

Types of the Dropped and its Jurisprudential Effects

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Abstract

Jurisprudence has many rules, countless branches and applications which are scattered in various chapters. It is characterized by its brevity in its form and general in its meaning, so that it is a common vessel for many branches and different issues. Here, its importance shows the urgent need of the jurist... The rule (if the origin is dropped, the branch falls) has many theoretical connections to the origins, and this rule has rules which are closed to it in meaning and content. It also has applications in various sections and issues of Islamic jurisprudence.

1. Introduction

Jurisprudence is considered as a scale that tackle every issue according to our first teacher, and our master Muhammad (Peace and blessings be upon him), and his successors after him who are the most eminent scholars, and the Companions and the Followers (may God be pleased with them) all the way to the later scholars. They were entrusted with the performance of this honorable task in order to derive legal rulings through diligence because perceptions and understandings differ and vary. It is self-evident that the jurisprudence and the branches differ with agreement on reaching one goal. It is the realization of the aims of the legislator from establishing the Sharia from the beginning, as Imam Al-Shatibi says that Sharia is “bringing interests and warding off evils” through these provisions.

It is necessary that efforts are directed to another work that organizes this wealth, and collects it in safe. It is possible for the diligent jurist to become familiar with the dispersal of the rulings because he does not need to know it. Here, the idea of jurisprudence is originated and developed until it reached us today in the form of an independent science of its own which is the science of “jurisprudence rules”. The majority of these rules which come in a concise basic form are nothing but an idea that unites many issues and branches of jurisprudence that are united by a common destiny. A lot of antiquities and branches do not encompass all the chapters of jurisprudence.

The jurisprudence rule “If the origin is dropped, the branch falls” is one of the important rules that is worthy of study, and it is chosen to be the subject of the study.

2. Types of Dropping and its effects

2.1. The Dropping that Accepts the Reimbursement

Separateness: It, in the language, refers to that man who divorces his wife for a ransom from her.

As for separateness in idiomatic terms, it is a man’s divorce from his wife that is based on money she spends.

The legality of separateness: The Almighty’s saying: (... If you fear that they will not establish the limits of God, then there is no blame on them for what she ransomed with instead...). Separateness is possible if it results from bad treatment, or she hates him. If a woman believes that she is unable to perform God's rights in her husband's obedience, here, divorce is permissible with reimbursement. Abdulbarr says that “We do not know of anyone who disagreed with it, except for Bakr bin Abdullah Al-Muzani who claims that it is duplicated.

1- The effect of separateness on fixed rights, does it forfeit these rights or not?

The majority of jurists from the Malikis, Shafi’s, Zahiriyya, and Muhammad bin Al-Hassan are with the view that the marriage rights of the spouses, such as the dowry, past alimony, and etc. forfeit if the spouses separated. Rights other than marriage, such as debt, do not forfeit whether the right is established for the husband or wife. There must be an agreement and consent to drop them because separateness does not necessitate the innocence of the husband or wife from all other rights by divorce. So, the rights are not dropped by divorce, so that they do not drop by separateness.

Abu Hanifa says that every fixed right at the time of divorce for both spouses related to the individual are dropped. The wife’s deferred dowry and her safe alimony are dropped from the husband. If the wife spends some of her dowry that she does not deserve it, it will be dropped even if she does not receive it completely. The alimony does not drop at wife's period because it is fixed at the time of separateness, house rent, debt, child, and breastfeeding because they are child's rights not for a wife.

There is no difference according to Abu Hanafia (may God have mercy on him) regarding the abolition of marital rights between pronouncing separateness and appearance because each of them indicates the complete salvation from marriage and what is related to it.

Abu Yusuf focuses on to the effect that results from separateness unless it is agreed. It drops all fixed rights at the time of separateness due to the marriage from which the word divorce does not explicitly deprive of the proven rights, and the wording of the dispute is explicit because each of the spouses exonerates his ownership from the marital rights over him.

