

The Extent of the Guardian's Right to Pardon Crimes and Penalties in Accordance with the Provisions of the Shari'a and the Saudi Penal Regulations

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Abstract

The study addressed an important issue concerning the extent of the legal guardian's right to pardon crimes according to the provisions of Shari'a and the Saudi penal system within two independent approaches. In the first part, we addressed the amnesty of the legal guardian in Sharia. We discussed the extent to which it is permissible to pardon the violent crimes, crimes of retribution, deception and crimes of ta'zir. It was concluded that crimes are not pardoned at all by the legal guardian or the individuals, whether in Sharia or in the civil system. As for the crimes of Kissas and Diyyat, the rulings of Sharia and the Saudi penal laws are consistent with the non-right of legal guardian to pardon. The right to pardons is limited to the avengers of blood heir if they are related to their own rights without public rights. The legal guardian has the right to pardons them if they concern the Islamic values. It is observed that there are differences of jurisprudence about the right of the legal guardian to pardon the crimes of Taizir, some of whom allowed the legal guardian absolute pardon in all crimes. Others believe the restriction of this right to a certain group of them. The second part of this study focuses on the legal conditions and effects of the amnesty issued by the legal guardian. It is concluded that Islamic jurisprudence did not stipulate conditions for the issuance of a pardon by the legal guardian. These conditions were drawn through the sayings of the Islamic jurists 'Fuqaha'. The penal system in Saudi Arabia is clear regarding this issue; amnesty whether is private or public, it does not affect the personal rights of the victim. According to the above, a number of conclusions and recommendations were mentioned at the end of the research.

Keywords: Amnesty, guardian, retribution, blood money, borders, Ta'zir, Saudi regulator, punishment, legal systems

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Introduction

Islamic law is the cornerstone upon which the legal systems of Saudi Arabia are built,¹ where its principles are general and abstract, applied to all individuals without exception, where it is doesn't prefer anyone over another, which preserves the status and prestige of the Sharia in the souls. No one denies that it is the law of perfection and eternity; it did not overlook an aspect of human life until it provided all its needs and requirements. As its provisions protect the interests of human beings in every age, and the rights of people are preserved everywhere and at any time, and often if not always legislation is characterized by a lack of ambiguity. Perhaps some Saudi legal systems are good example of this. There are many issues not listed in the legal systems, but it came well defined in Islamic law. They constitute fundamental principles that are by no means indispensable, and this led the Saudi organizer to rationing it in his legislation, one of these issues relates to the subject matter "The extent to which a guardian is entitled to pardon crimes for the public right", where such an amnesty constitutes a benefit to the public interest.

Islamic law has attributed the application of this important principle to the guardian, as a representative of the Muslim community and their agent in the care of their interests, which are embodied in establishing religion and keeping the community together. As a general rule, the guardian is considered a guardian of those who have no guardian. Islam is a religion of tolerance and forgiveness, and amnesty is a feature of Sharia, but later when the guardian authority base decided to pardon, it has established controls and standards aimed at achieving the supreme public interest of the nation and preserving the rights of individuals and groups. The Saudi penal system is in full conformity with the provisions of Islamic law regarding the idea of a pardon issued by the guardian.

In its balance between amnesty and punishment, Islamic law views them through two things: the first is

¹ See Article 7 of the Basic Law of Government in the Kingdom issued by Royal Order No. A / 90 dated 27/8/1412 AH. Which states "Judgment in Saudi Arabia derives its authority from the Book of Allah and the Sunnah of His prophet, etc."

the need for justice in everything, and this requires meeting the abuser with the same abuse, and this can be achieved only by establishing and enforcing the legal norm at the point of proof. if the punishment is proved and becomes necessary, the duty of Sharia requires, the lowering of the legal judgment against the offender, and the second is to call for charity in everything. Perhaps the best example of this is the amnesty for sanctions in accordance with the moral rule, and perhaps the balance between both matters embodies the true concept of justice in Islamic law. of course, this requires over-disclosing the reasons for the emergence of the right, and that will protect the culprit or victim from falling into the trap of injustice and looking at the fittest of them, as well as looking at the rules of precaution that have to move away from the challenge, which lead to justice and right. Therefore, if it is proved that, the punishment is definitive; there is nothing that prevents Sharia from inflicting it on the offender.

However, if the evidence of punishment is surmise, result in a firm judgment and achieve the intention of the legislator, it is the scars to reverse them to what is the safest which is the pardon, and perhaps the pardon issued by the guardian - whether in Sharia or the Saudi regime - have great importance and no secret to anyone, it is a means to unveil crimes and sanctions, especially political ones, it also brings joy , pleasure and harmony to all members of society; It is considered the only way to fix the judicial errors that appear after the exhaustion of all the methods of appeal, so that it can be said that there is no room to be dealt with except pardon, in addition, it is considered a means of rewarding every person who cooperates with the competent judicial authorities by informing him of dangerous crimes before they occur, thus enabling the authorities to arrest criminals.

In certain cases amnesty is a reward for convicts, If they improve their behavior and attitudes or cooperate with the authorities, finally, it is considered a means to encourage repentance for crimes, as in the case of war crimes before being able to.

The general amnesty, although his name indicates that it is comprehensive - but its scope does not include all crimes, comes about some of them, So that they exclude serious crimes, as in border crimes that a guardian may not, Nor the victim, nor anyone to pardon them, as they are pure rights of Allah Almighty. Similarly, retribution and parental crimes are a general principle, but it is not in the crimes of Ta'zir, there is a jurisprudential dispute over the right of the guardian to pardon it.

Accordingly, we will discuss these and other particulars within the scope of our research, which is titled "The extent of the guardian's right to pardon crimes and punishments in accordance with the provisions of Sharia and the Saudi penal system."

Research importance

The importance of our research is on the extent to which a guardian is entitled to pardon crimes under Islamic law and the Saudi penal system since most of the legal literature dealt with the study of this topic from a purely legal point of view. So we found an opportunity to single out this research from the point of view of legitimacy, where the research came a little compared with the Saudi penal system. The amnesty, whether in the Sharia or the Saudi regime, is one of the reasons leading to the fall of the criminal case and its expiration, therefore, erase the offense of the act, and it considered permissible in the rule, this requires knowledge of the crimes it covers on a legitimate and systemic scale.

The importance of amnesty is particularly evident in accordance with the provisions of Islamic Sharia, which has distinguished itself from the rest of the positive legislation by dividing crimes into three types, it dealt with the extent of eligibility issued by the guardian, for each crime separately, indicating the impact of the criminal case.

The reason for choosing the Search

Perhaps the reasons why the researcher chose this research came from the view of Islamic law in the balance between amnesty and punishment, this balance is shown in two things: the first is the administration of justice in everything, so that the abuser meets as much as he offended. by establishing the legal base on it when there is proof, Stability of the penalty to the extent necessary Makes it obligatory to be lawfully revealed to the perpetrator. The second is to call for charity in everything. Pardon penalties in accordance with the moral rule. This issue is also of both religious and practical significance, The Holy Quran and the Sunnah of the Prophet urged the pardon and forgiveness among people, and this idea has a good effect on people's souls, which shows the love of forgiveness among them, and leave the crime that happened against them to God Almighty. One of the reasons which we found in confusing the pardon issued by the guardian in some crimes of Ta'zir, and amnesty issued by the guardians of blood, and what matters regulate each.

Research difficulties

During his study, the researcher faced some difficulties, including: The lack of legal doctrinal references that dealt with this subject, in addition, there is al'ahadith, which may be weak, which is mistakenly attributed to our Holy Prophet's prayers and peace be upon him.

One of the difficulties faced by the study is the difference between Islamic jurisprudence schools regarding the right of the guardian to pardon the crimes of Ta'zir. Moreover, the jurists of Islam did not set clear conditions for the guardian's right to pardon, this leads to the conclusion of the study of some conditions, and it is also difficult to ensure that the selection of titles of the study in accordance with the folds of the topic.

