusion

Repentance has an effective role in the abolition of Islamic punishment, if the conditions are met, in the sense that the expression of remorse is shown on the face of a person, to compensate for past damages, not to repeat the crime, also the crime may be related to human rights and Or is it the right of God that in the right of the people, repentance should be accompanied by compensation and the consent of the rightful owner, in which case the abolition of punishment will not be for repentance but for the consent of the rightful owner, so the main issue in Muscat Repentance is mentioned in crimes related to the right of God, and if repentance is achieved, will the punishment be abolished or not? In the meantime, the time of repentance is of special importance.

If repentance is before the proof of a crime, the jurists believe in the abrogation of the crime. The first is that the proof of the crime is by the confession of the offender, in which case most jurists believe that the judge can impose punishment or pardon the offender, and finally, if the proof of the crime is done by providing evidence, the famous jurists They believe that punishment is not abolished by repentance.

But in ta'zir, since the imposition of punishment or not is by the ruler of sharia, so looking at the situation of the offender, he can impose ta'zir punishment from the very beginning or sentence the offender to innocence due to repentance or other conditions, although in the case of

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There are three different views on ta'z .r among jurists: the view that the role of repentance in ta'z .r is exactly the same as the limits.

Article sources

- Ibn Idris, Muhammad ibn Ahmad, (1410) **Al-Sarair Al-Hawi for writing Fatwas**, Qom, Society of Teachers, second edition.
- Ibn Babawiyyah, Muhammad ibn Ali, (1385), **Causes of Sharia, first edition**, Qom, School of Arbitration.
- Ibn Braj, Abd al-Aziz, (1406), **Al-Madhab**, first edition, Qom, Qom Seminary Teachers Association.
- Ibn Shu'bah, Harrani, Hassan Ibn Ali, (1404), **Tahf al-Aqool**, Ali Akbar Ghaffari's research, second edition, Qom Society of Teachers.
- Ardabili, Ahmad Ibn Muhammad, (1403), **Al-Fayeda and Al-Burhan for the explanation of the guidance of the minds**, Madarsinin Society, Qom, first edition.
- Isfahani, Fazel Hindi, (1416), **Kashf al-Latham wa al-Baham on the rules of rulings**, first edition, Qom, Qom Seminary Teachers Association.
- Imam Khomeini, Seyyed Ruhollah, (1372), **forty hadiths**, third edition, Tehran, Institute for Organizing and Publishing Imam's Works.
- Imam Khomeini, Seyyed Ruhollah, (2006) **Tahrir al-Waseela**, first edition, Qom, Dar al-Alam Press Institute.
- Bojnourdi, Sayyid Hassan, (1401), **Al-Qawa'd al-Fiqhiyyah**, two volumes, Qom, Al-Hadi Publishing, first edition.
- Haeri, Sayyid Ali ibn Muhammad Tabatabai, (1418), **Riyadh al-Masa'il fi Tahqiq al-Ahkam al-Dalil**, first edition, Qom, Al-Bayt Institute.
- Free agent, Muhammad ibn Hassan, (1409), **Shiite means**, first edition, Qom, Al-Bayt Institute, peace be upon them.
- Halabi, Abu al-Salah, (1403), **Al-Kafi fi al-Fiqh**, research by Reza Ostadi, first edition, Isfahan, Amir al-Mo'menin Public Library.
- Hali, Mohaqeq, Najmuddin, Ja'far ibn Hassan, (1408), **Sharia al-Islam fi al-Halal wa al-Haram**, Tahqiq Abd al-Hussein Muhammad Ali Baqal, second edition, Qom, Ismaili Institute.
- Khoei, Sayyid Abu al-Qasim, (1410), **Completion of the curriculum**, edition 28, Qom, published by Madinah al-Alam.
- Razi, (1379), **Nahj al-Balaghah**, Dashti translation, Mohammad, seventh edition, Qom, Mashreqin Publications.
- Shukri, Reza; Sirus, Qader, (2004), **Islamic Penal Code in the current legal order**, third edition, Tehran, Mohajer Publishing.
- Tusi, Mohammad Ibn Hassan, (2011) **Tahdhib al-Ahkam**, Khorsan Research, Tehran, first edition, Islamic Bookstore.

The Position of repentance..... (608)

- Tusi, Muhammad ibn Hassan, (1400), **The End in the Single of Jurisprudence and Fatwa**, Second Edition, Beirut, Dar Al-Kitab Al-Arabi.
- Tusi, Mohammad Ibn Hassan, (1407), **Al-Khalaf**, research, Ali Khorasani, Seyyed Javad Shahrestani, Mehdi Taha Najaf, Mojtaba Iraqi, first edition, Qom, Qom Seminary Teachers Association.
- Ameli, The First Martyr, Mohammad Ibn Maki, (1403), **Rules and Benefits**, Research by Seyyed Abdul Hadi Hakim, First Edition, Qom, Mofid Bookstore.
- Ameli, Shahid Thani, Zayn al-Din ibn Ali, (1413), **Masalak al-Afham al-Tanqih Sharia al-Islam**, first edition, Qom Institute of Islamic Enlightenment.
- Aliabadi, Abdolhossein (1368), **Criminal Law**, Tehran, Ferdowsi Publications.
- Klini, Mohammad Ibn Ya'qub Ibn Ishaq, (1407), **Al-Kafi**, research by Ali Akbar Ghaffari and Mohammad Akhundi, fourth edition, Tehran, Islamic Bookstore.
- Najafi, Mohammad Hassan, (1404), **Jawahar al-Kalam fi Sharh Sharia al-Islam**, research by Abbas Quchani and Ali Akhundi, seventh edition.
- Askari, Abu Hilal (1412), **Dictionary of Linguistic Success**, Qom, Arrangement of Baitullah Bayat, Islamic Publishing Institute, first edition.
- Seyyed Morteza, Ali Ibn Hussein (1415), **Al-Antisar Fi Anfaradat Al-Imamiya**, first edition, Qom, Qom Seminary Teachers Publication Office.