



The Effect Of Lapse Of Time In A Criminal Case From The Perspective Of Islamic Jurisprudence And The Criminal Law Of Afghanistan

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ABSTRACT

Elapse of time means the passing of a certain time on the criminal case or the application of punishment. The same period that is discussed in Islamic jurisprudence under the title (Taqadam). The problem mentioned in the current era is that the criminal case is presented to the court after a long time. Can such a claim be heard or not? And what effect does the passage of time have on this? The importance of the research is that in the current era, lawsuits arise over some cases that have been pending for a long time and the claimant presents her lawsuit to the court without any valid excuse, which is a problem. So how can we solve this problem? This research has discussed and examined the aspects of this issue in a specialized way, comparing it with jurisprudence and law.

This research is like a library and was done in an analytical-descriptive form by referring to jurisprudential and legal opinions and using the in-text referencing or (APA) method. The purpose of this research is to express a satisfactory verdict about the problem and the subject of the research, which will solve to a large extent the problem that has arisen among the people of Afghanistan, especially after the rule of the Islamic Emirate in this regard, in the light of Hanafi jurisprudence and criminal law. The result obtained is that the Hanafi jurists have considered the limit in which the right of God prevails to be effective in those crimes, and they are of the opinion that filing a lawsuit, testifying witnesses, and offering evidence after this period is not acceptable in the eyes of the judge. Also, the passage of time has been effective in politeness crimes from the point of view of legal experts, and after the same period as it was registered in the law, the lawsuit is not heard. Also, from the point of view of jurists, in politeness punishments, if the implementation of the punishment is subject to the lapse of legal time, it will cause the punishment to fall. Prescription (passage of time) in itself is not invalidating or confirming civil or criminal rights, but causes the claimant's claim to not be accepted after the expiration of a certain period of time.

Keywords:

Criminal lawsuit, passage of time, limited crimes, politeness crimes

INTRODUCTION

Praise be to Allah, and may blessings and peace be upon the Messenger of Allah, his family, his companions, and all those who follow him.

Dealing with various cases and resolving enmity between people is one of the important

human duties among the nations of the world, especially this is the duty of Islamic rulers to deal with people's affairs according to the rules of Islamic law, one of the important cases that often occurs between people is criminal litigation. Which takes place in different ways at different times among the people of the society.

Dealing with this matter is one of the basic duties of the courts, so that according to the laws of Sharia and the laws of the settled country, justice is provided in the best way among the people of the society, no innocent person is punished without reason and no criminal is acquitted. The problem is this; sometimes it happens that a long time has passed since the occurrence of the criminal case, including the limits and punishments, and after that the perpetrator sues someone or confesses himself, or the criminal is sentenced to punishment, but it takes a long time due to reasons. The current research (the effect of the passage of time on criminal cases from the perspective of Islamic jurisprudence and the criminal law of Afghanistan) deals with solving this issue and problem.

The importance of this research lies in the fact that many people have not filed criminal lawsuits after long periods of enmity due to their disbelief in fair proceedings during the previous government, or because they did not get the opportunity to submit a lawsuit to the competent authorities. And now, after the rule of the Islamic Emirate, they want their claims to be dealt with, and this investigation will help to deal with such cases.

The aim of the current research is to explain the above-mentioned issue in the light of Islamic jurisprudence and the state laws of the country, which is discussed analytically-descriptively in the form of a comparative library method. More attention will be paid to Hanafi jurisprudence in expressing and conveying jurisprudence, because the people of Afghanistan follow the Hanafi religion, and the courts issue rulings citing fatwas and authentic texts of the Hanafi religion, and the opinions of other jurists will definitely be taken into account in explaining the issue, because it is possible There are some issues that the opinion of another jurist is preferred. We will discuss the issues related to the research topic under the following topics: jurisprudential and legal definition of passage of time and criminal lawsuits, effect of passage of time on limits, retribution and ransom. The effect of the passage of time in punishments, the effect of the

passage of time on the implementation of punishment, etc.

Definition of review of Time

A: The fiqha definition of time: The passage of time, which in jurisprudential term is called "Taqaddum" means passing a certain period of time on a sentence of punishment that has not yet been applied, and this passage of time causes the hearing of a lawsuit (Odeh, B t.247).

Or in another way, review of time is delay of the Claim and Proof of Crime, in the court or in the implementation of Punishment is delayed or delayed by the court which causes the hearing of the case or the fall of the punishment. (Nuzhata,1424:22)

B: Legal definition of the passage of time: The Criminal Procedure Law of Afghanistan has defined the passage of time as follows in Article (4) Paragraph 36:

"The lapse of time is the lapse of a specified period of time, as a result of which the criminal lawsuit or the execution of the punishment according to the provisions of this law is dismissed."