Research Methodology

The researcher resorted to the use of descriptive and analytical method, and sometimes-inductive method. The ideas of research are dealt with in accordance with the provisions of Sharia and law as stated, and then the researcher analyzed them and demonstrates them in accordance with the provisions of Sharia and the Saudi Penal Code. The researcher gave his humble opinion in some of the contents of the study, which was marred by a dispute between the jurists. Thanks to God, we were able to reach a set of conclusions and recommendations that were extrapolated through the study.

Research Questions

The study raises a number of questions, including but not limited to the following:

1. What is an amnesty issued by a guardian?
2. What is the legal basis for the guardian's right to pardon?
3. What are the offenses for which the guardian is entitled to pardon?
4. Why does the guardian not have the right to pardon marginal and parental crimes?
5. What are the legal and legal requirements that must be met in the amnesty issued by the guardian?
6. What are the implications of a criminal case when a pardon was issued from the guardian?
7. What is the difference when issuing an amnesty between the rights of God and the rights of people?
8. What are the main findings and recommendations of the researcher in the study?

Research Plan

Our research entitled "The Extent of the Guardian's Right to Pardon Crimes and Penalties in Accordance with the Provisions of the Shari'a and the Saudi Penal Regulations" was divided into two topics after a general introduction. The first section deals with the extent of the guardian's right to pardon in accordance with the provisions of Islamic law and the Saudi regime.

Then, in the second section, we deal with the conditions and the legal and legal effects of amnesty according to the following division:

The first topic: amnesty in Islamic law and the Saudi penal system (The objective framework for the amnesty of the guardian in Shari'a and law)

The first requirement: what is the pardon issued by the guardian.

Section I: The concept of amnesty in language and terminology.

Section II: The concept of guardian in language and terminology.

First branch: Legal and regular authority of the guardian in pardoning border crimes

The second requirement: the legal basis for amnesty issued by the guardian

Subchapter II: The legal and legal authority of the guardian in pardoning the crimes of retribution and parental

The third requirement: The legitimate and formal position of the extent of the guardian's right to pardon the crimes of Ta'zir.

Section I: The position of the Islamic Shari'a on the pardon of the guardian for the offense crimes.

Section II: The position of the Saudi criminal regulator on the pardon of the guardian from the reinforcing punishment.

The second topic is the conditions and effects arising from the amnesty of the guardian in Islamic jurisprudence and the system (Procedural framework for guardian amnesty in Shari'a and order)

1. The first requirement: Guardian amnesty conditions in jurisprudence and order.

2. Section I: Conditions of Amnesty in Islamic Jurisprudence.
3. Section II: Guardian amnesty conditions in the Saudi penal system.
4. Second requirement: Legitimate and systemic effects in the pardon issued by the guardian
5. Section I: Effect of Amnesty in Islamic Jurisprudence
6. Section II: The effect of amnesty in the Saudi penal system.

Conclusions and recommendations
Resources and references

The first topic

The first topic: Legitimate and formal position of the guardian in amnesty for crimes

Preface

Since Allah created the land and on it, the Islamic law, as we shall see later, came by stipulating the principle of amnesty in the Qur'an and Sunnah. However, determining the scope of the amnesty of the guardian requires us to know the divisions of Islamic jurisprudence for these crimes, where it came in three sections: The first concerns border crimes, the second concerns the crimes of retribution and blood money, and the third relates to the crimes of Ta'zir. In addition, we will explain each section in some detail to determine the eligibility of the guardian to pardon them in accordance with the following demands:

The first requirement

The legal nature of the amnesty issued by the guardian

Segmentation

In this requirement we will address linguistic, idiomatic and legal concepts for the word "pardon" and "guardian" in the following sections as follows: -

Section I

The concept of "pardon" in language and idiom

Language: The amnesty came in several ways, including: it is said, he pardoned his guilt pardon it is said that the wind exonerated the effects in the sense of studied and erased¹, and the pardon comes in the sense of acquittal and relief. it is said a man pardon for sin: Aav, and relieved him of the order: Acquitted, and exempted him he asked for it². It also comes in the sense of abandonment and transgression. It is said that I forgave someone for my money in a sense I favored him and I gave him, it was also said that "the right to withdraw a fixed right in whole or in part with or without compensation³, it was also said that pardon meant "erasure and transgression"⁴ it was also called the drying up of guilt⁵.

It should be noted in this context that the word amnesty came in many Quranic verses, including the Almighty saying "Take the pardon and ordered the favor and offer for the ignorant⁶. In the legal term amnesty is defined as: exemption of the convicted person from the full or partial execution of the sentence, or to replace it with a lighter penalty than the sentence⁷. It is noticeable on this last concept of amnesty that it goes to private amnesty, not to amnesty in general.

Section II

The concept of "guardian" in language and terminology

As for the concepts of the special word "guardian", in the language, it goes on to be an additional compound consisting of two words, "guardian", and "command". The word "guardian" means: of control of the

¹ Abu Hamed Al-Ghazali, Revival of the Sciences of Religion, Dar Al-Marefa, Beirut, 1980, 2/182.

² Abi al-Hasan Ahmad ibn Fares ibn Zakaria, Language scales, Arab Writers Union, Damascus, 21423, 4/56.

³ Dr. Zaid Abdulkarim bin Zaid, pardon for punishment in Islamic jurisprudence, the first edition, Dar Al-Asima, Riyadh, 1989, p. 495.

⁴ Mansour ibn Younis ibn Idriss al-Bahouti, Scout of the mask on the board of persuasion, Dar al-Fikr, Beirut, 1981, 5/543.

⁵ Husayn ibn Muhammad al-Isfahani, ibid., 3/139.

⁶ Al-A'raf verse number 199.

⁷ Sameh El Sayed Gad, Pardon of Punishment in Islamic Jurisprudence and Positive Law, Modern Services Library, Jeddah, 1983, p. 75.

thing. Judgment in the movement of the fracture means: Principality and Sultan. The judgment in the movement of conquest means: victory and descent.

In the Saudi system, the concept of "guardian" is transferred to the supreme shrine, and this was confirmed by the circular of the Minister of Interior issued on 1/6/1421 under No. 3152, which states: "The guardian may pardon the reinforcing punishment ... It is the high place¹.

The second requirement

The legal basis for the pardon issued by the guardian

As usual, Islamic law preceded all positive legislation by establishing a legal basis for amnesty issued by the guardian. Which is considered to be a projection of public suit if it comes before the judgment is rendered, while the amnesty is considered the subject of punishment if it is sentenced, the provision of amnesty differs as to whether the crime is a marginal, a punishable offense, or a crime of retribution and blood money. This is what we will describe in succession in the following sections:

First branch

The legal and legal authority of the guardian in pardoning border crimes

First: - What are the border crimes and the position of Shara and the regime

Border crimes are defined as: crimes related to the rights of God, punishable by a severe penalty, really destined to God, and do not accept the projection of either the guardian or individuals when the limit obligations are available², its penalties are prescribed by law in both quantity and type³. In other words, "those crimes defined by Shari'a exclusively and punishable by Alhad, and Alhad is the punishment that is truly set by God⁴, it means that the penalty is assessed to be specific and has no minimum or maximum. This means that it is really for Allah Almighty, it does not accept any projection neither the individuals nor the guardian⁵.

The Saudi penal systems agree with what is stated in the Islamic Shari'a regarding the lack of pardon of the guardian in the crimes of the border, because these crimes are the exclusive right to the face of God Almighty. Therefore, does not have the guardian nor the victim or anyone to pardon them, and this is unanimously consistent scholars⁶, but none of them have intercession in them, if it is proven and raised to the guardian, there is no way for the latter to establish God's law on them.

There is no doubt that the inauguration of the Imam or the Caliph is one of the greatest purposes of Islamic law in order to establish the borders of God, and to maintain security and common justice among the people⁷. The imam or rather the guardian or others have no right of pardon, not even intercession. Accordingly, if the border reaches the guardian, there is no excuse for the latter except to establish it in the manner required by the provisions of Shari'a.

