

Short Research Article

Characteristics and effects of Amnesty and Pardon

Abstract

Forgiveness is one of the most important concerns in criminal law, with the result that Forgiveness helps the community achieve stability, rehabilitation, and well-being by allowing the offender to be improved. Amnesty is granted under the law and is considered a cause of prosecution and dismissal of criminal proceedings. Pardon is only oversight of punishment and is subject to revocation, on the recommendation of the judiciary and with the approval of the head of state. In amnesty, prosecution and criminal proceedings are dropped, the sentence is suspended, and the effects of the conviction are removed. Pardon also removes the effects of a conviction. But it does not affect compensation and debt. Amnesty is applicable at all stages of a criminal case (detection, investigation, prosecution, and execution of a sentence), whereas a pardon is applicable only after the issuance of a final order and can't be applied before.

Key words: Amnesty, criminal claim, Forgiveness, Pardon.

Introduction

الحمد لله رب العلمين والعاقبة للمتقين والصلوة والسلام على رسوله محمد وعلى آله واصحبه اجمعين

Forgiveness is one of the means of criminal politics, used in connection with certain crimes and offenders. Simply, forgiveness is a basis for expressing the mercy and compassion of criminals. The use of this foundation is usually aimed at modifying severe punishments, taking into account the political aspects, compensating for judicial errors, satisfying public opinion, avoiding the death penalty, and ultimately encouraging criminals to behave well in prison and practice good character and improve their condition. Forgiveness has been practiced in different religions, communities and tribes since the very past, and has been applied in various ways. Sometimes, after the issuance of a final judgment, it is found that the execution of the sentence loses its social interest, and has nothing but the destruction of the morale of the convict, especially at the time of issuance of the order when the prescribed punishment agrees with public opinion and threat. But later with the emergence of new ideas and thoughts in the public opinion, the society looks at it in terms of forgiveness and forgiveness compared to the past acts and considers the perpetrators of such crimes as worthy of relief. In such cases, it is preferable not to impose or, at the very least, to reduce the penalties to avert negative consequences. So, in this article, we'll go through the many types of forgiveness and their definitions, then the characteristics and impacts of amnesty and pardon, and lastly, we'll give our findings, arguments, and recommendations.

Reasons for Research Authority

- 1- Explaining the characteristics and implications of forgiveness, particularly amnesty and pardon, in criminal, civil, legal, and family disputes and issues.
- 2- Explain how amnesty and pardon restores the community's security, prosperity, and comfort while also improving the offenders and reintegrating them into society.
- 3- Explaining the distinctions between amnesty and pardon, as well as their characteristics, effects, and consequences.

Problems and Challenges

During our research about this topic, we've run into several challenges. Aside from a lack of a well-equipped library, few legal texts can be used accurately, and even if there are, they are not written by a very strong person. There is also no material on the internet in Pashto that addresses the types of forgiveness, their characteristics, and their consequences, to solve these problems, we worked hard and tried every possible way.

The Importance of Research

The debate over forgiveness and forgiveness is one of the most important in all of human history. Forgiveness fosters love and affection, which is a natural human trait, it does not cause conflicts and fights that end in disaster.

Forgiveness does not occur by chance, and conflicts and claims do not end without a reason, and if they are not managed properly, they can go down the wrong path and lose their way.

As a result, it is necessary for humans to collaborate in order to transform the state of war and conflict into one of the best acts of worship and obedience.

Forgiveness has been practiced in different religions, communities and tribes since ancient times, and has been applied in various ways. Sometimes it is issued after a final order, it is found that the execution of the sentence loses its social interest it has nothing, but the destruction of the convict's morale, especially when the sentence imposed agrees with public opinion and intimidation. However, as new concepts and thoughts arise in public opinion, society views it in terms of amnesty and forgiveness for past acts and deems the perpetrators of such crimes to be deserving of relief and expediency, which is appropriate in such instances. That is, the punishment imposed cannot be carried out or, at the very least, is reduced, to avoid negative consequences that are why it is important to include the issue of pardon and amnesty in educational areas such as schooling and higher education. It is a way that encourages every student to study extensively in this field.