The summary of the mentioned definitions is this; if the trial of a crime or the execution of a definitive sentence is postponed for a certain period of time, according to Sharia or other law, that crime is not dealt with and the final sentence is not implemented.

In this case, they say that the crime is subject to the statute of limitations.

Comparison between jurisprudential and legal definition of passage of time:

By reviewing the jurisprudential and legal definitions, it is clear that there is no fundamental difference between the jurisprudential and legal definitions of this term, but the legal definition is derived from its jurisprudential definition. But if we look carefully from another area, there is a difference and that is:

In the definition of jurisprudence, it generally includes the passage of time in the limits, qisas and diat, although the fall of these is based on the passage of time among the jurists, which we will discuss in detail in the following materials. But in the legal definition, because its definition and discussion was translated in the Afghan Criminal Procedure Law, it means that the

passage of time of the law here only includes lawsuits and punishments, not limits, retribution, and diat, because the method is used. Legislation in Afghanistan, both in terms of textual and formal laws, seems to have been legislated only in the field of crimes and punishments.

No, the reason for this is clear, because what is clearly defined in the Islamic Shari'ah, it is not permissible for a mujtahid or a judge to set another limit for it. As the legislators have made this issue clear in Article (2) Paragraphs 1 and 2 of the Afghan Penal Code as follows:

"This law regulates the crimes and punitive punishments. Perpetrators of hudud, retribution and death crimes are punished according to the rules of Hanafi jurisprudence of Islamic Sharia"

Therefore, the legal definition of the passage of time revolves around crimes and punishments, while the jurisprudential definition includes both issues based on its inclusion.

Definition of criminal case

A: The jurisprudential definition of a criminal lawsuit: To clarify the jurisprudential definition of a criminal lawsuit, we must first define the lawsuit: a lawsuit in the word means demand and desire (Ibn Manzoor, B.T.: 72).

And in the term, it is a promise by which a person announces and demands her/his right over someone else before the court (Sarkhsi, 1421: 51).

Lawsuits, which are of various types considering their subjects, are mainly divided into two types (civil lawsuits and criminal lawsuits).

"Criminal lawsuit or criminal lawsuit is the demand of the victim's right against or the demand of punishment of the criminal before the court" (Nuzha, 1424: 18).

Explanation of the definition: If it is clear from the dictionary definition of a claim, it means a request. So, in the definition of a criminal case, there are two important points:

1. The claim of the victim's right against (the person against whom the crime has been committed) is the claim of the material or moral right of the victim and the victim

against her or her lawyer or guardian from the court.

This right to ask depends on the subject or the nature of the crime of different types and methods, for example, if the crime was murder, retribution or death is demanded, if there were limbs and injuries on which retribution was possible, retribution or death, like an eye for an eye, is demanded. Ear against ear, nose against nose, etc., are still wounds for which revenge is possible, and if revenge is not possible, reparation and material compensation will be made.

2. Demanding the punishment of the criminal (demanding that the punishment be applied to the perpetrator of the crime) if the crime is one of the pure rights of Allah, such as apostasy, drinking alcohol, insulting religious sanctities, etc., in this case, by a special official (such as: Muhtsab, Sarnwal, Police, Monitoring and prosecuting orders and decrees, etc., which differs in different governance systems) is requested from the court.

B: The legal definition of a criminal case

The Criminal Procedure Law of Afghanistan has defined a criminal lawsuit in Article (4) Clause 3 as follows: "A criminal lawsuit is a demand for punishment by the police in accordance with the provisions of this law before the court."

From the above definition, it is clear that a criminal case is filed by the prosecutor, even if the victim is a private person or an official employee of the system, the only difference is in the legal and judicial method of the two systems (the Republic and the Islamic Emirate). You will be presented to the court. While in the Islamic Emirate, this lawsuit can be presented directly to the court through the individuals themselves or through their parents and lawyers, as well as police officers and supervisors of the Islamic Emirate's supervision and prosecution department, they present criminal cases to the courts. Since the Office of the Chief of the General Directorate does not exist with the laws and bills of the Republic era, and in the Islamic Emirate's rule, it was renamed to the Chief Directorate of Supervision and Prosecution of the Orders and Decrees of the Islamic Emirate, and its law has also changed. The stage of

investigation, prosecution and filing of criminal lawsuits is no longer necessary through this, so the demand for punishment (filing of criminal lawsuits) is not limited to this department. Anyway, let's talk about the main issue (the effect of the passage of time in a criminal case). Before discussing the passage of time in terms of retribution and retribution, I know that this issue can be raised from two areas:

- 1- The effect of the passage of time in not proving the claim (not hearing the claim)
- 2- The effect of the passage of time in the fall of the punishment after the verdict

Both issues are tied together, which explains one of the other reasons and the ambiguity of one causes the other to remain ambiguous.