Second: - Forensic evidence that no amnesty is permissible at the Alhud

The Qur'anic verses and hadiths are clear and explicit in the statement that the imam is not entitled to pardon at the border, while at the same time obliging him to establish the limits of Allah. It is the Sunnah of the Prophet Muhammad peace be upon him, "Recover the border between you because the "hud" I have reached is set"⁸. There is no doubt that this talk is an invitation to individuals not to raise, or override, which confirms the legitimacy of the amnesty before reaching the guardian⁹. In the sense of infringement, if the order reaches the guardian, it must be implemented and also the words of the Prophet (peace and blessings of Allaah be upon him "Whoever comes to you and commands you all on one man who wants to break your stick, or divide your

¹ See the circular of the Minister of Interior according to the data mentioned in the text.

² Dr. Ashjan Khalis Al-Zuhairi, Explaining the Saudi Penal System, Special Section, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2018, p. 25.

³ Zaki Mohammed Shannaq, The Saudi Criminal System, General Section, Theory of Crime and Punishment, First Edition, Al-Shaqri Library, Riyadh, 2018, p. 23.

⁴ Dr. Ahmad Ali Jaradat, Theory of Execution of Criminal Judgments in Islamic Jurisprudence, Borders, Retribution and Ta'zir, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, 2012, p. 19.

⁵ Dr. Abdulkader Odeh, Islamic Criminal Legislation Compared to Positive Law, "D.T." Part I, Dar al-Katib al-Arabi, Beirut, pp. 78_79.

⁶ See in this regard: Taqi al-Din Abu al-Abbas ibn Taymiyah, *ibid.*, 8/544. And d. Abdulkader Odeh, Islamic Criminal Legislation Compared to the Positive Law, "D.", Part I, Dar al-Katib al-Arabi, Beirut, p. 82. and Mohammed bin Ahmed al-Qurtubi, *ibid.*, 6/259. Zainuddin Abu Abdullah al-Razi, *ibid.*, 3/347.

⁷ Bandar bin Abdulrahman Al-Aqel, the expiry of the public action to pardon the guardian in the system of criminal proceedings, Master Thesis, a comparative study, College of Criminal Justice, Naif Arab University for Security Sciences, Riyadh, 2015, p. 47.

⁸ Narrated by Abu Dawood in his Sunna: 4/540, no. 4376, Al-Nasaa'i in Sunan 8/70, Shoaib Al-Nasa'i, Dar Al-Rayan Heritage.

⁹ Mohammed bin Ali Shawkani, Neil Awtar explain the ultimate news, the realization of Taha Abdul Rauf and Mustafa Hawari, Library of Al-Azhar Colleges 8/351. And d. Zaki Mohammed Shannaq, A Brief in the Saudi Criminal Procedure System, *Ibid.*, P. 100.

congregation and kill him? "¹.

In this regard, it is said that the address is addressed to the general Muslims, since the establishment of religion and ceremony is the responsibility of the Muslims on their behalf².

In the same sense, Shaykh al-Islam Ibn Taymiyyah goes on to say that "the "hudud" of Allah are beneficial for Muslims, and all of them need them, and the governors must search for him, and set up without the suit of one, as well as the testimony therein without the suit of one. The limits must be established on the Sharif The disadvantage of the strong and the weak, and does not solve the disruption, not through intercession or gift and does not change them, or intercession does not solve it"³.

Third: - Intercession in border crimes

Intercession at the border is an amnesty. This is haraam in the Qur'an and the Sunnah of the Qur'an, it is the Quran on the punishment of adultery by saying the right and most: "Do not take you compassion in the religion of God if you believe in God and the other day"⁴. The point of connotation in this verse does not depart from the fact that it is forbidden for compassion, but forbidding compassion that holds the ruler in disrupting the border or leave it, as he refuses to do so, as well as the saying of the Almighty, "A penalty for what they have won from God and Allah Aziz Hakim"⁵.

The Sunnah of the Prophet (peace and blessings of Allaah be upon him) said: "Whoever intercesses prevented the limits of God is the opposite of God in his command"⁶. This proves that it is not permissible to intercede at the border, to prohibit it, and to intimidate its actor with the aim of doing so. It is also mentioned in the hadeeth of Aisha, may Allah be pleased with her, concerning the Makhzoumi woman who was stolen, and her matter was of importance to Quraish, They said, "Whoever speaks to the Prophet (peace and blessings of Allaah be upon him) Except Osama bin Zaid love Rasulullah.". The Holy Prophet said, "I intercede within the "hudood" of God, then he stood and said: those who were before you were punished because if the rich person stole they left him, and if the weak man stole them, they set the "hud" on him, and if Fatima bint Mohammed stolen I will cut her hand"⁷.

From this hadith we conclude that the guardian not only has amnesty, but may not intercession in establishing the limits of God. This is evident by the words of the Prophet (peace and blessings of Allaah be upon him), whose words came in the form of the questionable denial, "intercede within the limits of God."

In another context, the recovery in the border between the adversaries is a matter of dropping the penalty, provided that it does not raise the matter to the ruler, the lifting of the latter only has the judgment among them; according to the Book of God⁸. In this said our Holy Prophet best prayers and delivery: "People recover among them in the border unless lifted to the rulers, if raised to the ruler among them by the book of God"⁹.

Fourth: The extent of the amnesty of the guardian in some border crimes

Realization of suspicion

If the general rule is that it is not permissible for the guardian to pardon the border crimes, but to refrain from intercession therein, then some of the jurists of Islam have authorized, as an exception, the weighting of the concealment, to establish a certificate to prove the "hud". The call for hasty repentance which confirms the status of pardon as an act of suspicion. It is established in the jurists that the borders are established only after the firm and definite certainty, which is not comparable to the act of offense for the following evidence:

1. 1 - The hadeeth of the Prophet (peace and blessings of Allaah be upon him): "Defend the borders (hudood) of Muslims as you can.
2. As well as the hadeeth of Abu Umayyah al-Makhzoumi: He came a thief to the Prophet peace be upon him confessed without the presence of belongings with him and the Holy Prophet said to him: "I don't think that you are stolen, he said: Yes, Messenger of God, he returned it by the Messenger

¹ Muslim, Book of the Principality, House of Generation and New Horizons, Beirut, (b), No. 3443.

² Mohammed bin Ahmed al-Qurtubi, the provisions of the Koran, ibid., 12/161. A / Bandar bin Abdulrahman al-Aql, the expiry of the lawsuit etc, Ibid., P. 47.

³ Taqi al-Din Abu al-'Abbas Ahmad ibn Abd al-Halim ibn Taymiyyah al-Hurai, The Legal Policy in Reforming the Shepherd and the Parish, Fatwa Group, Dar al-Ifta, Alexandria, 2005, 22/230

⁴ Al - Noor verse number 2.

⁵ Al - Maidah verse number 38.

⁶ Shawkani, Nobility Awtar, the first edition, Dar al-Hadith, Cairo, 2000, Volume 7, p. 112.

⁷ Abdul Rahman bin Nasser bin Saadi, Tayseer Karim Rahman in the interpretation of the words of Mannan, the message Foundation, Beirut, 1999 e, 14/303.

⁸ Abu Abdullah Mohammed bin Ahmed Al-Thahabi, polite in the abbreviation of Sunan Albihaqi, the realization of Dar al-Mishkat for scientific research, the first edition, Dar Al-Watan for Publishing and Distribution, Riyadh, 2001, 64/207.

⁹ Abu Dawood, Suleiman ibn al-Ash'ath, Sunan Abu Dawood, door to pardon the border unless you inform the Sultan, Dar al-Resala International, Beirut, 6/429.

of Allah twice or three times. He said yes, then he ordered that it must be cut¹, the aim of the Prophet was to ask him more than once because he want to make sure of the approval of his decision.