Hypothesis

- 1- If amnesty is issued under the law, can it eliminate the criminal nature of the criminal act?
- 2- Assuming that an amnesty has been issued after the trial and the court has ordered the payment of costs, will this amnesty affect the court's ruling on court costs or not?

Questions

What types of convicts can benefit from pardon and amnesty?

Can the perpetrator benefit from a pardon before the issuance of a court order?

Is it possible for an amnesty to eliminate all original, consequential, and complementary punishments, as well as the consequences of conviction?

A look back at previous Research

Much has been written about amnesty and pardon, particularly in the areas of criminal, civil, and family laws; however, there has yet to be a comprehensive study of the characteristics and impacts of pardon and amnesty. It means many criminal and legal books and articles, such as procedures of criminal and civil courts, civil and criminal laws, and other criminal and legal publications, address amnesty and pardon issues. The Penal Code, for example, has a few legal provisions dealing with amnesty and pardon in the Criminal Procedure Code, as well as several Iranian, Arab, Western, and mainly Afghan lawyers and writers on criminal, civil, family, and commercial concerns. On these themes, he has written and discussed lawsuits and forgiveness. There is no article on the characterises and effects of pardon and amnesty, as I noted earlier. As a result, I am hopeful that I will be able to write honestly about the characterises and effects of both pardon and amnesty.

Materials and procedures

Our study is based on a library search. In addition to Islamic Sharia and constitutional law, we used a variety of books and websites.

We have attempted to make every authoritative source available for the completeness of my subject, and we have used several sorts of oaths, implying that we have made our ultimate human endeavor so that the subject may be analyzed from all angles and the reader can be informed.

Definition of forgiveness: Forgiveness can take several forms, including bounty, gift, mercy, grant, pardon, amnesty, remission, remittal, absolution, covering, and vanishing, which is the best of all. Forgiveness is a term that refers to a decision made, even with the agreement of governmental institutions, to end the prosecution of the accused or forgiveness all or part of the prisoners. The authority to issue forgiveness decrees is determined by the responsible authorities under each country's constitution, and it emerges in several ways. Forgiveness, investigations, and criminal charges are all dropped. It can overturn court verdicts, lessen penalties, and even eliminate subordinate, supplementary sanctions and security measures in some situations. (8:511)

Types of forgiveness

Under each sort of forgiveness, there are two types: Pardon resulting from the action of the head of state, and Amnesty resulting from the action of Parliament or the National Assembly.

(6:108)

First - Pardon

The Pardon, which is also provided for in Articles 348 to 354 of the Afghan Criminal Procedure Code, is the oldest and most basic form of forgiveness. We look at the following four topics under four sections to better understand pardon: 1- the meaning of pardon. 2- Features of a pardon. 3- The impacts and ramifications of pardon.

A. The Meaning of Private Pardon

Article 348 of Afghanistan's Criminal Procedure Code explains pardon as follows:

1- A presidential decree establishes a pardon, under which the cost of the final penalty is waived, or some of the original sanctions are waived, or a lighter punishment is substituted for the one prescribed by law. 2- pardon does not exclude complementary, consequential penalties and security measures, as well as the penalties imposed on them, and does not change the penalties already imposed, unless the pardon decree has been approved against them. (4:348)

On this basis, private pardon is carried out permanently for one of three purposes: 1. to abolish all punishment. 2. Abolishing part of the punishment. 3. Substitution of punishment, namely changing heavy punishment to light punishment.

B. Characteristics of Pardon

Pardon has a number of characteristics; the most important of them are as follows:

1- The authority for pardon always is the head of state in every country and cannot be exercised by any other authority except the head of state. 2- Pardon is always about punishments, not crimes; in other words, pardon has no effect on or eliminates crimes. 3-Pardon can never be granted in Sharia proceedings, but only in the case of criminal offenses. 4- There are two categories of penal offenses: transmissible and non-transgressive; bearable punishable and non-punishable. (6:110)

