

The fourth lecture

Section Four: Pardoning the punishment

The effect of pardon on the limit is related to the type of right attacked, the pardon does not result from the limit its effect if the latter is a pure right of God Almighty, the assault occurred in such a case on the right of God alone, and in such a case it is not possible to imagine pardon because there is no individual victim imagined to issue a pardon, which is the case of the crimes of adultery and drinking alcohol, there is no victim victim who advances to forfeit his right to pardon and then no pardon In such a border.

As for the limits that combine the rights of God Almighty and the slave, pardon is conceivable, as in such a case there is a victim affected by the crime, who is the victim who received the assault his right, where he has pardon for the hadd in such a case, and pardon in this way has an impact on the limits of theft and slander:

- **Pardon for the limit of theft:** Pardon does not result from the limit of theft effect only if issued after the prosecution and before the pronouncement of the judgment, if issued after the pronouncement of the judgment has no effect or effect as the judgment becomes the limit of the pure right of God Almighty, and the rights of God pure does not accept projection or waiver, as it has no effect if issued before the claim of theft, because the lawsuit is not originally filed and accordingly, it does not envisage the pronouncement of the limit, as there is no judiciary in other than the scope of an existing lawsuit.

The amnesty that produces its effect, as described above, does not erase the description of the crime from the act of theft, but only removes the hadd punishment, and accordingly such theft may be punished in a ta'zir manner.

In this section, other problems arise related to the possibility of the fall of the hadd if the accused owns the money he was accused of stealing.

The jurists divided on these forms into two groups:

- ✓ **The first group:** They are Hanafi jurists, where they differentiate between the time of ownership of money to the thief and consider it the decisive in the matter, while if the ownership has occurred before or after the prosecution.

Accordingly, if the accused owns the money that he was accused of stealing before the prosecution, it is impossible to impose the hadd punishment, because the condition for his signature, as previously explained, is the prosecution, i.e., the claim for the stolen money, and the victim no longer has the right to claim and claim the stolen money if the accused owns the money, and therefore the lawsuit aimed at pronouncing the hadd punishment is not based.

But if the accused owns the money after claiming the theft and claiming the stolen by the victim, the hadd does not fall in such a case, and this group supported this opinion that they went to the judgment of the Messenger of Allah (peace and blessings of Allaah be upon him) regarding the theft of a robe that the victim used to use in the mosque, when the Messenger of Allah (peace and blessings of Allaah be upon him) was informed of this theft and it was proven that it was committed by the offender, he was sentenced to cut off the hand, and the victim said: The Prophet (peace and blessings of Allaah be upon him) said: "So come before you come to me", which indicates that the ownership of money to the thief drops the hadd before the claim but does not drop it after the claim.

- ✓ **The second team:** believes that the defendant's ownership of the stolen money drops the limit directly without discrimination because the eye has become his property, and it is not permissible to establish the limit and cut off his hand in an eye that has become his property, and their support in that is that if the claim and the claim is a condition for signing the limit, this condition must be permanently and continued throughout the lawsuit, which is not achieved in the case of the accused owning the stolen property, as by owning it, the claim is interrupted and becomes impossible, as the claim is a condition that must remain throughout the continuation of the lawsuit.

It should be noted in this regard that the possession of money by the accused does not negate the crime of theft, but rather the hadd only because it is limited only to the removal of the requirement of prosecution.

The hadd punishment is also dropped and is considered ownership of the property from the victim to the accused to acknowledge his ownership of it before the commission of the theft, or prior to the claim thereof, as such an acknowledgment erases the crime, because it removes its element of proving the victim's ownership of the money alleged to have been stolen.