3. In another hadith of the Prophet (peace and blessings of Allaah be upon him) he said: "If I were stoning anyone without knowing I would have been stoned, then there would be suspicion in their logic, form and whoever enters them."²

Through these conversations, we can see that the true street wanted to pardon the guardian, leaving it to the penalty because the charges should not be reduced, and suspicion of mistake. Accordingly, the jurists of Islam, based on the legal texts, have stipulated conditions related to proving the borders, so that the penalty shall be based on clear evidence, such as the full testimony of it, strong suspicion loses the penalty, and may result in the erasure of the offense. The pillars of the crime are fixed, but the penalty falls for suspicion of alimony, and theft of what they thought was his property, as the Prophet (peace and blessings of Allaah be upon him) said: "You and your money is for your father"³. Such a sentence would pardon their participation in the death penalty.

Working with repentance

Islamic law has adopted an approach to that preceded by any of the other heavenly legislations, nor the positive legislation in terms of accepting the repentance of the offender before he can declare repentance, and his presence before the guardian obediently chosen to lay down his arms.⁴ According to the Hanafis and Shaafa'is, beating is one of the most horrific crimes of the people. For this reason, the street has severe penalties, it is not cut off only from taking money, and does not kill only those who were killed, and only exiles from taking money, and did not kill⁵. Nevertheless, Islamic law authorized repentance and urged it to pardon forgiveness and forgiveness, which called the jurisprudence to approve it from the cover of the border on the possibility of repentance and strengthening, never return to these crimes, but it should be noted that the scope of amnesty for a warrior encompasses the general right and not the private right.

Section II

The legal and legal authority of the guardian in pardoning the crimes of retribution and parental

First: - What are the crimes of retribution and diyya

Parental retribution offenses are defined as: those offenses punishable by retribution, diyya or both⁶, each of these crimes is considered a truly appreciated punishment for individuals. Meaning: It has a single limit and does not have a minimum and upper limit between them. It means that it is really for individuals, that is, the victim may pardon her if he wishes.⁷

Second: - The position of Shara and system in amnesty

The Saudi penal system is in accordance with the provisions and purposes of Islamic Sharia in relation to crimes of retribution and Diyya, these offenses relate to felony against oneself and the parties. Thus, he has the right to pardon her, whether it is public or private, he may waive the punishment completely free of charge, and his pardon may be linked to taking blood money from the offender.⁸

As an exception to the above principle, some go to the custody of the guardian in pardoning retribution crimes in two cases: The first is the case of whether the right holder of the penalty is a minor and has no guardians. The guardian is considered the guardian of the one without the guardian, he has the right to pardon these crimes not as a guardian of Muslims, but as guardian of the guardian of blood or the victim, provided that the pardon is not free of charge⁹. The second is in the case of the lifting of the retribution order to him. In an interview with Anas ibn Malik, he said: "I did not see the Messenger of Allah peace be upon him raised a punishment, but ordered an amnesty".¹⁰

¹Narrated by Abu Dawood in his Sunan, The Book of Frontiers, Dar al-Kitab al-Arabi, Beirut, (b), No. 3870.

² Narrated by Ibn Majah in his Sunnah, The Book of the Frontiers, Achieved by Muhammad Fouad Abdul Baqi, Dar al-Fikr, Beirut (b), No. 2549.

³ Narrated by Ibn Majah in Sunan, Book of Trades, No. 2282.

⁴Zaki Mohammed Shannaq, brief in the Saudi Code of Criminal Procedure, *ibid.*, Pp. 104-105.

⁵ See: Zelgi, showing the facts, c 2, p. 236. And Sherbini, singer of the needy, c 4, p. 237.

⁶Ashjan Khalis al-Zuhairi, *ibid.*, P. 25.

⁷ Abdulkader Odeh, Islamic Criminal Legislation Compared to Positive Law, *ibid.*, P. 79.

⁸ Abdulkader Odeh, *ibid.*, P. 82.

⁹ Zaki Mohammed Shannaq, Saudi Criminal System, *ibid.*, P. 25.

¹⁰ Abi Dawood, Sunan Abu Dawood, The Book of the Dyat, The Arab Book House, Beirut, B.T.

With regard to urinary blood, he may waive his own right before filing a criminal case, or even after filing and during consideration. However, this waiver has no effect on the fall of public action, the latter remains a list established by the court so that the judge may decide a punitive sentence against the offender¹. In this regard, the provisions of the Saudi Code of Criminal Procedure are in full conformity with the provisions of Islamic Shari'a.

Third: The extent to which the guardian may be pardoned for murder

The question that arises in this regard is: Does the guardian or the victim's family have the right to pardon the perpetrator who committed the murder by mistake?

With regard to the answer to this question, the vast majority of jurisprudence went to the lack of permissibility for the guardian to pardon², their argument that murder is a crime shows and reveals the planning and determination in the commission of this heinous crime, which confirms the desire of the perpetrator to corrupt and to be evil. The Saudi Council of Senior Scholars followed this, it decided that the murderer does not kill retribution but kills an end. There is no amnesty and no reconciliation in it from the guardian or from others, even if the murderer is a kaafir and the killer is free and a Muslim.³

For our part, we support this trend: murder is a deliberate aggression on the face of deception and deception, including the death of the murderer. Whether this is a murder or a violation of an offer or fear of misfortune or discloses its secret, it is a kind of spoilage, and the bottom line is that killing the guile falls blood money to prevent the trading of blood.

The third requirement

The legal and legal position on the extent of the guardian's right to pardon the crimes of Ta'izz Segmentation

We will address the study of this requirement in two sections. So that the first section is devoted to amnesty issued by the guardian in the crimes of Ta'zir, in accordance with the provisions of Islamic Sharia, then we devote the second section to the pardon issued by the guardian for the reinforcement penalty, based on the provisions of the Code of Criminal Procedure and other regulations. This is as follows:

Section I

The position of Islamic law on the pardon of the guardian for the crimes of reinforcements

First: the general rule

Generally, the guardian has great power to criminalize and punish such crimes, on the criminal side; the latter has the right to expand the scope of criminal acts, and by introducing other new acts in addition to the acts mentioned in the text prohibited if he sees an interest in this guided by the provisions of Islamic law. In terms of punishment, the guardian has a significant role to play in determining the penalties for the offenses that are prohibited, without specifying the penalties in accordance with the public interest, as the inherent has right to appreciate the interest that requires criminalization and punishment. In the light of his appreciation of the public interest, the guardian shall have the right to decriminalize acts, he may pardon reinforcing punishments as he first estimated them. But on condition that they comply with the provisions of Islamic law in a way that does not conflict with it.⁴

Second: The nature of the crimes of ta'zir

Ta'izz crimes are defined as crimes punishable by one or more ta'zir penalties. The meaning of ta'zir is to discipline, which is in every sin that has no limit, nor expiation⁵, Ta'zir is a disciplinary guilt⁶, Ahmad Ali

¹Zaki Mohammed Shannaq, A Brief in the Saudi Criminal Procedure System, Ibid., P. 101. Abdulkader Odeh, Islamic Criminal Legislation Compared to Positive Law, op. Cit., P. 83.

²Ahmad ibn Hanbal, Musnad Imam Ahmad ibn Hanbal, Message Foundation, Beirut, 2000, 5/230. Ali Haider Effendi, referees referees in explaining the magazine provisions, Dar generation, Beirut, 1990, 7/106; and Mohammed Nasser al-Din al-Albani, Irwa al-Ghaleel in the graduation of Manar al-Sabeel conversations, the Islamic Bureau, Beirut, (d), 6/302. And Osman bin Ali Zayali, showing the facts explain the treasure minutes, the major printing press, Cairo.

³ This statement is consistent with the opinion of Imam Malik see: Decision No. 38 dated 11/8/1975, as well as Abu Barakat Ahmed bin Mohammed Dardir, the great commentary printing press, Cairo, 1201 AH, c 9, p. 333.