Accordingly, by observing the centrality of the title of the research, the effect of the passage of time in penal proceedings in terms of limits and punishments from both areas (before the ruling of the court and after the ruling of the court) We will discuss the following points:

The passage of time in the limits of retribution:

The passage of time on the crimes of Limits and retribution is a difference between the jurists of the four schools of thought, which we will discuss in detail below:

First: the passage of time in approx.

A: According to the Hanafi religion: The passing of time has an effect on those kinds of limits that are the pure right of God or the right of polytheists, but the right of God prevails in it, such as: (the limit of adultery, the limit of drinking alcohol, the limit of theft) That the passage of time is due to an excuse, and the excuses that, according to this religion, play a role in the lack of passage of time in criminal cases are: due to distance, illness, and the like, which make it impossible for witnesses or plaintiffs to testify or testify at the time of the crime sue. Because with the passage of time, doubt is found and the limits become invalid, and even if the person herself has confessed and later withdraws from her confession, the limit is invalidated. However, in that type of hudud where the slave's rights are pure, the passage of time does not prevent the hearing of the lawsuit, but at any time, even after a long period of time, a lawsuit can be filed regarding the

establishment of hadd qazf, or a witness can testify about it, because hud gazf is one of the rights of the slave, even to If the qadhif withdraws from his confession if the qadhif (a person subjected to qadhif) is a claimant, the limit is not invalidated (Ibn Abedin, 1421: 9).

Expiration of the penalty period:

The passage of time for the punishment of the limits means that when the court (judge) verdict is issued against the perpetrator of one of the mentioned limits and before the sentence is applied to the criminal, there is an obstacle that causes a delay or closure of the enforcement of the punishment (hadd), for example; He ran away, or what developments took place when the officials (executive) ran away and the accused remained unpunished and more or less time was spent on him. Will the punishment be applied to him after that or not? We will briefly explain it below:

As explained in the previous material, the passage of time was a difference between the jurists in proving or arguing about the establishment of limits, according to the Hanafi, the passage of time had an effect, especially in the limits that were pure rights of God, after a certain period of time, it could not be proven, the testimony of the witnesses against the perpetrator was not accepted, except in the case of qadhaf. , because it is one of the rights of the slave, the right to sue or prove will not be lost over time. While the president is of the opinion that without this distinction in all limits, the proof of limits or a criminal lawsuit for establishing a limit can be heard at any time and time, and will not fall over time. Almost the same difference is here in the same order. That is, according to the Hanafi, in the same way that a criminal case or proof of limits by testimony is subject to the lapse of time before qada, and the case is dismissed, after qada, if the criminal escapes and is caught after some time, or for any other reason, the punishment of hadd is over. It was not implemented and after some time it cannot be implemented again except in the cases of the rights of al-Abadi. While the president also based on their previous principle (the lack of effect of the passage of time in proving the limits) is of the opinion that after the issuance of the court order, even if the limit

is not enforced for various reasons, and even if time passes on the criminal, the punishment can still be enforced (Hasan, 1425). : 412-417).

The passage of time in punishments (Tazirat)

Crimes which do not cause revenge or retribution are called punitive (taziri) crimes which their condemnation is different from that of revenge and retribution over time. It is the same whether public individual rights or special individual rights have been granted. Due to the fact that penal punishments are basically decided by the ruler and the judge, but within the interaction of the legislation of the present era, the general limits of penalizing are defined in the relevant laws, for example; punishment crimes are divided into different categories and for each of them specific punishments are given so that the judges do not exceed the general limits. In the same way, it is permissible for the ruler and the judge to set a certain period for the passage of time so that after that time, the criminal case cannot be heard. Therefore, we see that the statutory laws (penal laws) discuss the effect of the passage of time in the absence of a criminal lawsuit and also discuss the role of the passage of time in the fall of punishment. Due to the limited scope of our topic, here we only mention the law of criminal procedures of Afghanistan, which considers a certain period of time in different crimes and considers some crimes to be subject to the passage of time and some are not subject to it.

In the same way, Maliki and Shafi jurisprudents have considered different periods of time for not hearing a lawsuit. In fact, they all agree on the duration of hearing a lawsuit, but they differ only on the duration (Uthman, 1415: 245). All the mentioned durations are diligence and it is up to the supreme ruler to decide how much time to determine for which type of crime.

The penal procedure law of Afghanistan is based on the criminal case, and the penalties of that time are proportional to it, so that a criminal case may be filed after the deadline has been dropped. As stated in article seventy-two paragraph (1) of the aforementioned law:

"Criminal lawsuits are dismissed after the following deadlines have passed:

- 1- Ten years in case of committing a crime.
- 2- Three years in case of committing a misdemeanour crime.
- 3- One year in case of committing a crime of lewdness.