5- Pardon is only granted when a court order has been issued, not before. 6- Even if the relevant sentence is completely abolished, Pardon cannot overturn the previous conviction and clear the person's criminal record, because if the person commits the crime a second time in the future, the previous offense counts as a repetition of his crime, and the person is labeled a repeat offender. 7- Pardon is usually conditional on certain factors, such as the type of crime, the severity of the sentence, and the performance of financial requirements, such as the offender's compensation or acquittal, receipt, payment of court expenses, cash, and fines, among other things. 8- Pardon usually does not infect the accomplices as well as the perpetrators, unless they are mentioned in the pardon decree. 9- Pardon does not affect certain matters, such as the following:

A- In terms of consequential and complementary penalties. B- In relation to the relevant part of the preceding sentence. C- In terms of security measures. D- In relation to court costs. E- Compensation for damages against the victim or offender. (1:256)

C. The Legal implications and consequences of Pardon

Pardon usually has the following legal implications and consequences:

Pardon, as noted earlier, only affects punishments, namely removes all or part of a person's existing punishment or replaces him or her with another light punishment. But pardon by no means do I want to convey that I recommend for the mother to be inactive:

1. Pardon cannot eliminate the crime, on the basis of which the person's criminal office cannot be cleared, but the person's respective conviction remains the same and is accountable for the person's future recurrence of the crime. 2. If Consequential or complementary punishments or security measures apply in addition to the original penalty, pardon cannot eliminate them, unless their pardon is specified in the pardon decree. (5:168)

Second: Amnesty

The second type of forgiveness is amnesty. In order to better understand amnesty, it would be good to study the following topics separately:

A. The Meaning of Amnesty

In fact, as previously stated, the earliest Forgiveness is the pardon; that is, only forgiveness existed in the past, but with the passage of time and, in particular, the Great French Revolution (1789) later, in addition to the pardon, and in light of a number of criticisms of the pardon, another type of forgiveness, known as the amnesty,

was introduced in France. Since then, it has been embraced in other countries, to the point that amnesty is now accepted in every country on the planet. (11:148)

However, amnesty can be defined as follows:

Amnesty in the form of law is an act of the National Assembly or Parliament that forgives persons for a specific offense.

Usually, amnesty comes after certain political tensions, changes, or revolutions that have resulted in certain crimes, such as burglary, embezzlement etc., which often occur in groups and in general, the aim is to eradicate the bitter memories created by the occurrence of pre-determined crimes and to safeguard the general interests of the community. (2:156)

B. Characteristics of Amnesty and their differences from the characteristics of Pardon

Amnesty, like a pardon, has a number of characteristics, the most important of which are as follows:

- 1- As previously stated, the head of state has authority over pardon, but the National Assembly or Parliament has authority over amnesty. Pardon is granted by the head of state, but amnesty is established by National Assembly law.
- 2- Pardon is typically associated with punishments, whereas amnesty is typically associated with crimes. In other words, amnesty is usually granted for a specific crime. Alternatively, certain crimes are absolved.
- 3- Although amnesty arises in connection with crimes, amnesty does not cover all crimes. This means that amnesty can only be applied to Tazeeri offenses, not Shariah offenses. Furthermore, Pardon in connection with punishments is not applicable in Shariah punishments, but only in Tazeeri punishments. (6:122)
- 4- As there are two types of criminal offenses: tolerable crimes and intolerable crimes. Amnesty cannot be established in criminal offenses that are tolerable, but it is applicable only in criminal offenses that are not tolerable and are inviolable. Furthermore, pardon is not possible in the case of penalties for tolerable criminal offenses; rather, pardon is only possible in the case of penalties for non-tolerable and inviolable criminal offenses.
- 5- Criminal proceedings, as we all know, are divided into three stages: pre-criminal case, criminal case, and post-criminal case. Pardon is granted only at the end of a criminal case, namely, after a court order has been issued, but there is no such thing as amnesty, but amnesty can be granted at any time after the offense has occurred, namely the triple-phase of criminal proceedings can be carried out at any stage. Of course, the effects and consequences of amnesty differ somewhat depending on the stages of criminal proceedings, as illustrated by the various hypotheses below. (8:260)

The effects and consequences of amnesty are studied and researched at all stages of criminal proceedings here, under various hypotheses.

Hypothesis 1: Amnesty occurs after the offense has been committed but before criminal proceedings begin: According to this theory because the offense has been abolished by amnesty, no further criminal proceedings can be initiated.