2- Compromise for Retribution

Allah has prescribed in the Holy Quran a punishment for the crime of self-aggression and what is below it intentionally or by mistake so as to deter those who intend to commit such crime. The scholars agreed a compromise for retribution in money between the crime doer and those of affected

one. This money is considered as a substitute for retribution. So, retribution is waived because it is not permissible to combine the compensation and the compensated according to the agreement of the jurists. The principle in the permissibility of reconciliation for retribution on money is the saying of the Prophet Muhammad (Peace be upon him): (Whoever is killed for whom a person is killed, his family is between two options, either to kill the killing-doer, or he will be ransomed).

The redemption is blood money or reconciliation over an amount of money agreed upon by the offender and the victim's parents, or himself in the event of a felony involving less than oneself.

2.2. The Irreplaceable Drop

Dropping without compensation is the removal of the right and its permanent disappearance to a non-owner without compensation and without consideration.

This is as the abolition of retribution by pardon, the abolition of the right to marriage and enjoyment by separateness, the forfeiting of the right to preemption, the forfeiting of the right to custody by writing, and many other things in the chapters of jurisprudence.

2.3. Dropping Effects

The first requirement: the drop of sin:

First: Sin: It is guilt, and the man has sinned. The truth is that there is a difference from one sin into another because sin does not deserve punishment, and others require punishment. It may be said that sin is the ugly thing that bears responsibility. The sin is the ugly part of the act, and it does not benefit the meaning of the liability.

And sin means disobedience because of God's saying: (So whoever is compelled to engage in an unrepentant act of sin), meaning: not intentionally committing a disobedience, and disobedience requires punishment.

As clarified that sin is an ugly act that requires punishment. Accordingly, sin is a consequence of punishment, and this punishment may be either worldly as in the retribution, punishment and discipline, or in afterlife when God Almighty said: (God has cursed him and has prepared for him a great torment).

3. What Prevents Proving Sin

What prevents a person from committing a sin until a person does what is forbidden while he is a sane adult, deliberately, voluntarily, and aware of the prohibition because of the Prophet's saying: "My Ummah has been prevented from error and oblivion and what they are forced to do".

It also does not prove to the compelled because necessities allow the forbidden, God Almighty said: (So whoever is forced, neither arrogant nor transgressive, there is no sin upon him). This does not prove to the ignorant of the prohibition because there is no punishment without knowledge, such as a person who drinks alcohol ignoring of the prohibition, then there is no sin on him.

Al-Suyuti (may God have mercy on him) states that "oblivion and ignorance absolutely suppress sin. This rule of ignorance is not taken to be absolute, so that ignorance does not claim every perpetrator

of a suspicion or major punishment. The scholars (may God Almighty have mercy on them) have defined the considered ignorance with the following:

- a- It is not known who converted to Islam recently.
- b- Ignorance of the resident in the abode of unbelief, and no one knows it.
- c- Ignorance of those who grew up in a remote desert.

4. The Sin is Extinguished by Repentance and Punishment

1- Extinguishing by repentance: People cooperate in committing sins, but there is no infallible among them in any case, and there is no doubt that sin inherits darkness, veil and humiliation. There is no way to remove all of that and purify from it except by repentance.

The importance of repentance does not stop at the level of purification of man and the removal of the darkness of disobedience, but rather extends to protecting the community by stopping harming them and uprooting the roots of sedition and corruption from the earth.

2-The ruling on repentance: The ruling on repentance is obligatory. It is obligatory immediately, and one is sinning by delaying it.

Repentance effects of which dropped to sin in the Hereafter, and Allah urged the sinful for repentance, as well as His Messenger to accept the repentance of the repentant, and make atonement for their sins in the Day of Judgment. God says: (O ye who believe! Turn to Allah with sincere repentance Perhaps your Lord will expiate from you your sins and admit you to Gardens Rivers flow under it).

As for the Sunnah of the Prophet, it includes what was narrated on the authority of the Prophet (peace be upon him) that he said: (The one who repents of sin is like one who has not sinned), it is about Ma'az.

3- The cessation of the sin with the penalty:

Punishment: As defined by Al-Mawardi (may God have mercy on him) it is a deterrent that God described to deter from committing what he prohibited and abandoning what he commanded) . The wisdom of punishment is to maintain security and stability in society by preserving the five necessities, which are: religion, soul, mind, offspring, and money.