This article of the law has considered certain periods of time in certain parts of the crimes, all of which are punishments, as we mentioned before that the determination of the duration of the lawsuit in punishment crimes is entrusted to the decision of the ruler or judge however, according to the requirements of the age and time, the scholars and legal experts of these times have recorded them in each category in written documents (statutory law) so that they can serve as a guide for the judges and also the judges do not violate the standards of justice and fairness. Despite that, some crimes are excluded, which do not include the above-mentioned periods (the passage of time has no effect on them), as paragraph (2) of the above-mentioned article reads as follows:

"Crimes listed in the Statute of the International Criminal Court and documents of the Rome Diplomatic Conference are exempted from the sentence listed in paragraph (1) of this article" (Criminal Proceedings Law: 72) That is, those types of crimes that have been noted in the International Criminal Court's charter, the filing of a lawsuit is not subject to the statute of limitations, which, based on the sentence contained in Article (5) of the Statute of the International Criminal Court and the final document of the Rome Diplomatic Conference, the International Criminal Court has authority over the following crimes are:

- 1- The crime of genocide.
- 2- Crime against humanity.
- 3- War crime.
- 4- The crime of rape.

Similarly, the mentioned law has also considered the passage of time for implementing the punishment of the criminal. As stated in the seventy-sixth article: "The punishment of the sentenced person will be revoked after the following deadlines have passed from the date of issuing the sentence:

- 1- Death execution penalty after twenty-five years.

- 2- Life imprisonment offence after twenty years.
- 3- Long imprisonment offence after ten years.
- 4- Moderate imprisonment crime after three years.
- 5- Short imprisonment offence after a period of one year.

According to what has been explained, the passage of time issue is also raised in penal crimes from two areas, one is the criminal lawsuit and the other is the application of the punishment, which actually belongs to the stage before the issuance of the court order and after the issuance of the court order, time has its role in both cases of review. So that in some cases it causes the criminal case not to be heard, and in some other cases, although the court verdict has been issued, but for that reason the implementation and enforcement of the verdict regarding the punishment of the convicted person remains undecided due to various reasons, and a little or more time is spent on it, which is called the passing of legal time in the terminology of legal experts, and it causes the punishment to collapse, as it was cleared in the above-mentioned items.

CONCLUSION

During research on the issue of the effect of the lapse of time on the criminal case, the following results were found accordingly:

Elapse of time means the expiration of the time limit for filing a lawsuit, demanding a right, or enforcing a penalty, and it is the same in civil or criminal cases. Determining the deadline for not accepting a lawsuit is entrusted to the decision of the ruler and the judge. The effect of passage of time on the crimes of Hudud and analogy (Qisas) has been disputed among the jurists, according to the Hanafi, it has an effect on the pure laws of God and has no effect on the rights of the servant, according to the majority, and it has no effect in both cases.

In penal crimes, which are mostly discussed by legal experts, the law of criminal procedures of Afghanistan, according to the jurists who consider the passage of time to be effective in the fall of the criminal case or the fall of the punishment, has made it impossible to

hear the case and the fall of the punishment after the passage of certain periods of time. The passage of time does not invalidate the right, but judicially, it causes the lawsuit to be unheard. If the lapse of time is effective in filing a criminal lawsuit, it also plays a role in the fall of the punishment, that is, if the criminal is not punished after the conviction and a certain period of legal time has passed on him, the punishment will be revoked.

REFERENCES

1. Holy Quran.
2. Ibn Abedin, Muhammad Amin bin Omar. (1421). Radal al-Mukhtar Ali.
3. al-Dar al-Mukhtar's commentary on Tanveer al-Absar. Beirut: Dar al-Fekr.
4. Ibn Manzur, Muhammad bin Makram. (bt). Arabes Tong. Beirut: Dar Sader. Department: Linguistics and Dictionaries
5. Brahmi, Abdul Karim (1434). The theory of limitation and its applications in criminal legislation. Algeria, b.i.
6. Sarkhasi, Muhammad bin Abi Sahl (1421). Happy. Investigation: Khalil Mohieddin Al-Mays. Beirut: Dar Al-Fikr.
7. Utaibi, Saud bin Abdul-Ali (1427). The Islamic Criminal Encyclopedia compared to the systems in force in the Kingdom of Saudi Arabia. Saudi: b i.
8. Othman, Muhammad Raafat (1415). The judicial system in Islamic jurisprudence. Dar Al Bayan.
9. Odeh, Abdul Qader (b.t). Islamic criminal legislation compared to positive law. Lebanon-Beirut: Scientific Books House.
10. Afghanistan Penal Procedure Code, published in Official Gazette 1393.
11. Grohi Az Ulama (1404-1427). Kuwaiti Jurisprudence Encyclopedia. Egypt: Dar Al-Safwa Press.
12. Nuzha, Muhammad bin Khalid. (1422). The statute of limitations on criminal cases in the Saudi system in light of Islamic jurisprudence. Saudi-Riyadh, b.t