Hypothesis 2: Amnesty occurs after the commission of the crime and the initiation of criminal proceedings in the pre-trial stage: According to this hypothesis, criminal proceedings commenced immediately upon the announcement of amnesty quickly comes to a halt and falls.

Hypothesis 3: Amnesty occurs during a criminal investigation or trial: According to this theory, even after amnesty, the criminal proceedings that have been initiated are immediately halted, and based of these proceedings, it's not possible to create legal effects and consequences.

Hypothesis 4: Amnesty occurs after the criminal case stage. In this case, amnesty occurs after the court's decision has been overturned, before the order is executed, or during the order's execution. It is done on the basis that if the order's execution has not yet begun, it cannot be started, and if it has begun, it will be stopped immediately, and the individual will be released immediately in both situations. (9:147)

- 6- In a pardon only punishments are erased and the crime is not abolished. Specific crimes or offenses committed under the amnesty are eliminated and obliterated in amnesty.
- 7- If a person's criminal status has not yet been registered with the criminal office, it cannot be registered after amnesty, and if it has been previously recorded, it is cleared, and the person will be charged with a repeat offense in the future, it does not count as a person's criminal record in other instances. Pardon, on the other hand, cannot wipe a person's criminal record. (10:152)

- 8- The consequential and complementary punishments are not removed in pardon, as stated, but in amnesty, the crime committed is automatically abolished, and the consequential and complimentary punishments are derived from the original crime, also vanishes when it comes to punishment.
- 9- Partners and accomplices in a Pardon are not eligible for Pardon unless their names are mentioned in the Pardon decree, although partners and accomplices in a broad amnesty are eligible for amnesty as well, amnesty is granted to the actor. (3:243)
- 10- A variety of requirements are normally considered in a pardon, as read, such as the seriousness of the offense or the return of improving to the person, but there are none in amnesty, is not taken into account, but just the sort of crime and the community's overall interests, as previously stated.
- 11- In pardon, the names of persons eligible for forgiveness are usually listed, but in amnesty, anybody who commits the same charge or offenses at a specific period is usually included. (6:187)
- 12- Pardon does not revert to the previous one, namely it does not have retroactive effects, but has an effect on the future, and namely it is applied after the date of pardon. For example, a person who has been sentenced to ten years of imprisonment and is subject to a pardon after six years is only forgiveness for the next four years, and this pardon applies to a person's previous six years of imprisonment cannot affect. Amnesty, on the other hand, is one of the cases that affect past crimes or offenses, and does not affect the future. That is, in amnesty, certain crimes that have already occurred are eliminated, but if the same crimes occur after amnesty, they are legally considered a crime and are punishable.
- 13- Unlike pardon, which often focuses on the interests of private individuals, but also exceptional circumstances such as the prevention of violence or conflict, the public interest is also considered, In amnesty namely, as the name implies, the general interests of the community are usually taken into account.
- 14- Because the interests of private individuals, rather than the public interest, are frequently taken into account in a pardon, the pardon does not belong to the public order and thus does not have a binding form. It refuses to accept it, and self-interest is usually created for the public interest, based on which amnesty actually depends on public order, and thus amnesty is a mandatory aspect. Amnesty is enforceable on this basis on all parties involved, and if a person willingly wishes that amnesty does not apply to him, he should do so because of the amnesty's compulsion, this is not acceptable.

C. Legal implications and consequences of Amnesty

The most significant effect of amnesty is the annihilation of all its effects and consequences, including specific crimes or offenses committed during a specified time period. (7:127)

Result

The following conclusions can be drawn from the definitions, the characteristics, and the effects of pardon and amnesty:

