

## Short Research Article

# Characteristics and effects of Amnesty and Pardon: in Reference to Afghanistan

### 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 the only oversight of punishment and is subject to revocation, on the recommendation of the judiciary and with the approval of the head of state. When amnesty is granted, prosecution and criminal proceedings drops, the sentence suspends, and the effects of the conviction removes. Pardon also removes the effects of a conviction. However, 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.*

**Keywords:** Amnesty, criminal claim, Forgiveness, Pardon.

### Introduction

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. Later with the emergence of new ideas and thoughts in public opinion, 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 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 restore 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 During the study, we've run into several challenges. Due to the lack of a well-equipped library, few legal texts were found, and even if there are, they are not written by well-known people. 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. It is recommended to further investigate the current topic in more detail and in-depth.

### **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, humans must collaborate 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, the final ruling loses its social significance because of the lack of proper implementation. It destroys the convict's morale, especially when the imposed sentence is mandatory and appropriate as well as corresponding to the intimation or crime.

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, in case of oppressive laws, better not to apply or, at the very least, has to be reduced to avoid negative consequences. Hence, it is important to include amnesty in the curriculum not only at school level but also at the university level in higher education. It is a way that encourages every student to study extensively in this field.

### **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?

### **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?

### **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 characteristics 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 characteristics 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.

### **Characteristics and effects of amnesty and grace**

**The 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. determining and granting amnesty is the responsibility of a competent authority who is in power in accordance the provisions of each country's constitution and widely varies.

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 (Shambiyati, 1382, P. 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 (Danish, 1399, P. 108).

#### **1. Grace (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**

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

1- A presidential decree establishes a pardon, under which the value of the final penalty is waived in whole or in part from the original sentence, , or the substitution of a milder punishment for the one identified 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 (Ministry of justice, 1392, P. 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, that is substituting heavier punishment for lighter 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 (Danish, 1399, P.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 (Ardabili, 1383, P. 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 replacing him or her with another light punishment. Nevertheless, pardon by no means do I want to convey that I recommend for the mother to be inactive:

1. Pardon cannot eliminate the crime, based on 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 (Judicial Training Course, 1387, P. 168).

#### **2. Amnesty**

The second type of forgiveness is amnesty which is detailed as follow

##### **A. The Meaning of Amnesty**

As previously stated, pardon is the earliest type of forgiveness existed and well-known in the past. However, with the passage of time particularly during the Great French Revolution in 1789; it was largely criticized which resulted in a different of forgiveness called amnesty. . Since then, it has been embraced in other countries, to the point that amnesty is now accepted in every country on the planet (Walidi, 1382, P. 148).

However, amnesty can be defined as follows:

Amnesty in the form of law is an act of the National Assembly or Parliament that forgiveness 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 (Ayubi, 1396, p. 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. The president of the state grant pardon while the National Assembly establishes amnesty.
- 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(Danish, 1399, P. 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 (Shambiyati, 1382, P. 260).

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

**Hypothesis 1:** Amnesty is granted before the criminal proceedings when crime is committed. According to this theory, amnesty abolishes the offense, so no further criminal proceedings is needed to 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 being initiated are immediately halted. Based on these proceedings, it's not possible to have 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 (Alam & Mohammad, 1396, P. 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 report has not been registered with the criminal office, it cannot be registered after amnesty. If it has been previously recorded, clearly the person will be charged with a repeat offense in the

future which does not count as a person's criminal record in other instances. Pardon, on the other hand, cannot wipe a person's criminal record (Gholami,1400, P. 152).

- 8- The consequential and complementary punishments are not removed in pardon, as stated, but in amnesty, the crime committed is automatically abolished. The consequential and complimentary punishments are derived from the original crime which 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 (Akhondi, 1385, P. 243).
- 10- A variety of requirements are normally considered in a pardon, such as the seriousness of the offense or personal improvement. None of these are considered in amnesty though the sort of crime and the overall interest of community is valued.
- 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 (Danish,1399, P.187).
- 12- Pardon does not revert to the previous one, that is it does not have retroactive effects, but has an effect on the future which 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. However, if the same crimes occur again 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 (Rasuli, 1383, P. 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 a community leader, 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, narration existed from the Prophet (peace and blessings of Allah be upon him) and Hazrat Ali (May God be pleased with him). Pardon from the point of view of criminal law is the prerogative of the leadership which takes place after the final order and cannot be enforced before or during the suspension of execution. As far as amnesty is concerned, its acceptance is not compulsory for the offender, and in most cases, pardon can be appealed 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 can be stated that, if amnesty is granted after the trial, the court orders payment of expenses. Then the amnesty is ordered by the court about the court expenses. 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., That is, a person who has been harmed or disadvantaged can claim about his or her rights. 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. However, But pardon is applicable in the fall and mitigation of punishment after final court rulings. Also, amnesty is issued by law and pardon is issued by presidential decree.

### Ethical Approval:

As per international standard or university standard written ethical approval has been collected and preserved by the author(s).

## 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. The head of state can decree forgiveness 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.

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