• **Pardon for defamation:** Pardon has an impact on the limit of slander as long as the right of God Almighty and the right of the slave are combined, and this is detailed on two opinions:

- ✓ **The first team:** They are Hanafi jurists and believe that as long as the judgment was not issued, the pardon remains permissible, unless it is on the money as it is considered a bribe, which is not permissible even if it occurred before the issuance of the judgment, but when the latter is issued, the right to pardon falls and there is no room for its introduction, because of the authority enjoyed by the judgment.
- ✓ **The second group:** They are the Shafi'i jurists and see the permissibility of pardoning the limit before and after the judgment without discrimination, where its impact extends and the offender benefits from it in both cases, considering the permissibility of pardon in the felony on the offer of a fortiori, as long as it is permissible in the felony for oneself, i.e. in retribution and blood money, and their support in that is that the limit of slander prevails in which the right of the slave, who can pardon the limit, but in some of their opinions it is a pure right of the slave.

Section Five: Statutes of limitation for hudud crimes

In their organization of the statutes of limitations in hudud crimes, the jurists were divided into two doctrines:

- ✓ **The first doctrine:** is the doctrine of the imams Malik, Shafi'i and Ahmed, where they see that the statute of limitations does not fall out except for the crimes of ta'zir and ta'zir penalties, where the guardian has to pardon and drop them immediately or after a period if he deems it to achieve an interest or pay damage, while the crimes of hudud and retribution and blood money does not have the right to pardon them, and the rules of Sharia do not include anything to indicate that they may fall by prescription and the lapse of a certain period after committing them.
- ✓ **The second doctrine:** is the doctrine of Imam Abu Hanifa, this doctrine in turn allows the statute of limitations in crimes and penalties of ta'zir, and does not allow it in crimes and penalties of retribution and blood money and in the limit of slander, as well as allows the statute of

limitations in hudud crimes except for slander, which is the fundamental difference between this doctrine and its predecessor.

Although it adopts the principle of the permissibility of the statute of limitations in hudud crimes, except for slander, it is not taken at all, but it is decided on the basis of the evidence adopted in the crime of hadd in question between whether the evidence of evidence is the testimony of witnesses or acknowledgment, if the evidence is the testimony of witnesses, the penalty of limitation is dropped by statute of limitations, but the latter does not fall if the evidence is the acknowledgment, and the basis in this distinction is that when the witness attends the crime and witnesses it, he is Choosing between two cases:

- Either he should perform the shahada in response to the words of God Almighty: "Establish the testimony for God."
- Either he refrains from doing so because the Messenger of Allah (peace and blessings of Allaah be upon him) said: "Whoever covers up his Muslim brother, Allah will cover him in the Hereafter."

Therefore, if the witness prefers the second option to cover up the crime and refrains from testifying for a certain period, it means that he adopts the option of concealment instead of performing the testimony, he is not entitled to testify after that on the crime, as this would be considered a presumption that there is an external motive and reason that prompted him to testify, and therefore the latter is not accepted because of the doubts that hover around it that reduce its credibility.

This is confirmed by the saying of Umar ibn al-Khattab, may Allah be pleased with him, who takes the rule of unanimity for not denying it at all, "Whatever people testified to a limit that they did not testify about, His Holiness, they testified to grief and no testimony for them", as quoted from the Messenger of Allah (peace and blessings of Allaah be upon him) as saying: "The testimony of an opponent or two suspicions is not accepted", and the late testimony in such a case takes the judgment of the charge, not the testimony, nor the testimony of an accused against an accused.

The Hanafi believes that the statute of limitations is permissible in both the crime and the penalty, and the latter does not lapse if it is based on the confession

as evidence, and another opinion excludes from this rule the limit of drinking alcohol, which falls even if the evidence of the crime is the confession.

The same doctrine also excludes from the fall of the hadd the crime of defamation because the victim's complaint is a prerequisite for the prosecution and then the consideration of the case, and the witness in his absence cannot testify or submit before the complaint, and defamation is one of the limits in which the right of the slave is clearly visible, and the statute of limitations in the rights of the servants does not extinguish the lawsuit.

The jurists differed in determining the limitation period between six months and one month, while Abu Hanifa believes that the statute of limitations should not be specified for a certain period, but rather leaves its discretion to the guardian.