Forgiveness is divided into amnesty and pardon parts. If forgiveness is the blinding of all or some of the punishment of a convict, it is a pardon, but if the crime is forgotten or ignored, then it is amnesty. According to Islamic criminal law, Forgiveness, whether amnesty or pardon, is the prerogative of the leader of the community, who implements it in the best interests of the community; Therefore, in Islamic law, Forgiveness for convicts and criminals is accepted in various punishments with special conditions, narrated by the Prophet (peace and blessings of Allah be upon him) and Hazrat Ali (May God be pleased with him) in this case, and pardon from the point of view of criminal law, forgiveness is the prerogative of the leadership and the final order is enforced after the president and is not capable of enforcing it before and suspends the execution as far as amnesty is concerned and its acceptance is compulsory for the offender are not, and in most cases, pardon is demanded by the defendant. Amnesty quashes prosecution and eliminates the effects of convictions. Amnesty transmits convictions, but it does not affect compensation and debt. Therefore, from the point of view of criminal law, amnesty includes all persons, removes the effects of conviction in addition to abolition and elimination of punishment, and does not interfere with criminal description and title. This is because the minimum number of criminal descriptions and titles remains and all those who commit it after a certain period of time are punished according to the rules, especially the amnesty on the rights of persons who revoke the sentence. The cause cannot be invalidated unless the law specifies, Otherwise amnesty, therefore, does not affect the rights of persons affected by the crime; because when the crime is eliminated, the actual effects that caused the damage are on their own.

Discussion

Following the characteristics and legal implications of pardon and amnesty, the question that comes to our mind is, how does amnesty and pardon affect court costs and claims? Another question is whether the amnesty removes the criminal description of the crime? In response to the first question, it was stated that, if amnesty has been created after the trial and the court has ordered payment of expenses, then the amnesty has been ordered by the court in respect of court costs. However, in this case, the amnesty does not affect the court's ruling on court costs, even if the person has not yet paid court costs, the person is still liable to pay them. Also, pardon does not affect court costs, which, of course, is similar to amnesty and a pardon, That is, a person who has been harmed by a crime, if he wishes, can claim his right to a slave. pardon, however, is ineffective in the case of damages as a result of a rightful claim or private claim.

In answer to the second question, does the amnesty remove the criminal description of the act or not? There are differences of opinion among lawyers. However, since amnesty eliminates all traces of the crime, it eliminates the principal, consequential, and complementary punishments, including the accomplice. Therefore, amnesty also degrades the definition of a criminal act.

Conclusion

The differences between pardon and amnesty can be better understood by its characteristics. In amnesty, criminal claims, and prosecution are dropped at any stage. But pardon is applicable in the fall and mitigation of punishment after final and final court rulings. Also, amnesty is issued by law and pardon is issued by presidential decree.

Suggestions

1. Because forgiveness of convicts, rather than punishing them, have positive repercussions and consequences in terms of reforming offenders, retaining their social status, and boosting the community's security and well-being. As a result, it is suggested that the legislature take the specification of this case into account in all penalties.
2. If the head of state can forgive and justify the punishment on the basis of existence of suspicion, or if the punishment is useful for the improving of the offender, then the offender must be punished.
3. One of the prohibitions on amnesty should be the repetition of the crime.

References

1. Ardabili, Mohammad Ali. (1383). General Criminal Law. Volume 2, Seventh Edition, Tehran: Mezon Publishers.
2. Ayubi, Fazel Rahman, (1396). Criminal Procedure courts. First Edition, Kabul: Publishers, Mostaqbal Tolana.
3. Akhondi, Mahmmod. (1385). Criminal Procedure Courts. Volume 2, Edition 12. Tehran: Ministry of Culture.
4. Ministry of justice (1392). Criminal Procedure code. Official Gazette No 1. Kabul: Government, Printing Press.
5. Judicial Training Course. (1387). General Principles Of Criminal Law. Kabul: Afghanistan Justice Project.
6. Danish, Hafizullah. (1399). Criminal Procedure Courts. Volume 2, First Edition, Kabul: Publishers, Mostabal Tolana.
7. Rasuli, Mohammad Ashraf. (1383). Causes Fall Punishment. Kabul: Publishers, Fasl Center.
8. Shambiyati, Hoshang. (1382). General Criminal Law. Volume 2, Tehran: Publication, Majd.
9. Alam Stanekzai, Mohammad Zarif. (1396). Principles of Criminal Proceedings And Trails. First, Edition, Kabul: Publishers, Resalat Hamid Tolana.
10. Gholami, Hamidullah. (1400). Description of Criminal Law. Volume 1, First Edition, Kabul: Maqsodi Publishing House.
11. Walidi, Mohammad Saleh. (1382). General Criminal Law. Tehran: Publications, Khorshid.