For more details: see in this regard the General Presidency for Scientific Research and Issuing Fatwas, Senior Scholars Research, Volume III, Riyadh, 2001, the door of killing the Ghila, available at <http://www.alifta.net/Fatawa/FatawaChapters.aspx?Languagename=en&View=Page&PageID=342&PageNo=1&BookID=1>

⁴ Zaki Mohammed Shannaq, brief in the Saudi criminal procedure system, second edition, Dar Hafiz, Riyadh, /2015, p 102. See the same author, the Saudi criminal system, General Section, ibid., Pp. 25_26.

⁵Dr. Mohammed Said Abdel Qader, Jurisprudence in Islam, the first edition, the establishment of knowledge, Alexandria, 2002, p. 41. Majid Abu-Kefirah, A Brief on the Rulings of Borders, Retribution and Ta'izz, First Edition, Dar Al-Nafees, Jordan, 2000, p. 294a / Gedo Hatem, Ta'zir Crimes in Islamic Legislation, Master Thesis, Faculty of Law and Political Science, Mohamed Khedr University, Algeria, 2014 , P. 7.

⁶ Ahmad Ali Jaradat, Theory of Execution of Criminal Judgments in Islamic Jurisprudence, Ibid., P. 332

Jaradat, Theory of Execution of Criminal Judgments in Islamic Jurisprudence, *Ibid.*, P. 332. Islamic law did not specify the specific penalties for each punitive offense, but merely decided on a set of punishments beginning with the lightest and ending the most severe, so that the guardian is left to choose the punishment that suits each crime separately.¹

Third: - Shara's position on the pardon of the guardian for crimes of ta'zir

As for the extent of the guardian's right to pardon these crimes, it is prevalent as we said that he may pardon, whether for the crime or punishment in whole or in part², these crimes are similar to border crimes, retribution and blood money. However, there is no dispute among Islamic jurisprudence on the extent of permissibility of amnesty in all or whether it is confined to a certain group of them and not others, and accordingly we will address the views of Islamic scholars and doctrines.

In Islamic jurisprudence has gone part of them by saying full Taazir³, these crimes are punishable by appropriate penalties. There is no amnesty for the punishment or the crime, while the guardian may pardon the rest of the other crimes. While another aspect of jurisprudence by saying that the authority of the guardian in the pardon absolute in all crimes punishable Taazir⁴, whether the amnesty is related to crime or punishment if the guardian sees an interest in it, provided that the amnesty does not conflict with the provisions of Islamic law⁵. As for the views of the Islamic schools of thought in this regard, we find that the Hanafi said that the due diligence as a right of God is left to the guardian⁶, the latter may not leave him unless he is aware that the offender has exploded before the punishment of ta'zir is carried out therein. As for the Shaafa'is, they have two opinions: the first is to leave the guardian of Ta'izz if it is in the rights of Allaah⁷, on the contrary, it is not permissible for the guardian to leave ta'zir if it is the right of the slave, if the latter demands it as punishment.

At the Maalikis⁸, they went on to say that the Ta'zir due as a right of Allaah does not have the right to drop it, but the guardian must implement it by establishing it. Or to be entrusted to do so, and the due diligence as a right of individuals may pardon it, or to be entrusted to do so, and the due diligence as a right of individuals may pardon it. As for the Hanbalis, they went with his guardian to pardon the punishment of ta'zir⁹, When he sees that the interest requires it, or the offender comes repentant, or if the guardian has knowledge that the offender has exploded before the penalty of ta'zir is imposed. Within the scope of the due diligence as a right of

¹ Dr. Shahaat Ibrahim Mohamed Mansour, marginal and reinforcing crimes in Islamic criminal jurisprudence, the first edition, Dar al-Fikr al-Jama'i, Egypt, 2011, p. 200.

² Dr. Wahba Al-Zuhaili, Criminal Jurisprudence and Evidence, Part VII, Dar Al-Fikr, Syria, 2006, p 245. Abdulkader Odeh, Islamic Criminal Legislation, op.cit., P. 82.

³ Muhammad ibn Ismail al-Bukhari, Sahih al-Bukhari, the door of writing science, Dar Touq al-Najat, Cairo, 1/33. Ahmad bin Ali al-Jassas, the provisions of the Koran, House of Revival of Arab Heritage, Beirut, 1984, 47/278. And Mohammed bin Mohammed Trabelsi, talents of Galilee in a brief explanation Galilee, Dar thought, Damascus, 1991, 23/309. Abdul Rahman bin Ahmed bin Rajab, the collector of science and governance in explaining fifty recent mosques of speech, Foundation message, Beirut, 2001, 13/345.

⁴ Zein al-Din ibn Ibrahim ibn Muhammad ibn Najim, "D", the clear sea explaining the treasure of chips, Dar al-Kitab al-Islami, Beirut, 5/49. And Ibrahim bin Ali bin Farhoun, insight rulers in the origins of the districts and curriculum judgments, Library of Al-Azhar Colleges, Cairo, 1985, 2/298. Ali bin Mohammed Al-Maroudi, The Great Container, Scientific Books House, Beirut, 1998, 13/439. Yahya bin Sharaf al-Nawawi, kindergarten students and mayor of muftis, Islamic Bureau, Beirut, 1991, 10/176. Ali ibn Suleiman al-Mardawi, "D.", fairness in knowing the most correct from the dispute, the House of Revival of Arab Heritage, Beirut, 10/242. Al-Bahwati, Revealing the Mask, op. Cit., 6/124.

⁵ Dr. Ahmad Awad Bilal, Comparative Criminal Procedures and the Saudi Procedural System, Dar Al-Nahda Al-Arabiya, Egypt, 1990, p. 626, and d. Zaki Mohammed Shannaq, Saudi Criminal System, General Section, *Ibid.*, P. 26.

⁶ Ibn Abdeen, The Confused Response to Al-Dur Al-Mukhtar, Dar Al-Fikr, Beirut, 2000, 23/301, Al-Sanani, Ways of Peace Explanation of Al-Maram, Achievement: Mohammed Daly Balta, Modern Library, Beirut, 2008, 13/219, Ali Haidar, Durar Al-Hakam Explanation of Al-Hakam Magazine, Investigation: Fahmi Al-Husseini, Scientific Books House, Beirut, (PT), 11/124, Sarkhsi, Al-Mabsout, Achieved by: Khalil Mohieddine El-Meis, First Edition, Dar Al-Fikr, Beirut, 2000, 12/120.

⁷ Ibn al-Khatib al-Sherbini, singer of the needy, third edition, Dar al-Maarifah, Beirut, 2007, 21/231, nuclear, kindergarten students and mayor of muftis, Achievement Adel Ahmed existing and Ali Mohammed Moawad, Scientific Books House, Beirut, (b), 12 / 154, Al-Rahibani, Preliminary Matters forbidding the Explanation of the End of the End, Islamic Office, Damascus, (PT), 26/301, Ibn Zakariya al-Ansari, Asna al-Mutlaib Explanation of Kindergarten Student, Islamic Book House, (PT), 28/164, Abu Bakr bin Masoud bin Ahmed Kasani Hanafi, Badaea Sanayea in the order of canons, second edition, the House of Scientific Books, Beirut, 1406/1986, 33/205. Muhammad ibn Abi al-'Abbas Ahmad ibn Hamza ibn Shihab al-Din al-Ramli, op.cit., 28/327.

⁸ Ibn Al-Hajeb, Mosque of Mothers, Achievement: Abi Al-Fadl Badr Al-Omrani, First Edition, Scientific Books House, Beirut, 2004, 54/222, Abu Abdullah Al-Maliki, Sharh Mayara Al-Fassi 17/154, Muhammad Arafa, footnote to Desouki on the great commentary, investigation: Mohammed Alish, Dar al-Fikr, Beirut, (PT), 29/289.