Sanctions are divided into two main types:

A- An estimated penalty: It is defined and predetermined by the legislator in the explicit text that they are called textual penalties, and they are of two types:

1- Punishments: It is a legally prescribed punishment, such as the punishment of theft, the punishment for adultery, blocking the road, apostasy, slander, drinking alcohol, and for prostitution.

2- Retribution: It is the analogy between punishment and felony.

B- Delegated punishment: It is the one that Islamic legislation does not specify anything of it in type or amount, but rather delegated it to the guardians of the order. This delegated punishment is called

worldly. The worldly punishment is a suppression of sin in the Hereafter, for the Prophet's (Peace be upon him) saying: (Whoever is afflicted in minimum sin and punished, God is the fairest not to re-punish his servant than praising him, and whoever is guilty of committing a sin in this world and Allah covers him. So, Allah is the most generous not to make him return to something that He has pardoned).

5. The Reasons for Dropping the Penalties

1- Abolishing the punishment by inheritance of retribution: The offender may inherit his own blood completely as if one of his father's two sons died, then the non-murderer died, only the killer is inherited, the killer inherits his own blood.

In this case, retribution is prohibited because it is impossible to retaliate against him and against him, or as some have justified that the offender's inheritance has all the right to retribution is like an agreement made by all the blood guardians to pardon.

2- Dropping of the penalty by the loss of the place: retribution is prohibited without the soul if it is not possible to fulfill it through the loss of the place of retribution. The principle of retribution in the felony is the member according to the place of the felony. While the offender is still alive, retribution lapses and does not transfer to another member. Penalties lapse with the death of the offender if they are physical and related to the offender himself because the place of punishment is the offender, and it cannot be imagined after the absence of its place.

3- Abolition of the penalty by conciliation: Reconciliation is a contract by which an agreement is made between two parties. Reconciliation is one of the reasons for the abolition of punishment, but only retribution and blood money are reimbursed. As for the other two penalties, there is no effect of conciliation on them.

4- Abolition of punishment by pardoning: Pardoning results in the lapse of retribution. Forgiveness has an impact on retribution of crimes whether the pardon is from the victim or the guardian. In these crimes, the punishment is necessary. The jurists express it as the right of God, and what was a right of God, it is forbidden to forgive or drop it.

As for the punishment, the jurists agreed that the guardian has the right to pardon completely in the crimes of punishment, and he may pardon all or some of the punishment, but they differed about it if the guardian has the right to pardon in all crimes and punishments or in some and not others.

6. The Dropping of the Branch if the Original is Abolished

If the origin is followed by it, then the branch is abolished with the abolition of the origin. One of the jurisprudential rules in this case is: "If the origin falls, the branch falls".

"If the origin falls, the branch falls". There is no reverse, that is: the fall of the branch or subsidiary does not require the fall of the original or the successor because if the foundation collapses, what was built upon will be destroyed.

7. Conclusions

The most prominent conclusions are:

1- Fall is of two types in Islamic jurisprudence:

First: Abolition that accepts compensation, such as divorce as soon as it occurs. So, rights such as dowry and alimony for the wife are obligatory before the divorce happens as well as the abolition of retribution occurs if the mutual consent occurred between the offender and the parents of the victim.

Second: Abolition without reimbursement: It is the removal of the right and its final avalanche to a non-owner without compensation, i.e. without a consideration of any kind.

2- The effects of falling, including:

(i) The drop of sin is either through repentance or punishment.

(i) Sanctions are divided into two basic types:

a - An estimated punishment such as punishment and retribution which is specified by the wise legislator.

b - Delegated punishment: It is not specified by the wise legislator, but rather delegates its order to the guardian, i.e. the head of state is to take into account the public interest.

3- Reasons for dropping penalties:

a - The penalty is waived by inheritance of retribution

b- The penalty is extinguished by the loss of the place.

c- Extinguishing the penalty by conciliation.

d- Abolition of the penalty by pardon.

4- The abolition of the branch if the origin is dropped, and this jurisprudential rule is issued for it. Many particles and countless applications occurs in dropping of the origin the branch which is built on the origin falls.

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