


Forgivable and unforgivable crimes in the Iranian penal system

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Abstract

In the Code of Criminal Procedure and the Islamic Penal Code the legislator's approach is to prioritize the public aspect of crime over the private aspect. As the legislator in Article 8 of the Code of Criminal all crimes have a divine aspect and in the Islamic Penal Code, the principle is that crimes are unforgivable. In fact, in committing any crime, instability in the public order of society is presumed. In this research, the forgivable and unforgivable crimes in the Iranian penal system have been studied analytically-descriptively. Consequently, the legislator's approach in not determining the exact criteria in the separation of these crimes, ambiguity in crimes that are legally forgivable, development of jurisdiction of the two criminal courts, ambiguity in how to determine the punishment for committing the crime of theft and fraud in Article 11 of the Law on Reducing the Punishment of Imprisonment, approved in 1399, failure to pay attention to public order in forgiving some important crimes such as fraud that disrupt public order and the privatization of criminal justice is considered inefficient.

Keywords: *Forgivable crimes, Unforgivable crimes, Public aspect of crime, Private aspect of crime, Law on Reducing the Punishment of Imprisonment approved in 1399.*

1. Introduction

Initially, most crimes were privately owned and there was no public or private litigation. Criminality and punishment with the formation of governments, were transferred to the government through public power. Hence, raising issues such as public order or public interest, persecution of the perpetrator was considered a right and duty for the government, and the concept of public aspect was

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created. The concept of public and private prestige and attention to personal and social interests is the basis for the formation of forgivable and unforgivable crimes in the Iranian legal system. With the passage of the laws after the Islamic Revolution, this approach underwent changes in the relevant laws. The main question of the article is what is the effect of this separation on the justice and punishment system? And whether the legislative approach is considered effective? In the terms of response and hypothesis, it can be said that the result of this separation is so important that the execution of punishments or their fall depends on the forgiveness or non-forgiveness of the victim. And in some cases, it reduces the punishment and the main condition is the use of some compassionate institutions. On the other hand, the legislature must take into account the public order and the community's involvement in important crimes and consider the plaintiff's pardon ineffective. But the legislator with the ambiguity in the position of separation of crimes, the development of the list of forgivable crimes, the ambiguity in the phrase is legally forgivable and forgiving a crime such as fraud and reducing its gross punishment without cultural support and disregard for deterrence of punishment has not taken an effective approach. Therefore, while examining its historical-evolutionary course, the criteria for determining this type of crime and the effects of this distinction, which pay attention to the victim-right in determining punishment and in the general view of the tendency towards criminal policy models, are considered in terms of critical views and gaps in the latest legislative developments in Iran.

2. Methodology

In this research, forgivable and unforgivable crimes in the Iranian penal system have been dealt with by analytical-descriptive method.

3. Results and discussion

In the method of determining crimes - forgivable and unforgivable in the legislative system of countries either the statutory method is used, which includes specifying this type of crime, or the statutory method, which includes the presentation of rules and criteria in determining the forgivability of a crime. In the Islamic Penal Code adopted in 1392, the legislature has divided crimes in this regard into three categories: unforgivable crimes, absolute forgivable crimes and conditional forgivable crimes. And in spite of the stipulation of forgivable crimes in Article 104, in Article 103, relying on the principle of unforgivability, it has determined the criterion of the human right to be a crime and the legally forgivable nature of that crime in human rights crimes. Of course, it seems that since the articles of the Islamic Penal Code or other special laws mention the forgivability of crimes of any kind (even if specified in the Shari'a), including crimes, limited crimes or subject to ta'zir on the other hand,

in crimes subject to ta'zir, according to the jurisprudential rule of "ta'zir for all forbidden acts", the acts of ta'zir are legally assigned to the discretion of the Islamic ruler, and the right of people or being the right of God does not apply to this type of crime. On the other hand, there was no need to lay down the rule provided for in Article 103 and the method of legal calculation used in Article 104 seemed sufficient. Regarding the conditional pardon, the legislative approach is flawed. Because, on the one hand, in case of non-fulfillment of the condition or suspension against the defendant, in addition to damages to the victim, it will cause a delay in the trial. On the other hand, the legislature has not set a time for the fulfillment of the condition suspended. Therefore, it seems necessary to establish a unified procedure in this regard. With the passage of the Law on Reducing the Punishment of Imprisonment, approved in 1399, the scope of forgivable crimes was expanded. However, this development is desirable and defensible in the position of encouraging the perpetrator to satisfy the plaintiff by compensating his losses.

However, the prediction of some criteria and criteria regarding the pardon of some crimes -Including setting a financial quorum for it, and generalizing this condition to consider forgivable the beginning of the crime of these crimes, which sometimes it is not possible to assess the amount of property at this stage- against property and ownership is criticized. Therefore, it would have been better for the legislator to be content with the condition of the victim and to compensate him. On the other hand, it was expected that the development of a new legislature in this regard would include some computer crimes, especially crimes whose traditional form is forgivable.

4. Conclusion

1. The legislator, by maintaining the principle of unforgivable crimes based on Article 19 of the Islamic Penal Code of 1392, shall apply the rule for forgivable or unforgivable crimes.
2. The legislature should consider his character and dangerous state in punishment for crimes that he deems forgivable, such as theft or fraud with the authority of judges. Not to reduce the punishment by half in all crimes, as noted in Article 11 of the Law on Reducing the Punishment of Imprisonment in 1399.
3. Explain a more precise rule for distinguishing forgivable or unforgivable crimes or use the counting method. And remove the vague phrase legally forgivable.

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