⁹ Ahmad ibn Hanbal, Musnad Imam Ahmad ibn Hanbal, Foundation message, Beirut, 1421, 23/101, Ibn Mufleh, branches, investigation: Abdullah bin Mohsen Turki, first edition, Foundation message, Beirut, 2003, 23/204, Bahouti, explain Ultimate wills, World of Books, Beirut, 1996, 32/254, Hijjawi, persuasion in the jurisprudence of Imam Ahmad bin Hanbal, investigation: Abdul Latif Mohammed Musa al-Sobki, Dar al-Marefa, Beirut, (b), 24/209, Mardawi, equity in The Most Likely Knowledge of the Controversy, First Edition, Arab Revival Heritage House, 1419, 45/321

individuals, the Hanafis and the Malikis consider that pardoning is a matter for the individuals themselves.¹

With regard to what was said by one of the Shaafa'is, the ta'zir, if it is the right of the individual and his request, the guardian should leave him and pardon him as in the case of the rights of God. This means that it is permissible to grant an amnesty issued by the guardian for the punishment of ta'zir, regardless of whether the right is God's right or whether the right is due to individuals and demanded it.²

Perhaps one of the most important advantages arising from the differences between the sects is that there is an agreement among them that due reinforcement in the right of Almighty God. The guardian may be pardoned in certain cases, these include verifying that the offender has repented, or rather fulfilling the meaning of restraint prior to the execution of the sentence, as well as when the guardian considers the amnesty to be in the public interest. One of the advantages is that the ta'zir due to the right of the slave or the predominance of the right of the slave depends on the claim of the owner, if asked to answer it. The judge does not have the power to overthrow him, and the guardian does not have the right to pardon him. This means that the weighting of the penalty for pardon or vice versa is based on the ijthad of the guardian in what he deems appropriate, and fix the offender in view of the interest, and this is one of the controls on the pardon issued by the guardian.³

Based on the foregoing, if the penalty serves the benefit of ta'zir, namely the occurrence of discipline and restraint, it must be applied from the rule of Part One, otherwise, the prudence of the introduction of amnesty; perhaps the punishment constitutes an ugly harm to the law and reason, and therefore does not allow the Muslimization and harm to Muslims. This view is established through the sayings of the jurists, where Ibn Farhun says: "For the guardian of the fittest taking into account the pardons or ta'zir".

Fourth: - Pardon of the victim of the crime in the crimes of ta'zir

As for the victim of the crime, or rather the victim in the crimes of Ta'zir, he has the right to pardon what affects his person, as in the case of cursing and beating, however, his right to pardon is limited solely to his personal rights without affecting the group's rights to discipline and reform the offender⁴. In a clearer sense, the amnesty of the victim departs to his or her personal rights⁵. As for the pardon of the guardian in ta'zir crimes for punishment or crime, this pardon does not affect the rights of the victim⁶. In any case, and in the foregoing, we can say that the Ta'zir is a human right, and the guardian must leave it and pardon him even if the right holder requests it, pardoning the person from his right is permissible, provided that the right of authority is not compromised. In this regard Maroudi⁷ differentiate between two cases: the first is that if there is a pardon for Adam before pleading, then the guardian has the choice between pardon or ta'zir. Secondly, if the amnesty is granted after the pleading, the punishment for the right of the authority therein is disagreement due to two things: there is no right for the guardian to promote it. The second thing is that the guardian has the right to support it with pardon before pleading to him.

Section II

The position of the Saudi criminal regulator on the pardon of the guardian for the reinforcing punishment

First: - Pardon in the system of criminal procedures and the system of trial of ministers

In the Saudi penal system, the guardian plays a major role in some punitive crimes. It is important to assess the interest that requires criminalization and punishment; he also has the right to an interest that requires amnesty for punishment. The guardian has the right to pardon some penalties, in the light of what is required by the interest, provided that this amnesty does not conflict with the provisions and purposes of Islamic law. On this basis, article 22 stipulates that "a general criminal action shall lapse in the following cases:

1. A final judgment

¹ Abu Abdullah Mohammed bin Ahmed Al-Thahabi, polite in the abbreviation of Sunan Albihaqi, the realization of Dar al-Mishkat for scientific research, the first edition, Dar Al-Watan for Publishing and Distribution, Riyadh, 2001, 64/207. Al-Bahhoti, Explanation of Ultimate Wills, *ibid.*, 34/256.

² For more details on Islamic jurisprudence differences see in particular: d. Maher Abdel Hamid, Amnesty for Punishment in the Light of Islamic Law and Comparative Law, First Edition, Scientific Books House, Lebanon, 2007, p. 202. And d. Abdulkader Odeh, Islamic Criminal Legislation Compared to Positive Law, *op. Cit.*, P. 91.

³ Al-Shehbi Qwaider, Balancing Penalty and Amnesty, *ibid.*, P. 214.

⁴ Dr. Abdulkader Odeh, *op. Cit.*, P. 777, and d. Abdulhamid Amara, Guarantees of opponents during the criminal trial phase in positive and Islamic legislation, Dar Al-Khaldounia, Algeria, 2010, p. Amir Abdul Aziz, Criminal Jurisprudence in Islam, Third Edition, Dar es Salaam, Palestine, 2007, 401.

⁵ Dr. Abdulqader Odeh, *ibid.*, P. 82. And Mohammed bin Mohammed bin Abdulrahman al-Maliki, the talents of Galilee in explaining the exclusive Sheikh Khalil, the achievement of Mohammed Yahya bin Mohammed al-Amin Musawi, Dar Radwan, 1431/2010, Volume VII, first edition, 20/214. Mohammed bin Saleh Al-Othaimen, Fatah Dhul Jalal and Ikram explaining the attainment of Maram, the realization of Subhi bin Mohammed Ramadan, 2017, Dar Al-Bayoumi, 25/101.

⁶ Abdul Haq ibn Ghaleb ibn Atiyah, short editor in the interpretation of the dear book, Scientific Books House, Beirut, 1422, 21/145. And d. Abdulqader Odeh, *ibid.*, P. 82.

⁷ Al-Maroudi, The Royal Judgments, First Edition, Dar Bin Qutaiba, Kuwait, 1409/1989, 42/156.

2. Pardon of the guardian in the pardon.
3. What is repentance in which the legal controls projected penalty.
4. The death of the accused, This does not prevent you from continuing your right suit¹.

No one denies at the outset that the reference of this text is due to Islamic law. It has clearly stated that it is permissible for the guardian to pardon the general right to crimes in which he may pardon. In the sense of the offense, the guardian does not have an amnesty for the “hud”crimes; “the King”, however, authorize others to issue an amnesty, such as the Minister of the Interior and the District Princes, but at the same time note that the authorization is restricted and conditional.

The right of amnesties to the guardian as stipulated in article 27 of the system of trial of ministers is also confirmed, it stipulates that "His Majesty the King shall in all cases issue a special pardon for the convicts in accordance with this Law or commute the sentence to such extent as the pardon decides². It is noteworthy on this article that it gave the right to the guardian of the "king" to issue a special pardon, and entrusted to pardon the punishment with the status of criminalization.

Since the amnesty in Saudi Arabia is issued by the King, it requires a system to specifically include the penalties it contains, and the scope of the amnesty is limited to the cases for which a judgment has been issued, as stipulated that “sentenced prisoners shall be exempted from the general right in the cases of reinforcement”³. For the defendants, the amnesty does not cover them even if they are partners in the crime with others who have already been sentenced to a conviction.⁴

Undoubtedly, when the Saudi regulator decided to pardon the penalty of public right, his report was based on the rules of Islamic law. At the same time, it should be noted that what is meant by amnesty here falls under the range of reinforcing crimes against God, if it has an interest and benefit to society, and should not affect the rights of the victim.⁵

In our view, we raise the following question: How well is the Crown Prince entitled to pardon in cases where the guardian is outside the country, whether for official work or to receive treatment, or in any case with which he can not exercise his constitutional functions?

Regarding the answer to this, the regime came without a text or reference to it, and all that the guardian may authorize the issuance of amnesty to some of the district princes or the Minister of Interior. Therefore, we wish the Saudi organizer to address this situation by drafting a statement stating the eligibility of the Crown Prince as his first deputy to the king and entrusting him with the administration of state affairs in the absence of the guardian. With regard to the special right, it is mentioned in the provisions of article 23 of the Code of Criminal Procedure. It states "The special criminal case shall terminate in one of the following cases:

1. A final judgment shall be issued
2. The amnesty of the victim or his heirs shall not prevent the pardon issued by the victim or his heirs from continuing the public right of action.⁶

Second: - Amnesty in some Saudi penal systems

Some Saudi regimes have come to emphasize the right of the guardian to pardon some punitive penalties whenever he sees an interest in it, where the judiciary is obliged to issue it when its conditions are met. For example, in the anti-bribery system, article 16 of the Code states that “the briber or intermediary shall be exempted from the original penalty and subordination if he informs the authorities of the crime before it is discovered.⁷

Similarly, Article 25 of the Penal Code stipulates that “the competent court shall rule on exemption from the penalty for forgery crimes, The provisions of this Regulation shall be given to all perpetrators who report their crime before it is discovered and to use the forged editor. The competent court may exempt the perpetrator from punishment after the discovery of the crime if he is guided by the other perpetrators and is

¹ Article 49 of the Saudi Code of Criminal Procedure promulgated by Royal Decree No. M / 2 dated 22/1/2014

² See the mentioned article of the system of trial of ministers issued by Royal Decree No. 88

³ See, but is not limited to Royal Decree A / 101 of 9/4/2015, which exempts prisoners of public right whose cases relate to the penalties. This amnesty came in conjunction with the accession of the Custodian of the Two Holy Mosques King Salman bin Abdulaziz to the reins of power in the Kingdom. See also Royal Decree No. 7331 / MB of 22/8/2007.

⁴ Dr. Zaki Mohammed Shannaq, Brief in the Saudi Code of Criminal Procedure, *ibid.*, P. 103.

⁵ Dr. Ibrahim bin Hussein Mogani, clarifications on the system of criminal procedures, Library of Law and Economics for publication and distribution, Riyadh, 2009, p. 30.

⁶ See Article 23 of the Saudi Code of Criminal Procedure.

⁷ See the Saudi Anti-Bribery Law issued by Royal Decree No. M / 36 dated 29/12/1991.

easily arrested.¹

Article 11 stipulates that "the competent court may exempt from these penalties any perpetrators who inform the competent authority of the crime before it is known and before the damage has occurred." If reporting after knowledge of the offense is to be exempted, the report shall control the rest of the perpetrators in case of multiple offenses, or the tools used in the crime.²

The exemption also has a role in the anti-money-laundering regime. Article 18 stipulates that the competent court may exempt from these penalties the owner of the funds. Or the proceeds of the offense, or its holder or user if he notifies the authorities prior to his knowledge of the sources of the funds or proceeds, and the identity of the participants without benefiting from their proceeds.³

The second topic

Conditions and effects arising from the pardon of the guardian in Islamic jurisprudence and the Saudi regime

Segmentation

The pardon issued by the guardian must be in accordance with legal controls and standards, whether in Sharia or the system. Accordingly, the study of this topic came to identify the legal conditions in the amnesty issued by the guardian, as well as the implications of this in three demands. We devote the first requirement to the conditions of amnesty in Islamic jurisprudence, then we deal with the second demand for the conditions of amnesty in the Saudi regime, while the third request we devote to the effects resulting from the amnesty, whether in Shara or the system, as follows: -

The first requirement

Conditions of pardon of the guardian in Islamic jurisprudence and system

The Saudi Penal Code clearly and explicitly stipulated the conditions to be met in the amnesty issued by the guardian regarding the penalty, as stated in the Islamic jurisprudence, which did not set specific conditions, especially in the pardon issued by the guardian and a right of God Almighty. From the context of their talk, we can conclude a number of conditions that must be met in the amnesty related to the rights of God. We will explain this as follows:

Section II

Conditions of amnesty in Islamic jurisprudence

First: - Amnesty should not be within the limits of God. This condition is not disputed by the jurisprudence⁴; the "hudood" are special rights of Allah Almighty. Once the crimes are proven, the guardian has no choice but to establish them, this means that neither the guardian nor the victim can be pardoned.

Second: - The pardon should be an investigator in a favorable interest⁵. This is an indispensable condition necessitated by the jurisprudence in the amnesty of the guardian, which must be investigating for the benefit. As if the person who committed the crime is known among the people that he is a man of virtue and virility, and his committing of the crime was a slip, or he is newly interred the Islam, or he regret the commission of the act and repent.

Third: The accused of pardon shall not be known for debauchery and immorality, this requirement corresponds to a stay of execution in legal systems, the person to whom the pardon is to be issued must have no precedent for debauchery and immorality. The scholars know that the cover-up of the accused of these qualities is hated⁶, and to confirm that they said: "It is not known that he should not be covered up. But his case shall be submitted to the guardian if he does not hide from that a spoiler; because the cover for this covetousness in abuse and corruption and violation of sanctity, and the boldness of others to do like ⁷". In the sense of infringement, if the guardian pardons a defendant who is known for debauchery and immorality, such pardon shall be misplaced.

Fourth: The amnesty shall be issued before reaching the guardian. This requirement relates to individuals and the extent to which they are entitled to amnesty for crimes committed against them, in order for the amnesty issued by individuals to be productive and correct, it is stipulated that the order has not been filed with the guardian. In the sense of infringement, if the order is filed to the guardian, then the amnesty of

¹ See the Penal Code for Counterfeiting Crimes issued by Royal Decree No. M / 11 dated 18/2/1435.

² Article 11 of the Law on Combating Cybercrime issued by Royal Decree No. M / 17 dated 8/3/1421.

³ See Article 18 of the Anti-Money Laundering Law issued by Royal Decree No. M / 31 dated 11/5/1431.

⁴ Dr. Abdulkader Odeh, *ibid.*, P. 84. and Mohammed bin Mohammed bin Abdulrahman al-Maliki, *Talents of Galilee ...*, *Ibid.*, 21/210. Maroudi, *The Royal Provisions*, *ibid.*, 42/156. And Mohammed bin Abi Abbas Ahmed bin Hamza bin Shihab al-Din sandy, *the end of the needy ...*, *Ibid.*, 26/323. Abu Bakr ibn Mas'ud bin Ahmed al-Kasani Hanafi, *Badaa'i Sanayi 'Ibid*, 33/205. And Mohammed bin Abi Abbas Ahmed bin Hamza bin Shihab, 28/327

⁵ Abdulkader Odeh, *ibid.*, P. 94.

⁶ Ali bin Suleiman Mardawi, *fairness in knowing the most correct of the dispute*, *ibid.*, 11/244. Abu Abdullah Mohammed bin Ahmed al-Dhahabi, *polite in the abbreviation of Sunan for Bayhaqi*, *ibid.*, 21/214. Ali ibn Sulayman al-Mardawi, *fairness in knowing the most correct of the dispute*, *ibid.*, 19/248.

⁷ Abu Abdullah Mohammed bin Ahmed al-Thahabi, *polite in the abbreviation of Sunan for Bayhaqi*, *ibid.*, 21/214.

individuals shall be deemed unfounded.

Section II

Conditions of amnesty in the Saudi regime

The Saudi regime¹ clearly and explicitly stipulated the conditions to be met in the pardon of the penalty, as follows:

First: The penalty shall not be a “hud”. This clause is fully consistent with the purposes of Islamic law. The circular of the Minister of the Interior affirms this: “The guardian may pardon the reinforcing punishment if the ta'zir is not a human right.”²

Second: - Issuing a judgment in the case to be pardoned. The pardon does not apply to the accused before the verdict is issued, however, this rule is not intended for launching, crimes are still in the investigation phase, and no judicial decisions have been issued, yet may be covered by amnesty, as in the case of qat use crimes.³

Third: In common crimes of public and private rights, pardon requires the termination of the private right. This is confirmed by article 22 of the Code of Criminal Procedure, which states in its inability "that does not preclude the continuation of the claim of the private right".⁴

The second requirement

The legal and legal effects of the pardon issued by the guardian

We have stated that the guardian is the representative of the general Muslim community, and is entrusted with the task of taking care of their interests in accordance with the provisions of Sharia and religion. Since the Shariah has authorized the right of pardon in some crimes, there is no doubt that this pardon has legal effects, and therefore, we take it in accordance with the provisions of the Shariah and the Saudi regime within the following two branches, as follows:

Section I

The effect of the pardon of the guardian in Islamic jurisprudence

First: The impact of amnesty on the crimes of “hud”, retribution and ransom

As we have already shown, criminal cases in Islamic jurisprudence are divided into three sections: one arising from the commission of a border crime, the other arises from the crimes of retribution and parental, and the third arises from Ta'zir. With regard to border crimes, as we have said that Islamic jurisprudence is unanimous that there is no guardian of amnesty or overturning. This is the case for crimes of retribution and blood money, the right to pardon or not in this type of crime is limited to the victim, whether he is alive or his guardians, or rather heirs after him, if he has died. Therefore, the amnesty issued by the guardian in these crimes is not affected.

Second: The effect of amnesty on Ta'zir crimes

As for the crimes of Ta'zir, there is disagreement among the jurists on them. The Hanbalis and Hanafis⁵ went to permissible to pardon the reinforcing punishment of Allah Almighty, except for the prescribed Ta'zir, and those relating to the abandonment of prayer and insulting the companions. While the Hanbalis consider that the amnesty issued by the guardian has an impact on the general criminal case during the trial and leads to its expiry, This pardon has no effect on private criminal case; the property of the latter in the pardon only prove to the owners affected by the crime according to the consensus of scholars.⁶ The other saying that he is not allowed to pardon the guardian for the crimes of Ta'zir, so that it entails its duty to establish it. In the sense of violation if the guardian pardoned, this pardon has no effect on criminal proceedings during the trial; because the scope of the amnesty came in what may not be pardoned. However, the pronounced amnesty of the guardian on the criminal case concerning the corporal punishment was more likely, and the right of Allah Almighty, provided that this does not affect private criminal proceedings.⁷

Section II

The effect of the amnesty of the guardian on the Saudi penal system

First: Legal text:

Article 22 of the Code of Criminal Procedure sets out the implications of an amnesty issued by a

¹ Dr. Ahmad Awad Bilal, *Comparative Criminal Procedure and Procedural System in Saudi Arabia*, Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 1179.

² Order of the Minister of the Interior, No. 3152, dated 1/6/2000.

³ See Royal Decree A / 101, dated 9/4/2015.

⁴ See Article 22 of the Code of Criminal Procedure promulgated by Royal Decree No. M / 2 dated 22/1/2014.

⁵ Mohammed bin Abi Abbas Ahmed bin Hamza bin Shihab al-Din sandblasting, the end of the need to explain the curriculum Ibid, 28/326

⁶ According to some Shaafa'is and Maliki, it is permissible for the guardian to pardon the reinforcing punishment of the rights of persons: see Kashkawi, Abu Bakr bin Hassan, the easiest to explain the guidance of Salik in the jurisprudence of Imam Imam Malik, without publication date, Modern Library, Beirut, 1/106.

⁷ Dr. Abdulkader Odeh, *Islamic Criminal Legislation Compared to Positive Law*, op. Cit., P. 97.

guardian, Where it stipulated that "the public criminal case shall terminate in the following cases: 1 ... 2. Pardon of the guardian in the pardon ... etc"¹.

Second: Legal Effect:

It is clear from the said article that came in accordance with the rules of Islamic Sharia that the guardian may pardon the penalty of public right, it should be noted, however, that the scope of amnesty in Islamic law is superseded by reinforcing crimes whose penalties relate to God². When the guardian issues an amnesty, the effect of such action shall lead to the expiry of the public criminal case, and shall be subject to the penalties imposed in cases of public right, this pardon shall not affect the rights of the victim or his relatives, in accordance with the aforementioned article 22.³

From our point of view, we do not object to the pardon of the guardian for crimes that have a special right if the victim or his family relinquishes their personal rights.

Third: The period during which amnesty is issued in the Saudi regime

Perhaps the prevailing system in the Kingdom of Saudi Arabia is the issuance of an amnesty every year for some of the punitive penalties and sentenced to judicial rulings, but this rule as we said is not general, sometimes amnesty extends to some offenses that are still pending before the judiciary, for which no judicial decisions have been issued. To be sure, the pardon, however, includes only punitive punishments, so that the border crimes that Allah and His Messenger have ordered to apply, if they reach the guardian, this principle is well known and recognized by all, which states that the border is not amnesty if you reach the guardian.

The Royal Pardon Rules reflect this principle, it stipulates that "this amnesty shall not include the penalty of limitation - imprisonment or lashing in any way". The addressee of this principle is not prisoners with special rights such as retribution and so on, but only applies to prisoners of public right.⁴

Results

1. Islamic law is more regulated for amnesty than positive laws, as it is mentioned in more than one place in the Holy Quranic verses, as well as in the Sunnah.
2. In the amnesty issued by the guardian, the Saudi organizer requested that a final judgment be issued, contrary to what is stated in the positive legislation, such as the Jordanian legislation, the general amnesty applies whether a verdict is issued or not.
3. Neither Islamic law nor the Saudi regime has set a specific time for the issuance of the amnesty law, and can therefore be issued at any time and in any case where the case is filed, even after a final judgment has been issued.
4. The issuance of the general amnesty law and the special amnesty do not affect the personal rights of the victim of the crime and this is agreed upon in the provisions of Sharia and the Saudi penal system.
5. In border crimes, the guardian does not have the right of general amnesty, not even intercession, because they are rights of God.
6. In cases of parental retribution, the right of pardon shall be restricted to the guardians of blood. If they are pardoned, this does not prevent the judiciary from issuing a punitive punishment against the offender.
7. Both private and public amnesty in shara and discipline are among the reasons leading to the expiration of the criminal case.
8. When a general amnesty law is enacted, it does not include certain persons, while a special amnesty shows these persons and the type and amount of punishment.
9. The general amnesty and the special amnesty in Shara and the Saudi regime shall not affect the right of the injured party to claim compensation before the judiciary, within a certain period specified by law.

¹ See Article 22 of the Saudi Code of Criminal Procedure promulgated by Royal Decree No. M / 39 dated 28/7/2001.

² See Decision No. 352 of the Minister of Interior, dated 1/6/2000.

³ Ahmad Awad Bilal, Comparative Criminal Procedure ..., Ibid., 1180.

⁴ Ibn Ghuth and Talha bin Mohammed, the prosecution and its provisions in jurisprudence and order, the treasures of Seville, 2004, p. 526.

Recommendations

1. We wish the modern Islamic jurisprudence to set specific conditions for the amnesty issued by the guardian, in accordance with the purposes of Islamic law glue.
2. We wish the Saudi organizer to make the cases covered by the amnesty or not, the competence of each party has been registered with the case.
3. In the case of amnesty cases, we hope that these cases will not come out of the Shari'a courts, except by reasoned judgment, based on the provisions of Article 10 and Article 5 of the Saudi Code of Criminal Procedure.
4. The pardon issued by the king is only in cases in which a verdict has been issued, but some cases still pending before the courts may be covered by the pardon. We hope that the Saudi organizer will decide on this matter to state clearly and explicitly that the amnesty does not cover the cases that are still pending before the judiciary, so that it is limited only to cases where a final judgment has been issued.
5. We hope that the Saudi organizer, like the rest of the Arab legislators, will limit the punitive crimes and put special sanctions on them, and not leave the door wide open for the diligence of the judiciary.
6. We wish the Saudi organizer to draw up a special provision on the extent of eligibility for a pardon from the Crown Prince, in case the guardian cannot exercise his constitutional duties for illness or to travel abroad.

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